

**E.O. 12866 Meeting
Religious Liberty and Free Inquiry Rule
Rulemaking RIN: 1840-AD72**

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Thank you for the opportunity to provide comments on OIRA's review of the final rule, Religious Liberty and Free Inquiry Rule (RIN 1840-AD72).

A. The Need for Federal Regulatory Action

- There is no need for this regulatory action. In fact, repealing the current regulation has the potential to cause harm to students on college campuses across the county.
 - Religious discrimination is on the rise on college campuses, with 1 in 4 students experiencing either discrimination or intolerance because of their religious beliefs.¹ Furthermore, news reports of religious discrimination have begun to appear regularly in both the media and academic publications.²
 - For example, Jacob Mandel, a Jewish college student who participated in a Jewish student organization on campus, was threatened on a public university campus and advised friends not to wear a Star of David to avoid being identifiable as Jews.³ Jewish faculty members at several universities were also the target of anti-Semitic threats like "Gas Jews Die" and images of swastikas.⁴
- There is no evidence that this regulation has caused any harms or inappropriate burdens that result in a need for this regulatory action. Requiring public universities to comply with free speech and inquiry protections is an important goal. The agency should identify specific reasons why this regulation is causing harms or burdens and needs to be repealed.

¹ Kevin Fosnacht & Cindy Broderick, *The Role of Religion and Institution Type in Seniors' Perceptions of the Religious and Spiritual Campus Climate*, 19 J. OF COLL. & CHARACTER 244 (February 2018).

² *Is Religious Intolerance and Discrimination Becoming More Common?*, NSSE SIGHTINGS (Feb. 26, 2018), <https://nssesightings.indiana.edu/archives/783>.

³ Jeremy Bauer-Wolf, *The Bias that a College Ignores?*, INSIDE HIGHER ED (June 29, 2017), <https://www.insidehighered.com/news/2017/06/29/lawsuit-highlights-jewish-students-frustrations-san-francisco-state>.

⁴ Colleen Flaherty, *Jewish Professors Targeted*, INSIDE HIGHER ED (Nov. 28, 2016), <https://www.insidehighered.com/news/2016/11/28/two-jewish-professors-different-campus-are-harassed-anti-semitic-threats>.

B. Alternative Regulatory Approaches

- The agency should consider the alternative of leaving this regulation in place, and should specify why that alternative approach cannot be maintained.
 - The current regulation assists in eliminating religious discrimination and intolerance on college campuses.
 - In a pluralistic society, it is important for students to be exposed to a variety of religious groups while in college and to learn about religious diversity.
 - Research has found that “religion and spirituality remain an important element in fostering a positive campus climate for all members of today’s college campuses.”⁵
 - Joe Cohn, legislative and policy director for the Foundation for Individual Rights in Education (FIRE) said, “A better way to promote diversity and inclusion is to foster an environment where a diverse array of student organizations are part of the campus community and where the barrier to creating new belief-based student groups is low.”⁶
- The current regulation promotes a “thriving civil society,” and teaches college students how to join in this longstanding American tradition of forming voluntary associations around a particular identity.⁷

C. Identifying and Measuring Benefits and Costs

- Because the current regulation protects the benefit of student free speech, intellectual diversity, and religious nondiscrimination, the agency should calculate the cost of losing those benefits if the current regulation is repealed.
- The agency should assess the degree to which repealing this regulation would lead to further discrimination, intolerance, and marginalization of religious students on campus, particularly those who are members of minority religions.
- The agency should consider and calculate the financial impact on

⁵ *Is Religious Intolerance and Discrimination Becoming More Common?*, NSSE SIGHTINGS (Feb. 26, 2018), <https://nssesightings.indiana.edu/archives/783>.

⁶ Kery Murakami, *Tying Grant Eligibility to Religious Freedom*, INSIDE HIGHER ED (Feb. 7, 2020), <https://www.insidehighered.com/news/2020/02/07/colleges-worry-about-implications-religious-freedom-rule>.

⁷ Eboo Patel, *Should Colleges De-Register Student Groups*, INSIDE HIGHER ED (Sept. 28, 2018), <https://www.insidehighered.com/blogs/conversations-diversity/should-colleges-de-register-student-groups>.

national religious student organizations, chapters of organizations on individual campuses, and individual student members.

- If this regulation is repealed and chapters of religious organizations are decertified by universities, that would impact the economic prospects of the national organization through a substantial loss of dues and members.
- Almost all college students are required to pay mandatory student activity fees. But only officially recognized student groups have access to these fees to use for educational events and speakers. If religious student groups are decertified as official student organizations, the students in these groups will still be required to pay fees, but will be unable to utilize the funds that all other groups can access. This will lead to lost expenses and for the speech of religious organizations, and a disparate negative impact on those organizations' ability to gather and speak in comparison to other student organizations.
- In addition, only officially recognized student groups have access to free meeting spaces. If religious groups are decertified, they would have to pay anywhere from \$200–\$1000 to rent space for each meeting, possibly dozens of times per school year.
- This disadvantage for religious organizations raises concerns both constitutionally and under the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb through § 2000bb-4.
 - It is unconstitutional for public universities to discriminate against a religion organization because of their religious viewpoints.⁸
 - It also violates RFRA for this agency to single out a regulation that protects religious groups and target that regulation for elimination, since removal of the protection afforded by that regulation would substantially burden the religious exercise of students and student groups
- The agency should consider the burdens and costs resulting from loss of diversity on campus from repeal of the regulations, and should assess the number of religious student organizations likely to be expelled from campuses or student group resources that currently have protection under this regulation.
 - For example, prior to this regulation, the University of Iowa expelled almost 40 religious student groups from campus including the Sikh Awareness Club, the Chinese Student Christian Fellowship, the Imam Mahdi Organization, and the Latter-day Saint Student Association simply because they wanted to be led by student who

⁸ *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (“The government must abstain from regulating speech when the specific motivating ideology or the opinion or the perspective of the speaker is the rationale for the restriction.”); 42 U.S.C. § 2000bb-1.

- shared their faith.⁹
- “The changing demographics of our nation require nearly every American adult to possess skills to bridge religious divides.”¹⁰
 - Students will be exposed to a variety of religions and beliefs throughout their lives and careers.¹¹ Maintaining the existing regulation provides societal benefits as students enter the workforce and various communities around the country.
 - If there are fewer religious student groups on campus, fewer students will have opportunities to learn about a diversity of beliefs in a safe environment.
 - Repealing this regulation would open up religious students to further marginalization and discrimination by allowing public universities to exclude them from campus life and the public square.
 - To return to the University of Iowa example, even though 356 student groups were *not* in compliance with the policy,¹² *only* religious groups were removed from campus.
 - Several students at the University of Iowa reported feeling “intimidated” by what the University’s accusations and deregistration of their organization meant for their education and future job prospects, particularly because the University was also the employer for some of these students.¹³
 - A study of religious students found that a lack of recognition on campus of their beliefs can act to ‘other,’ marginalize, and isolate students.¹⁴
 - When only religious student groups are expelled from campus or put on a “watch list,” as they were by the University of Iowa,¹⁵ they suffer a dignitary harm by a public institution that tells them they are not welcome in the public square, and when the federal government continues to fund those universities, a message is sent that the

⁹ Megan Fowler, *Judge: U of Iowa Officials have to Pay for Repeated Discrimination Against Christian Groups*, CHRISTIANITY TODAY (Oct. 3, 2019), <https://www.christianitytoday.com/news/2019/october/university-of-iowa-intervarsity-discrimination-liabilities.html>.

¹⁰ Alyssa N. Rockenbach et. al., *Ideals: Bridging Religious Divides through Higher Education*, <http://ifyc.org/sites/default/files/navigating-religious-diversity-9-27.pdf>.

¹¹ *Id.*

¹² Eboo Patel, *Should Colleges De-Register Student Groups*, INSIDE HIGHER ED (Sept. 28, 2018), <https://www.insidehighered.com/blogs/conversations-diversity/should-colleges-de-register-student-groups>.

¹³ *Id.*

¹⁴ Jacqueline Stevenson, *Internationalisation and religious inclusion in United Kingdom higher education*, HIGHER EDUCATION QUARTERLY (2014), <http://shura.shu.ac.uk/9630/>.

¹⁵ INTERVARSITY CHRISTIAN FELLOWSHIP/USA and InterVarsity Graduate Christian Fellowship, Plaintiffs-Appellees, v. THE UNIVERSITY OF IOWA, et al., Defendants-Appellants., 2020 WL 1242915 (C.A.8).

discrimination is societally acceptable.

- Forming and joining student organizations has a significant positive impact on student outcomes and mental health. The agency should consider the negative impact on students' development and mental health if religious organizations are removed from campus.
 - Young people are currently facing a mental health crisis, with 35% of college students struggling with a mental illness.¹⁶
 - “There is extensive research focused on student involvement in college suggesting that quality involvement leads to higher levels of student learning and development.”¹⁷
 - Furthermore, involvement in student organizations “significantly predicted several aspects of psychological well-being including: students’ personal growth, positive relationships with others, and purpose in life.”¹⁸
 - “Religious participation on campus is itself a form of social integration. Faith communities are instrumental in the formation of friendships and intimacy with other people, and these supportive networks, in turn, provide a wide range of psychological and spiritual benefits”¹⁹
 - Studies have demonstrated that a “supportive campus environment” was the “engagement variable most significantly predictive of mental health for both males and females.”²⁰
 - Many students join different types of groups depending on their interests and where they have a sense of belonging. Often, this sense of belonging stems from joining a group which shares their religious beliefs or identity.²¹
 - The vast majority of students who participate in student organizations report that it made them feel more connected to the community, made them more confident, and taught them problem

¹⁶ Amy L. Eva, *How Colleges Today Are Supporting Student Mental Health*, GREATER GOOD MAG. (Jan. 11, 2019),

https://greatergood.berkeley.edu/article/%C3%ADtem/how_colleges_today_are_supporting_student_mental_health

¹⁷ Cindy A. Kilgo et. al., *The Estimated Effects of College Student Involvement on Psychological Well-Being*, 57 J. OF COLL. STUDENT DEV. 1043 (Nov. 2016), <https://muse.jhu.edu/article/638565/summary>.

¹⁸ *Id.*

¹⁹ Alyssa N. Bryant, *The Effects of Involvement in Campus Religious Communities on College Student Adjustment and Development*, 8 J. OF COLL. & CHARACTER 1 (2007).

²⁰ Virginia Miller Ambler, *Who flourishes in college? Using positive psychology and student involvement theory to explore mental health among traditionally aged undergraduates*, W&M SCHOLARWORKS (2006), <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=2108&context=etd>.

²¹ *Student Life Survey: Student Involvement & Belonging*, CENTER FOR THE STUDY OF STUDENT LIFE (July 2015), <https://cssl.osu.edu/posts/632320bc-704d-4eef-8bcb-87c83019f2e9/documents/student-life-survey-2015-involvement-and-belonging.pdf>.

- solving skills.²² The Ohio State University found that student involvement and engagement “is a key component of their success.”²³
- Stanford researchers have found that “good academic performance is also driven by habits learned through religious adherence,” because they cultivate conscientiousness and cooperation.²⁴
 - The benefit of religious student groups is particularly striking for students who are members of minority groups or who are first-generation college students. Joining a Shia Muslim student group or a Korean Christian student group brings a sense of home that has demonstrably beneficial impacts on students.
 - First-generation college students are more than twice as likely to drop out of four-year institutions before the second year and are also less likely to finish a bachelor’s degree within five years.
 - Studies have shown that first generation college students most frequently utilized two programs to aid in success: departmental organizations and religious organizations.²⁵
 - The agency should analyze the impact repealing this regulation would have on first generation college students and minority groups.

E. Specialized Analytical Requirements

Small businesses and non-profits

- The agency needs to assess the impact on small businesses, which includes nonprofit entities, under the Regulatory Flexibility Act (“RFA”).
 - The RFA defines small businesses to include most non-profit entities. Therefore, the agency needs to provide a sufficient analysis to assess and certify the impact on religious organizations—both parent organizations of student groups, and the student groups themselves—on removing the current regulatory protections for those organizations.
 - For example, Ratio Christi is a Christian apologetics ministry with student chapters across the country, including at public universities that have sought to deny Ratio Christi recognition and access to

²² *Id.*

²³ *Id.*

²⁴ Carrie Spector, *Religiously engaged adolescents demonstrate habits that help them get better grades, Stanford scholar finds*, STANFORD RESEARCH STORIES (Apr. 15 2018), <https://ed.stanford.edu/news/religiously-engaged-adolescents-demonstrate-habits-help-them-get-better-grades-stanford-scholar>.

²⁵ Erica Irlbeck et. al., *First Generation College Students: Motivations and Support Systems*, 55 J. OF AG. ED. 154, <https://files.eric.ed.gov/fulltext/EJ1122313.pdf>.

campus resources because of its theologically informed leadership requirements. Ratio Christi has student chapters at nearly 200 universities and colleges.

- Ratio Christi, like many campus ministries, simply wants to be treated equally. Universities are supposed to be and operate best when they are places promoting the free exchange of ideas, i.e., when their purpose is the pursuit of truth. This purpose is undermined if a university becomes an arm of political truth or allows cancelling groups whose traditional Christian beliefs aren't acceptable as ideas to be explored and debated. The 2020 regulation secures the purpose of the university and reflects the American ethos, which is grounded in the First Amendment.
- A substantial number of nonprofit student organizations would be impacted by a rule repealing the 2020 regulations.
- Non-profit religious entities also have rights under the Religious Freedom Restoration Act (“RFRA”). Any substantial burden on their religious exercise cannot be imposed absent a compelling interest imposed by the least restrictive means of regulation. 42 U.S.C. § 2000bb-1.

Federalism

- The rule has significant impacts on federalism and effects on state and local law, and the agency should assess and estimate those impacts.
 - The current rule requires public universities to comply with free speech and non-discrimination principles and the First Amendment. Repealing that rule removes protections that federal law should provide.
 - Sixteen states have laws that ensure student organizations may speak for and govern themselves.²⁶ This includes the right to choose their own leaders according to their own standards.
- The agency should consult with state and local governments, universities, and tribal entities before proceeding with a proposed rule.

Comment period

- Because of the wide-ranging impacts of this rule on so many students and student organizations, and because of the lack of negative impact of leaving the current rule in place while this rule is considered, the agency should provide at least 60 days for a public comment period so groups have a sufficient opportunity to obtain and submit helpful information.

²⁶ Virginia, Tennessee, Arizona, North Carolina, Ohio, Idaho, Montana, Arkansas, Alabama, Kentucky, Kansas, South Dakota, North Dakota, Oklahoma, Iowa, and Louisiana