

## SETTLEMENT AND RELEASE AGREEMENT (7/30/11)

1. In exchange for the mutual promises made herein, the parties hereto make this Settlement and Release Agreement to resolve the litigation initially captioned *Christian Legal Society; Christian Legal Society Chapter at The University of Montana School of Law, a student organization at The University of Montana School of Law, on behalf of itself and its individual members vs. E. Edwin Eck, in his official capacity as Dean of The University of Montana School of Law; Margaret A. Tonon, in her official capacity as Director of Student Affairs; and Members of the Executive Board of the Student Bar Association of The University of Montana School of Law*, United States District Court for the District of Montana, Missoula Division, No. CV-07-154-M-RFC-JCL, and the appeal in that case from judgment in favor of Defendants docketed in the United States Court of Appeals for the Ninth Circuit as Case No. 09-35581. The parties recognize that Dean Irma S. Russell is substituted for Dean Eck and that Professor Cynthia Ford is substituted for Professor Tonon; and that the current Members of the Executive Board of the Student Bar Association of The University of Montana School of Law are substituted for such Members who were serving when the lawsuit was filed.

2. Plaintiffs-Appellants shall withdraw their appeal in Case No. 09-35581 within one week of the signing of this Agreement.

3. The parties shall bear their own costs and attorney fees.

4. Plaintiffs-Appellants agree not to commence any new civil action against the School of Law, the SBA, or the officers of either of them, or the State of Montana and its instrumentalities, officers, employees, and agents, based upon the facts underlying the litigation identified in Paragraph 1, subject to the performance by Defendants-Appellees of the terms of this Agreement.

5. This Agreement is accepted as the sole consideration to compromise disputed claims. Neither the negotiations for settlement nor the execution of this Agreement shall be considered as an admission of liability, or as an admission that the claims or the defenses to the claims are without merit. The parties do not intend for this agreement to apply in other contexts or in other litigation.

6. On November 13, 2007, Dean Eck announced that the Christian Legal Society Chapter at The University of Montana School of Law (CLS-UM) may use the School of Law facility and School of Law services, including access to channels of communication with students such as the law school website and appropriate bulletin boards. On behalf of the School of Law and her successors as Dean of the School of Law, Dean Russell agrees that CLS-UM shall continue to be recognized as an independent student organization (ISO) with the same access to School of Law facilities and channels of communication as enjoyed by ISOs that receive funding from the Student Bar Association (SBA), whether or not CLS-UM receives SBA funding. These privileges include the following:

- a. use of School of Law facilities and services that other ISOs enjoy;
- b. the same priority and the same means for reserving use of meeting space and facilities for activities and events that other ISOs enjoy;
- c. allotment of a monthly meeting time on the same basis as other ISOs;
- d. access to channels of communication to the same extent these channels are available to all other ISOs, including but not limited to the School of Law website, bulletin boards (including a designated bulletin board for CLS-UM), email listserves (including “blast” emails to all students), student handbook, Moodle web page and Moodle publicity of CLS-UM meetings and activities, posting promotional materials around the School of Law, and any other means of communication and technology made available to other ISOs;
- e. participation in the student organizations’ fair at the same time, place, and manner that other ISOs participate;
- f. listing in compilations of student organizations that the School of Law or the SBA Executive Board make available to current students, prospective and incoming students, or the public;
- g. participation by the president of CLS-UM on the Student Organizations Presidents’ Committee with the same privileges that presidents of other ISOs enjoy;
- h. holding fund-raising events on the same basis as other ISOs;
- i. sponsoring speakers and other events at the School of Law on the same basis as other ISOs;
- j. coordinating volunteer projects at the School of Law on the same basis as other ISOs.

7. CLS-UM shall be eligible to apply for Community Grants. In considering whether to award a grant, the SBA Executive Board and the Dean of the School of Law shall use only viewpoint-neutral criteria as described in Paragraph 9.

8. CLS-UM acknowledges that the SBA Executive Board currently interprets its bylaws to mean that CLS-UM is ineligible for SBA funding through the SBA annual budget process. Nevertheless, to the extent that this interpretation is modified in the future, CLS-UM may apply for SBA funding through the SBA annual budget process

that has been a subject of the litigation identified in Paragraph 1. The SBA annual budget process refers to the process described in the SBA Bylaws, Article X, as distinguished from the process for applying for Community Grants or any other means by which ISOs, including CLS-UM, may apply for funding. CLS recognizes that, in addition to the criteria in Paragraph 9.a.i – xiii., the SBA Executive Board may elect to consider, as an additional criterion in the SBA annual budget process, whether an ISO has complied with SBA Bylaws Article X, Sections 2, 4, and 5. In so agreeing, CLS-UM does not concede that all aspects of the annual budget process are viewpoint neutral; however, CLS-UM will not challenge it if it is administered by the SBA or the School of Law in accordance with the terms of this Agreement.

9. Effective upon Plaintiffs-Appellants' withdrawal of their appeal in Case No. 09-35581, Defendants-Appellees shall adopt the following viewpoint neutrality standards and safeguards.

a. Viewpoint Neutrality Requirements and Criteria.

The SBA Executive Board shall comply with the requirement of viewpoint neutrality in preparing budget proposals for funding independent student organizations (ISOs) and shall use the following criteria:

- i. Whether all of the officers and members of the ISO are currently enrolled students of The University of Montana School of Law.
- ii. Whether the ISO can demonstrate that it has undertaken events and activities in the past that met the objectives and budget of the ISO for the events; however, this criterion shall not be used in the case of a recently formed ISO.
- iii. Whether the proposed events and activities to be funded are open to all law students.
- iv. Whether the ISO's request reflects the likely cost of the event, including consideration of the number of students likely to attend; however, this criterion shall not be used to consider the popularity of a group's speech as prohibited by Paragraph 9.b.i.
- v. Whether the proposed events and activities will be held at the School of Law or within the campus of The University of Montana.
- vi. Whether the proposed facility is suitable for the proposed events and activities.

- vii. Whether any honoraria requested are in the range of honoraria for similar speakers/performers.
- viii. Whether any travel expense estimates are reasonable for the type of event or activity.
- ix. Whether the ISO has internal controls to safeguard and properly expense any funding it receives.
- x. Whether the ISO has sought out co-sponsorships of proposed events.
- xi. Whether any supplies requested can be donated or provided by other sources.
- xii. Whether the event is similar to or duplicates events provided by other ISOs or University of Montana schools or departments; however, this criterion shall not be used to consider the popularity of a group's viewpoint as prohibited by Paragraph 9.b.i.
- xiii. Any other viewpoint-neutral criteria that are determined by university legal counsel's written opinion to be required by state or federal laws for funding ISOs.

b. Impermissible Funding Criteria.

The SBA Executive Board shall not use the following criteria in preparing budget proposals for funding ISOs:

- i. The popularity of an ISO's viewpoint, including the existence among the student body of opposition to, or support for, the group. However, the SBA Executive Board may consider the number of students expected to be involved in specific activities or events as necessary to estimate variable expenses of the activity or event.
- ii. The length of time the ISO has been in existence.
- iii. The amount of SBA funding the ISO has received in the past.

c. Viewpoint Neutrality Safeguards.

- i. Each member of the SBA Executive Board shall abide by the

viewpoint neutrality requirements and criteria as provided in Paragraphs 9.a and 9.b. Each academic year, before the preparation of budget proposals for funding ISOs, the SBA President shall call a meeting of the SBA Executive Board with invitations to the Law School Dean, UM Legal Counsel and the SBA faculty advisor, for the purpose of discussing legal requirements applicable to SBA student organizational funding decisions, including the mandatory viewpoint neutrality requirements set forth in Paragraphs 9.a and 9.b of this Agreement.

- ii. At the time it presents a final budget proposal, the SBA Executive Board shall make publicly available on its website: 1) all budget requests from ISOs; 2) the budget proposal with explanations prepared by the Business Manager under Bylaws Article X, Section 6; 3) its written explanations of grants or denials required by Paragraph 9.c.iv; and 4) the final budget proposal of the SBA Executive Board.
- iii. The SBA Executive Board shall prepare publicly available audio recordings of all hearings and meetings at which the SBA funding of ISOs is discussed. Such hearings and meetings shall be open to attendance by any member of the School of Law. The audio recordings shall be preserved for two years and made available upon request to any student of the School of Law.
- iv. The SBA Executive Board shall provide written reasons for grant or denial of an ISO's request for funding.
- v. Within fourteen days of the ratification of a final budget proposal of the SBA Executive Board, an ISO or an aggrieved student member of an ISO, who contends that the viewpoint neutrality requirement was violated, may appeal to the Dean. Appeals must be in writing and set forth specific reasons for the appeal. The Dean shall issue a written decision on the appeal within ten days of receipt, unless otherwise agreed by the appellant.
- vi. The Dean is responsible for compliance with the viewpoint neutrality requirement in the allocation of SBA funding to ISOs.
- vii. The provisions of Paragraphs 9.a, 9.b, and 9.c shall be included in the publicly available policies of the School of Law and the SBA Executive Board.

10. The parties agree on the following safeguards relating to the SBA student vote on budget ratification. In so agreeing, CLS-UM does not concede that the

student vote on budget ratification is viewpoint neutral; however, CLS-UM will not challenge it if it is administered by the SBA or the School of Law in accordance with the terms of this Agreement:

a. If a final budget proposal published by the SBA Executive Board is not ratified by student vote, the SBA Executive Board shall proceed as set forth in Bylaws Article X, Section 9, while continuing to follow the viewpoint neutrality criteria provided in Paragraph 9 of this Agreement. The SBA Executive Board may change budget allocations among ISOs, but the SBA Executive Board may not delete an ISO that receives funding in the first final budget proposal from all funding in subsequent budget proposals unless the ISO consents or unless funding would violate state or federal law as determined by university legal counsel's written opinion.

11. In the event CLS-UM has concerns about the implementation of this settlement agreement, including the viewpoint neutrality standards and safeguards and the CLS-UM's enjoyment of the same privileges as other ISOs, except for SBA funding, CLS-UM shall inform the Director of Student Affairs and propose a resolution of the issue. In the event that CLS-UM and the Director of Student Affairs do not agree on a resolution within 2 weeks, CLS-UM may request the Dean of the School of Law to resolve the issue, who shall make a written determination within ten days of the request. CLS-UM agrees not to file suit during the 24 days of this process. By complying with Paragraph 11, CLS-UM shall be deemed to have complied with the appeal process provided in Paragraph 9.c.v.

12. The Dean of the School of Law, in consultation with UM Legal Counsel, is responsible for ensuring that the SBA Executive Board complies with all of the applicable terms of this Agreement.

13. Although nothing herein shall be interpreted to imply that retaliation has occurred or is likely to occur, the School of Law commits in good faith to take no adverse action against any student member or faculty advisor of CLS-UM in retaliation for pursuing their claims in this action or pursuing remedies necessary to obtain enforcement of this Agreement.

14. The parties agree to cooperate fully and to execute any supplementary documents and to take any additional actions that may be necessary to give full force and effect to the terms of this Agreement.

15. This Agreement constitutes the entire agreement between the parties concerning the subject matters thereof, and there are no other written or oral agreements, understandings, or arrangements between the parties regarding the subject matters of this Agreement.

16. This Agreement may be executed in counterparts. Each counterpart

bearing original signatures together with the Agreement shall constitute one instrument. Facsimile copies of signature pages shall be considered to be original signatures for all purposes.

17. The parties hereby fully and forever release and discharge each other and their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys, from any and all actions, claims, causes of action, demands, or expenses for damages, costs or attorney fees, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the occurrences that are the subject matter of the litigation described in Paragraph 1.

18. This Agreement is a public document and shall be posted on the School of Law Moodle site.

19. This Agreement may be enforced in a court of competent jurisdiction in Missoula, Montana.

FOR PLAINTIFFS-APPELLANTS:

Date: July 30, 2011

Signature: Kimberlee W. Colby  
Kimberlee W. Colby  
For Christian Legal Society,  
Christian Legal Society  
Chapter at The University of  
Montana School of Law, and  
Its Individual Members

Date: August 2, 2011

Signature: M. Casey Mattox  
M. Casey Mattox  
For Alliance Defense Fund

FOR DEFENDANTS-APPELLEES:

Date: August 3, 2011

Signature: Irma S. Russell  
Irma S. Russell  
Dean, School of Law,  
For The University of Montana  
School of Law

Date: August 3, 2011

Signature: Anthony Jackson  
Anthony Jackson  
SBA President,  
For The University  
of Montana School of  
Law Student Bar  
Association Executive Board