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Counsel for Plaintiffs Tanya Cordova, Justin Ranger, Paul  
Beskow, Samantha Thorson, Jesse Barnum, and Alex  
Canfield

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
Boise Division

TANYA CORDOVA, JUSTIN RANGER, PAUL  
BESKOW, SAMANTHA THORSON, JESSE)  
BARNUM, and ALEX CANFIELD, )

Plaintiffs, )

vs. )

MICHAEL LALIBERTE, in his official capacity) as Boise State University Vice President for  
Student Affairs; KELLY STEVENS, in her  
official capacity as Director of Student Activities;) and TERI RAPP, in her official capacity as  
Financial Technician for the Associated Students)  
of Boise State University, )

Defendants. )

Civil Action No. \_\_\_\_\_

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

## INTRODUCTION

This is a case about viewpoint discrimination in the allocation of mandatory student activity fees Boise State University requires its students to pay for the benefit of student organizations. Each year, every Boise State University student is required to pay a student activity fee specifically intended for allocation to student organizations. These fees are provided to the Associated Students of Boise State University which, under the authority of and subject to university policies, allocates them to student organizations. Well over one hundred student organizations, representing a broad range of views and interests receive allocations of these student activities fees each year through ASBSU. However, religious student organizations alone are expressly excluded from seeking or receiving funding through ASBSU. Moreover, Defendants have adopted criteria and procedures for funding student organizations that invite further viewpoint discrimination. Defendants' continued exaction of student activities fees from the Plaintiffs and other similarly situated students, only to allocate these fees in a viewpoint discriminatory manner, violates the First Amendment.

Plaintiffs bring this Complaint through their undersigned counsel, Bruce D. Skaug, Goicoechea Law Offices; and Gregory S. Baylor, M. Casey Mattox and Isaac Fong of the Center for Law & Religious Freedom against the above-named Defendants in their official capacities. In support of their claims for relief, Plaintiffs allege and aver as follows:

### JURISDICTION AND VENUE

1.1 Plaintiffs bring this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for deprivations of Plaintiffs' rights secured by the First and Fourteenth Amendments to the United States Constitution.

1.2 Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction is also conferred on this Court by 28 U.S.C. § 1331 because the cause of action arises under the Constitution and laws of the United States.

1.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, upon information and belief, the Defendants reside in the District of Idaho and may be found and served in the District of Idaho, and because a substantial part of the events or omissions giving rise to these claims arose in this District.

#### PARTIES

2.1 Plaintiff Tanya Cordova is a student in good standing at Boise State University who pays the Associated Student Body student activity fee. Plaintiff Cordova disagrees with the views of one or more student groups at Boise State University who receive student activities fees. However, she does not object to paying student activities fees that are directed to these groups so long as the fees she is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Cordova is an active member in one or more religious student organizations at Boise State University.

2.2 Plaintiff Justin Ranger is a student in good standing at Boise State University who pays the Associated Student Body student activity fee. Plaintiff Ranger disagrees with the views of one or more student groups at Boise State University who receive student activities fees. However, he does not object to paying student activities fees that are directed to these groups so long as the fees he is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Ranger is an active member and officer in one or more religious student organizations at Boise State University.

2.3 Plaintiff Paul Beskow is a student in good standing at Boise State University who pays the Associated Student Body student activity fees. Plaintiff Beskow disagrees with the views of one or more student groups at Boise State University who receive student activities fees. However, he does not object to paying student activities fees that are directed to these groups so long as the fees he is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Beskow is an active member in one or more religious student organizations at Boise State University.

2.4 Plaintiff Samantha Thorson is a student in good standing at Boise State University who pays the Associated Student Body student activity fee. Plaintiff Thorson disagrees with the views of one or more student groups at Boise State University who receive student activities fees. However, she does not object to paying student activities fees that are directed to these groups so long as the fees she is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Thorson is an active member and officer in one or more religious student organizations at Boise State University.

2.5 Plaintiff Jesse Barnum is a student in good standing at Boise State University who pays the Associated Student Body student activity fee. Plaintiff Barnum disagrees with the views of one or more student groups at Boise State University who receive student activities fees. However, he does not object to paying student activities fees that are directed to these groups so long as the fees he is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Barnum is an active member and officer in one or more religious student organizations at Boise State University.

2.6 Plaintiff Alex Canfield is a student in good standing at Boise State University who pays the Associated Student Body student activity fee. Plaintiff Cordova disagrees with the

views of one or more student groups at Boise State University who receive student activities fees. However, he does not object to paying student activities fees that are directed to these groups so long as the fees he is required to pay are dispensed in a viewpoint neutral and otherwise constitutionally appropriate manner. Plaintiff Canfield is an active member in one or more religious student organizations at Boise State University.

2.7 Defendant Michael Laliberte is the Vice President for Student Affairs at Boise State University. His duties include interpretation and application of the policies of the University respecting student affairs, including student organizations and funding of student organizations by the Associated Students of Boise State University. Defendant Laliberte is sued in his official capacity.

2.8 Defendant Kelly Stevens is the Boise State University Director of Student Activities. Her duties include interpretation and application of the policies of the University respecting student organizations and the Associated Students of Boise State University. Defendant Stevens is sued in her official capacity.

2.9 Defendant Teri Rapp is the Financial Technician for the Associated Student Body of Boise State University. She is an employee of Boise State University. Her duties include interpretation and application of the policies of the University respecting student organizations and the Associated Students of Boise State University (ASBSU) and assisting ASBSU in managing its budget, including its allocations of student activities fees to student groups. Student groups submitting budget requests to the ASBSU submit them to Ms. Rapp. Defendant Rapp is sued in her official capacity.

## FACTUAL BACKGROUND

### ASBSU Funding of Student Organizations From Student Activity Fees

3.1 Every student at Boise State University pays a mandatory Associated Student Body student activity fee each year. Boise State University 2008-2009 Schedule of Tuition & Fees, available at <http://finad.boisestate.edu/budget/pdf/FY09fees.pdf>, and a copy of which is attached as Exhibit A.

3.2 Funds from the Associated Student Body student activity fee are accounted for separately from tuition and other fees. *Id.*

3.3 All proceeds from the Associated Student Body student activity fee are provided by the University to the ASBSU Financial Technician, Defendant Rapp, for allocation by ASBSU to recognized student organizations in good standing. Associated Students of Boise State University Student Government ASBSU Codes, 21-200 (p.9), a copy of which is attached as Exhibit B.

3.4 Student organizations seeking ASBSU funds must submit a budget request by January 30, 2009 in order to be considered for funding for the following academic year. However, student groups that submit a budget after the end of January but before February 15 may still receive ASBSU funding, but will have their budget request automatically cut by 10%. Fiscal Year 2010 ASBSU Budget Application for Student Organizations, available at [http://clubs.boisestate.edu/forms/files/FY09\\_BudgetApplication.pdf](http://clubs.boisestate.edu/forms/files/FY09_BudgetApplication.pdf) (last visited December 15, 2008), and a true and correct copy of which is attached as Exhibit C. *See also* Ex. B, 22-230, *et. seq.*, (p. 10).

3.5 Student organizations submit their budget requests to Defendant Rapp, the ASBSU Financial Technician, in the ASBSU Business Office. Ex. B, 22-230 (p. 10); Ex. C, p. 7.

3.6 Funding approved by ASBSU is provided as matching funds for an organization's own fundraising efforts. Organizations receive \$2 in matching funds for every \$1 they raise. Ex. B, 22-401, (p. 11). See also Section 4: Financial Information, 10, available at <http://clubs.boisestate.edu/TheSource/section4.pdf> (last visited December 9, 2008), and a copy of which is attached as Exhibit D. However, each organization is also eligible for up to \$250 in non-matching funding. The amount awarded as non-matching funds is subtracted from the organization's matching funds awarded by ASBSU. Ex. B, 22-500 (p. 13).

3.7 Barring special action to raise an organization's budget limit, previously funded organizations may request only up to 150% of their approved budget from the previous year, or \$3,000, whichever is less. However, new organizations or those that have not previously received funding may request only \$700. Ex. B, 22-401 (p. 11).

3.8 The Financial Advisory Board (FAB), an ASBSU committee, meets between February 1 and April 1, the "Budget Hearing Period" to consider funding requests of student organizations. Ex. B, 22-230 (p. 10).

3.9 The FAB then submits its recommendations for funding for each student organization to the full ASBSU for final approval. Ex. B, 22-250 (p. 11); Ex. D, 10.

3.10 In determining the amount of funding to award each organization, ASBSU "will consider funding only those projects or activities that benefit the student and enhance the image of Boise State University, with a special emphasis on activities that will benefit large numbers of students." Ex. B, 22-300 (p. 11). See also Ex. C, 1 (same). On information and belief, ASBSU

has published no further explanation of the specific factors it considers in determining whether a student group's budget satisfies these criteria.

3.11 Defendant Rapp is responsible for managing the budgets of each student organization funded by ASBSU, ensuring that they satisfy all Boise State and ASBSU policies. Ex. B, 21-400-500, 22-405, 22-420, 22-455.

#### Exclusion of Religious Student Organizations

3.12 Boise State University recognizes over 200 student organizations representing a broad range of opinions on a diversity of topics. These include the Secular Student Alliance, 2nd Amendment Gun Club, Bisexuals, Gays, Lesbians, & Allies for Diversity, College Democrats, College Republicans, and many others. Student Activities, Boise State University Student Organizations, available at <http://clubs.boisestate.edu/details/> (last visited Dec. 15, 2008), and a copy of which is attached as Ex. E.

3.13 Among the 200 recognized student organizations are also approximately eighteen organizations categorized as religious student organizations. These represent a variety of religious viewpoints, including Intersivity Christian Fellowship, the Muslim Student Organization, and Vedic Philosophical & Cultural Society. Ex. E.

3.14 The Boise State University Student Involvement Center, under the authority of Defendant Laliberte, "creates and defines student organization categories," determining whether a student organization is religious, cultural, special interest, etc, and assigning them to the category they deem appropriate. ASBSU relies upon these categories. Ex. B, 22-110.

3.15 Religious student organizations are singled out for exclusion from ASBSU funding. Ex. B, 22-110 (p. 10) ("ASBSU shall not fund Ad Hoc organizations recognized by ASBSU Judiciary (through their own rules) or sectarian organizations"); Ex. C, 2 ("Club Sport



and Religious Organizations are not eligible for funding”); Ex. D, 9 (“Religious Organizations cannot receive funding from ASBSU. Club Sport organizations receive funding via the Club Sports fee, which is administered by Campus Recreation.”). See also, The Source Section 6: Advisor Handbook (last visited 12/9/2008), available at <http://clubs.boisestate.edu/TheSource/section6.pdf>, and a copy of which is attached as Ex. F (Same as Ex. D).

3.16 Boise State University’s sole asserted basis for singling out religious student organizations for exclusion from receiving ASBSU funding is that it must do so in order to comply with the Idaho Constitution:

#### Why Can’t Religious Groups Receive Funds from ASBSU?

The Idaho State Constitution expressly forbids state money going to religious organizations. Here is text of the constitution:

#### *Article IX Education and School Lands*

#### SECTION 5. SECTARIAN APPROPRIATIONS PROHIBITED.

Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or monies whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, University or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose; provided, however, that a health facilities authority, as specifically authorized and empowered by law, may finance or refinance any private, not for profit, health facilities owned or operated by any church or sectarian religious society, through loans, leases, or other transactions.

Ex. D, 2.

3.17 On information and belief, one or more other public schools and universities in the State of Idaho permit religious student organizations to participate equally with other student

organizations in seeking allocations of student fees collected by those schools for allocation to student organizations.

3.18 The Secular Student Alliance has been classified as a “special interest” student organization and is therefore eligible for ASBSU funding.

3.19 In addition to the prohibition on ASBSU funding for religious student organizations, on information and belief, Boise State University officials have also recently informed at least one religious student organization that they intend to draft a new university policy that would deny religious student groups the same use of university facilities for meetings and activities that other student groups have. On information and belief, this policy is imminent but has not yet been implemented.

#### Plaintiffs’ Objections to Defendants’ Viewpoint Discrimination

3.20 Plaintiffs are each full fee paying students at Boise State University. They each pay the mandatory ASB Student Activity Fee each semester.

3.21 Plaintiffs disagree with the views and/or activities of some student groups that receive funding through ASBSU from the mandatory student activity fee that they are required to pay.

3.22 Plaintiffs object to the distribution of their mandatory student activity fees in a viewpoint discriminatory manner. Plaintiffs object to the lack of adequate protections for viewpoint neutrality in the distribution of the ASB student activity fees they pay and to the express viewpoint discrimination against religious student organizations.

3.23 All acts of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction herein alleged, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies and usages of the

State of Idaho, and pursuant to policies and/or customs established by Boise State University, through Defendants.

3.24 Unless and until the Defendants are enjoined from employing a system of student organization budget allocation devoid of adequate protections against viewpoint discrimination, including the categorical denial of ASBSU funding to religious student organizations, Plaintiffs and other similarly situated students at Boise State University as well as religious student organizations in which Plaintiffs are active members and/or officers will continue to suffer irreparable harm to their First Amendment rights.

#### COUNT I

#### FREE SPEECH CLAUSE UNITED STATES CONST. AMEND. I

4.1 Plaintiffs restate and reallege each allegation set forth in paragraphs 1.1 through 3.24 as if set forth verbatim herein.

4.2 By exacting mandatory fees from Plaintiffs and distributing these fees to student organizations in a viewpoint discriminatory manner, excluding religious organizations altogether, and adopting criteria and procedures for allocating student activity fees to student organizations that invite viewpoint discrimination, Defendants have violated and will continue to violate the right to free speech guaranteed to Plaintiffs, similarly situated students, and religious student organizations at Boise State University by the First Amendment to the United States Constitution and made applicable to the Defendants by the Fourteenth Amendment.

#### PRAYER FOR RELIEF


WHEREFORE, Plaintiffs respectfully request that this Court order the following relief:

- (1) A declaration that Defendants' mandatory exaction of student activity fees from Plaintiffs and other similarly situated students and the allocation of those fees in a

manner that discriminates against religious viewpoints and lacks adequate protections to ensure viewpoint neutrality violates the First Amendment of the United States Constitution;

- (2) A preliminary and permanent injunction prohibiting Defendants from exacting student activity fees from Plaintiffs and other similarly situated students for allocation to student organizations unless and until Defendants cease their viewpoint discriminatory exclusion of religious student organizations and adopt adequate protections for viewpoint neutrality;
- (3) A preliminary and permanent injunction prohibiting Defendants from permitting student activity fees already collected by the University from being allocated to student groups unless and until Defendants cease their viewpoint discriminatory exclusion of religious student organizations and adopt adequate protections against further viewpoint discrimination;
- (4) Recoupment of any and all Associated Student Body student activity fees exacted from Plaintiffs and allocated without adequate protections against viewpoint discrimination, including the exclusion of religious student organizations.
- (5) An award of reasonable costs and attorneys' fees incurred by Plaintiffs in prosecuting this action pursuant to 42 U.S.C. § 1988;
- (6) That this Court retain jurisdiction over this case for the purposes of enforcement of any order; and
- (7) Such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 17th day of December, 2008.



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(*Pro Hac Vice* Motions Filed)

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