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IN OPPOSITION TO SB 175

KANSAS SENATE COMMITTEE ON JUDICIARY

MARCH 9, 2015

Thank you, Chairman King, and members of the Judiciary Committee for affording us the opportunity to provide testimony regarding SB 175. My name is Micah Kubic, and I serve as executive director of the American Civil Liberties Union of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas.

The ACLU of Kansas opposes SB 175 because it is not a necessary tool for the protection of the associational rights of students. Moreover, it will require public universities to provide their name and funding to discriminatory student organizations in violation of their First Amendment right to academic freedom.

SB 175 will prohibit post-secondary institutions, primarily public universities and community colleges, from denying recognition and funding to student organizations that discriminate in their membership based on classifications – such as sexual orientation, disability, and/or religion. In other words, the bill requires public post-secondary institutions to recognize and fund organizations that discriminate.

- **Schools should not be required to provide benefits—including public funding—to organizations that operate in a discriminatory fashion.** Participation in student organizations is a significant way that students obtain meaningful leadership opportunities, personal and professional contacts, and other important benefits. Thus, exclusion from student organizations can substantially harm students, denying them access to class information, study-group opportunities, professional contacts, and alumni associations.

  Post-secondary institutions should have the discretion to decide whether they want to lend their name or provide funding to student organizations that deny these benefits to certain classes of students.

- **Denial of public funding and recognition to discriminatory student organizations does not violate their First Amendment rights.** Under the First Amendment, students at public post-secondary institutions have the right to form clubs and organizations that deny membership based on race, sex, religion, national origin, sexual orientation, disability, or any other characteristic. Public universities may not prohibit students from forming such groups or disseminating their messages.

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However, SB 175 wrongly conflates the protected First Amendment right to free association with the right to government sponsorship and funding of that association. In *Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010), the U.S. Supreme Court upheld a law school policy requiring recognized student organizations to accept any student as a member. The school denied recognition to CLS because it had a policy of denying membership to "unrepentant homosexuals" and students who refused to sign the group's statement of faith. CLS claimed that the law school's policy requiring it to open its membership to all students violated its freedom of association. The Supreme Court disagreed.

The Court explained that officially recognized student organizations constitute a limited public forum. The university may impose conditions for participation in that forum as long as those conditions are reasonable and viewpoint-neutral. Requiring an antidiscrimination policy is reasonable because it ensures that the leadership, educational, and social opportunities afforded by recognized student organizations are available to all students.

The type of anti-discrimination policies that SB 175 would negate are viewpoint-neutral, because they apply only to an organization's conduct, not the views it espouses. Under such a policy, a recognized student group may promote any views that the group may hold—whether that view is related to race, gender, sexual orientation, or religious doctrine. It simply may not engage in discriminatory conduct.

The issue at stake in SB 175 is not whether student organizations are free to believe and associate as they like – they are. Instead, the issue is whether student organizations have a right to be publicly funded to operate in a discriminatory manner. They should not.

- **Prohibiting anti-discrimination polices interferes with post-secondary institutions' academic freedom.** The Supreme Court has recognized the fundamental importance of academic freedom to the survival of a free society. "This means the exclusion of governmental intervention in the intellectual life of a university." *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957) (Frankfurter, J., concurring). "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university-to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Id.* at 263. Moreover, "[a] college's commission—and its concomitant license to choose among pedagogical approaches—is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process." *Christian Legal Society*, 130 S.Ct. at 2988-89. The government should not interfere with a post-secondary institution's determination that its mission is best served by recognizing and funding student organizations that meet certain reasonable, viewpoint-neutral criteria, including a requirement that they not discriminate in membership.

We urge you to oppose SB 175 on these grounds.