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*Counsel for Plaintiff Christian Legal Society Chapter
of University California, Hastings College of the Law,
a/k/a Hastings Christian Fellowship*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTIAN LEGAL SOCIETY CHAPTER
OF UNIVERSITY OF CALIFORNIA,
HASTINGS COLLEGE OF THE LAW, a/k/a
HASTINGS CHRISTIAN FELLOWSHIP, a
student organization at University of
California, Hastings College of the Law,

Plaintiff,

CASE NO.

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

1 v.)
2)
3 MARY KAY KANE, in her official capacity as)
4 Chancellor and Dean of University of)
5 California, Hastings College of the Law; JUDY)
6 CHAPMAN, in her official capacity as)
7 Director of Student Services for University of)
8 California, Hastings College of the Law; and)
9 MAUREEN E. CORCORAN, EUGENE L.)
10 FREELAND, CARIN T. FUJISAKI, JOHN T.)
11 KNOX, JAN LEWENHAUPT, JAMES E.)
12 MAHONEY, BRIAN D. MONAGHAN,)
13 BRUCE L. SIMON, JOHN K. SMITH, and)
14 TONY WEST, in their official capacities as the)
15 Board of Directors of University of California,)
16 Hastings College of the Law,)
17 Defendants.)
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COMES NOW Plaintiff, Christian Legal Society Chapter of University California, Hastings College of the Law, a/k/a Hastings Christian Fellowship (hereafter, "HCF"), by and through its undersigned counsel, Timothy Smith, Esq. and Steven Burlingham, Esq. and Gregory S. Baylor, Esq., Steven H. Aden, Esq. and Timothy J. Tracey, Esq., Religious Liberty Advocates of the Christian Legal Society, and Benjamin W. Bull, Esq., Gary S. McCaleb, Esq., and Joshua W. Carden, Esq. of the Alliance Defense Fund, and hereby brings the following causes of action against Defendants Mary Kay Kane, in her official capacity as Chancellor and Dean of University of California, Hastings College of the Law; Judy Chapman, in her official capacity as Director of Student Services for University of California, Hastings College of the Law; and Maureen E. Corcoran, Eugene L. Freeland, Carin T. Fujisaki, John T. Knox, Jan Lewenhaupt, James E. Mahoney, Brian D. Monaghan, Bruce L. Simon, John K. Smith, and Tony West, in their official capacities as the Board of Directors of University of California, Hastings College of the Law. In support of its claims for relief, Plaintiff alleges and avers as follows:

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

Parties

2.1 Plaintiff Christian Legal Society Chapter of University California, Hastings College of the Law, a/k/a Hastings Christian Fellowship is an unincorporated student organization of University of California, Hastings College of the Law in San Francisco, California. It is a local chapter of the national organization known as the Christian Legal Society, an IRC 501(c)(3)-qualified religious professional membership organization. HCF is capable of suing in its own name and has standing to bring this action in its own name and on behalf of its individual members.

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1 McAllister Street, San Francisco, California 94102. Chancellor Kane is sued in her official
2 capacity.

3 2.3 Defendant Judy Chapman is the Director of Student Services for University of
4 California, Hastings College of the Law. Her duties include, among others, oversight of the
5 registration of student organizations at UC Hastings and review of student initiated grievances
6 regarding discriminatory practices and violation of privacy rights. The Office of Student
7 Services is located at 200 McAllister Street, San Francisco, California 94102. Ms. Chapman is
8 sued in her official capacity.

9 2.4 Defendants Maureen E. Corcoran, Eugene L. Freeland, Carin T. Fujisaki, John T.
10 Knox, Jan Lewenhaupt, James E. Mahoney, Brian D. Monaghan, Bruce L. Simon, John K.
11 Smith, and Tony West are members of the Board of Directors of UC Hastings and are
12 responsible for, among other things, governance of UC Hastings. Their offices are located at 200
13 McAllister Street, San Francisco, California 94102. They are sued in their official capacities.

14 **Factual Background**

15 3.1 Christian Legal Society is a nationwide association of Christian lawyers, law
16 students, law professors, and judges. The organization's purposes include providing a means of
17 society, fellowship, and nurture among Christian lawyers; promoting justice, religious liberty,
18 and biblical conflict resolution; encouraging, discipling, and aiding Christian law students; and
19 encouraging lawyers to furnish legal services to the poor. In furtherance of its purposes, the
20 national Christian Legal Society organization maintains both attorney and law student chapters
21 across the country.

22 3.2 All members of the national Christian Legal Society, including student members,
23 must sign a Statement of Faith indicating that the member holds certain Christian viewpoints
24 commonly regarded in both the Roman Catholic and Protestant evangelical traditions as
25 orthodox. A true and correct copy of the New Member Application which includes the
26 Statement of Faith is attached as Exhibit A.

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1 3.3 HCF is the local UC Hastings chapter of the national Christian Legal Society
2 organization. HCF is a student organization at UC Hastings, and, until the 2004-2005 academic
3 year, has been officially recognized by the College as a registered student organization.

4 3.4 HCF is governed by a chapter constitution. A true and correct copy of the HCF
5 Constitution is attached as Exhibit B.

6 3.5 Any student is welcome to participate in HCF meetings and other activities,
7 regardless of religion, sexual orientation, or membership or non-membership in any other
8 protected class. However, pursuant to the constitution and rules for CLS student chapters of the
9 national Christian Legal Society, HCF requires its members and officers to sign the national
10 Christian Legal Society's Statement of Faith.

11 3.6 HCF incorporates these officer and membership requirements into its chapter
12 constitution.

13 3.7 Specifically, HCF's Chapter Constitution provides:

14 All members and officers of this Chapter must agree to and affirm the following
15 Statement of Faith:

16 Trusting in Jesus Christ as my Savior, I believe in:

- 17 • One God, eternally existent in three persons, Father, Son and Holy Spirit.
- 18 • God the Father Almighty, Maker of heaven and earth.
- 19 • The Deity of our Lord, Jesus Christ, God's only Son conceived of the Holy
20 Spirit, born of the virgin Mary; His vicarious death for our sins through which
 we receive eternal life; His bodily resurrection and personal return.
- The presence and power of the Holy Spirit in the work of regeneration.
- The Bible as the inspired Word of God.

21 Exhibit B, at p. 1.

22 3.8 HCF interprets its Statement of Faith to require that officers adhere to orthodox
23 Christian beliefs based on the authority of the Bible, including the Bible's prohibition of sexual
24 conduct between persons of the same sex. A person who engages in homosexual conduct or
25 adheres to the viewpoint that homosexual conduct is not sinful would not be permitted to become
26 a member or serve as an HCF officer. A person who may have engaged in homosexual conduct
27 in the past but has repented of that conduct, or who has homosexual inclinations but does not
28 engage in or affirm homosexual conduct, would not be prevented from becoming a member or

1 serving as an officer.

2 3.9 The mission of HCF is to maintain a vibrant Christian law fellowship on the UC
3 Hastings campus which enables its members, individually and as a group, consistent with
4 Biblical orthodoxy, to fulfill the Christian mandate to love God and to love their neighbors as
5 themselves. Exhibit B, at p. 1.

6 3.10 HCF believes that in order to achieve its mission, and in compliance with Biblical
7 orthodoxy, it must require its members and officers to sign, affirm, and endeavor to live their
8 lives in a manner consistent with its Statement of Faith.

9 3.11 Individuals who refuse to adhere to HCF's Statement of Faith are not permitted to
10 be members or officers.

11 3.12 UC Hastings is a public law school located in San Francisco, California and part
12 of the University of California system of schools.

13 3.13 UC Hastings permits students to form and register "student organizations."

14 3.14 To date, UC Hastings has registered 54 student organizations ranging from the
15 Clara Foltz Feminist Association to Hastings Republicans. *See* UC Hastings College of the Law,
16 2004-2005 Registered Student Organizations. A true and correct copy of the UC Hastings
17 College of the Law, 2004-2005 Registered Student Organizations is attached as Exhibit C. Of
18 the 54 registered student organizations, only 3 are religious or spiritual student organizations.
19 *See id.*

20 3.15 Student groups at UC Hastings must be recognized as a "registered student
21 organization" in order to use College facilities for meetings or to receive funding. Recognition
22 as a UC Hastings student organization conveys numerous additional substantial benefits and
23 privileges. Additional benefits of forming a registered student organization include, but are not
24 limited to:

- 25 (a) Use of designated UC Hastings bulletin boards for announcements of interest to
26 organization members and the student body;
- 27 (b) Use of the Student Information Center for distribution of organization materials to
28 the UC Hastings community;

- (c) Listing on the Office of Student Services' website and any hard copy lists;
- (d) Participation in the Student Organizations' Faire;
- (e) Access to all services offered by the Office of Student Services, including organization consultation, workshops, financial consulting and training, and publications;
- (f) Access to UC Hastings' publications, including the "Hastings Weekly;"
- (g) Placement of organizational materials in 1L orientation packets;
- (h) Listing organization announcements on classroom chalkboards;
- (i) Placement of announcements in the Student Event Calendar, delivered weekly to UC Hastings students via email; and
- (j) Eligibility to enter into a License Agreement with UC Hastings for use of the College name.

3.16 As a condition of becoming a "registered student organization" at UC Hastings and thereby gaining access to the benefits and privileges enumerated above, the University requires an organization to agree to and abide by the "Policies and Regulations Applying to College Activities, Organizations and Students." "All registered students organizations will comply with the Policies and Regulations Apply to College Activities, Organizations and Students as stated in the Handbook for Student Organizations." University of California, Hastings College of the Law, Student Organization Registration , p. 19. A true and correct copy of University of California, Hastings College of the Law, Student Organization Registration is attached as Exhibit D.

3.17 Among other things, the Policies and Regulations Applying to College Activities, Organizations and Students require student organizations to abide by the Policy On Nondiscrimination. A true and correct copy of the relevant Policies and Regulations Applying to College Activities, Organizations and Students is attached as Exhibit E.

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1 4.4 On or about September 23, 2004, HCF hand-delivered to Defendant Chapman a
2 letter providing a brief overview of the membership and leadership policies of the Christian
3 Legal Society and a synopsis of the pertinent law which HCF believed favored Defendant
4 Chapman approving HCF's registration form.

5 4.5 On or about October 1, 2004, UC Hastings informed HCF that "to be one of our
6 student-recognized organizations, [HCF] must open its membership to all students irrespective of
7 their religious beliefs or sexual orientation." Letter from UC Hastings to HCF dated October 1,
8 2004. A true and correct copy of the Letter from UC Hastings to HCF dated October 1, 2004 is
9 attached Exhibit F.

10 4.6 On or about October 12, 2004, Ms. Haddad received an email from Defendant
11 Chapman informing her that the \$250.00 in student activities funds set aside for HCF officers to
12 travel to the Christian Legal Society's National Conference had been withdrawn.

13 4.7 Since receiving the October 1, 2004 letter from UC Hastings, HCF has been
14 denied access to classroom chalkboards, bulletin boards, and all other channels of
15 communications in order to announce its meetings or recruit members from the UC Hastings
16 community.

17 4.8 HCF desires the privileges and status of being recognized by UC Hastings as a
18 registered student organization.

19 4.9 HCF objects to the Policy on Nondiscrimination that requires HCF to open its
20 membership and officer positions to all students regardless of religion or sexual orientation.

21 4.10 HCF's objections to the Policy on Nondiscrimination stem from its members'
22 sincerely held religious beliefs.

23 4.11 HCF does not object to the University policies forbidding discrimination on the
24 basis of race, color, national origin, ancestry, disability, age, or sex.

25 4.12 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to
26 discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's
27 constitutional right to an exemption from said policy, and withholding from HCF the status and
28 benefits of a registered student organization, UC Hastings has engaged in discrimination against

1 HCF and its members based on the content and viewpoint of their speech and sent a message of
2 exclusion and disfavor of HCF and its members by Defendants, resulting in a chilling impact on
3 HCF's efforts at recruitment, association and dissemination of its message.

4 4.13 All alleged acts of the Defendants, their officers, agents, servants, employees, or
5 persons acting at their behest or direction, were done and are continuing to be done under the
6 color of state law, including the statutes, regulations, customs, policies and usages of the State of
7 California, and pursuant to policies and/or customs established by UC Hastings through
8 Defendants.

9 4.14 Unless and until enforcement of the Defendants' policies regarding the Policy on
10 Nondiscrimination is enjoined, HCF and its members and similarly situated religious
11 organizations will suffer and continue to suffer irreparable harm to their federal and state rights
12 of free association, freedom of speech and free exercise of religion.

13 COUNT I

14 FREEDOM OF EXPRESSIVE ASSOCIATION
15 UNITED STATES CONST. AMEND. I

16 5.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through
17 4.13 as if set forth verbatim herein.

18 5.2 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to
19 discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's
20 constitutional right to an exemption from said policy, withholding from HCF the status and
21 benefits of a registered student organization, and engaging in direct and subtle forms of
22 retaliation against HCF and its members, Defendants have violated and will continue to violate
23 the right to freedom of expressive association guaranteed to HCF and its members by the First
24 Amendment to the United States Constitution and made applicable to the states and their political
25 subdivisions by the Fourteenth Amendment.

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1 COUNT II

2 FREE SPEECH
3 UNITED STATES CONST. AMEND. I

4 6.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through 5.2
5 as if set forth verbatim herein.

6 6.2 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to
7 discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's
8 constitutional right to an exemption from said policy, withholding from HCF the status and
9 benefits of a registered student organization, and engaging in direct and subtle forms of
10 retaliation against HCF and its members, Defendants have violated and will continue to violate
11 the right to free speech guaranteed to HCF and its members by the First Amendment to the
12 United States Constitution and made applicable to the states and their political subdivisions by
13 the Fourteenth Amendment.

14 COUNT III

15 ESTABLISHMENT CLAUSE
16 UNITED STATES CONST. AMEND. I

17 7.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through 6.2
18 as if set forth verbatim herein.

19 7.2 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to
20 discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's
21 constitutional right to an exemption from said policy, withholding from HCF the status and
22 benefits of a registered student organization, and engaging in direct and subtle forms of
23 retaliation against HCF and its members, Defendants have violated and will continue to violate
24 the Establishment Clause of the First Amendment to the United States Constitution and made
25 applicable to the states and their political subdivisions by the Fourteenth Amendment.

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COUNT IV
DUE PROCESS
UNITED STATES CONST. AMEND. XIV

8.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through 7.2 as if set forth verbatim herein.

8.2 By adopting the University Nondiscrimination Policy that fails to provide HCF with fair notice as to whether or not its leadership and membership practices comply with the nondiscrimination requirement and tasking University officials with enforcing the Policy on Nondiscrimination without providing criteria or guidelines to govern its enforcement, Defendants have violated and will continue to violate the right of due process guaranteed to HCF and its members by the Fourteenth Amendment to the United States Constitution.

COUNT V
FREE EXERCISE CLAUSE
UNITED STATE CONST. AMEND I

9.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through 8.2 as if set forth verbatim herein.

9.2 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's constitutional right to an exemption from said policy, withholding from HCF the status and benefits of a registered student organization, and engaging in direct and subtle forms of retaliation against HCF and its members, Defendants have violated and will continue to violate the right to free exercise of religion guaranteed to HCF and its members by the First Amendment to the United States Constitution and made applicable to the states and their political subdivisions by the Fourteenth Amendment.

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EQUAL PROTECTION CLAUSE
UNITED STATES CONST. AMEND. XIV

10.1 HCF restates and realleges each allegation set forth in paragraphs 1.1 through 9.2 as if set forth verbatim herein.

10.2 By enacting and enforcing the Policy on Nondiscrimination forbidding HCF to discriminate on the basis of religion or sexual orientation, refusing to recognize HCF's constitutional right to an exemption from said policy, withholding from HCF the status and benefits of a registered student organization, and engaging in direct and subtle forms of retaliation against HCF and its members, Defendants have denied and will continue to deny the equal protection of the laws guaranteed to HCF and its members as a religious association by the Fourteenth Amendment to the United States Constitution.

Prayer for Relief

WHEREFORE, Plaintiff HCF respectfully requests that this Court order the following relief:

- (1) A declaration that Defendants' Policy on Nondiscrimination is unconstitutional facially and as applied against Plaintiff and similarly situated religious organizations who desire to select members and officers based upon their shared religious beliefs and/or viewpoint regarding homosexual conduct;
- (2) A preliminary and permanent injunction enjoining Defendants from requiring Plaintiff and similarly situated religious organizations from adhering to the Policy on Nondiscrimination with respect to religion and sexual orientation; and prohibiting Defendants, their employees, officers, employees and agents, and all persons acting by and through them, from withholding the privileges, benefits, or incidents of registered status from Plaintiff and similarly situated organizations and from retaliating against Plaintiff and its members directly or indirectly for exercising their constitutional rights;

- 1 (3) An award of reasonable costs and attorneys' fees incurred by Plaintiff in
2 prosecuting this action pursuant to 42 U.S.C. § 1988; and
3 (4) Such other and further relief as the Court deems just and proper under the
4 circumstances.

5 Respectfully submitted this 21st day of October, 2004.

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Counsel for Plaintiff Christian Legal Society Chapter of University
26 *California, Hastings College of the Law, a/k/a Hastings Christian*
Fellowship

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McKinley & Smith, A Professional Corporation

1
2 VERIFICATION

3 I, Isaac Fong, a citizen of the United States and a resident of the State of California, am a
4 Co-Leader of the Christian Legal Society Chapter of University of California, Hastings College
5 of the Law, a/k/a Hastings Christian Fellowship. I have read the foregoing Verified Complaint
6 for Declaratory and Injunctive Relief and declare under penalty of perjury under the laws of the
7 United States of America that the foregoing factual averments are true and correct to the best of
8 my knowledge and belief.

9 CHRISTIAN LEGAL SOCIETY CHAPTER OF
10 UNIVERSITY OF CALIFORNIA, HASTINGS
11 COLLEGE OF THE LAW, a/k/a HASTINGS
12 CHRISTIAN FELLOWSHIP

13 _____
14 Isaac Fong
15 Co-Leader
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