

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

**ROMAN CATHOLIC FOUNDATION,
UW-MADISON, INC.**, a Wisconsin non-
profit corporation, **ELIZABETH A.
PLANTON**, and **ELIZABETH A.
CZARNECKI**,

Plaintiffs,

v.

The Regents of the University of Wisconsin System, **DAVID G. WALSH, MARK J. BRADLEY, JEFFREY BARTELL, ELIZABETH BURMASTER, EILEEN CONNOLLY-KEESLER, JUDITH V. CRAIN, MARY QUINETTE CUENE, DANA E DAVIS, MICHAEL J. FALBO, THOMAS LOFTUS, MILTON McPIKE, CHARLES PRUITT, PEGGY ROSENZWEIG, JESUS SALAS, BRENT SMITH**, and **MICHAEL J. SPECTOR**, all in their individual and official capacities; **KEVIN P. REILLY**, individually and in his official capacity as President of the University of Wisconsin System; **JOHN D. WILEY**, individually and in his official capacity as Chancellor of the University of Wisconsin-Madison; **LORI M. BERQUAM**, individually and in her official capacity as Dean of Students at the University of Wisconsin-Madison; **ELTON J. CRIM, JR.**, individually and in his official capacity as Associate Dean of Students (Interim) at the University of Wisconsin-Madison; and **YVONNE FANGMEYER**, individually and in her official capacity as Director of the Student Organization Office at the University of Wisconsin-Madison,

Defendants.

Case No. _____

VERIFIED COMPLAINT

Plaintiffs Roman Catholic Foundation, UW-Madison, Inc., Elizabeth A. Planton, and Elizabeth A. Czarnecki, by and through counsel, and for their Complaint against David G. Walsh, Mark J. Bradley, Jeffrey Bartell, Elizabeth Burmaster, Eileen Connolly-Keesler, Judith V. Crain, Mary Quinnette Cuene, Danae Davis, Michael J. Falbo, Thomas Loftus, Milton McPike, Charles Pruitt, Peggy Rosenzweig, Jesus Salas, Brent Smith, and Michael J. Spector, members of the University of Wisconsin System Board of Regents; and Kevin P. Reilly, President of the University of Wisconsin System; John D. Wiley, Chancellor of the University of Wisconsin-Madison; Lori M. Berquam, Dean of Students at the University of Wisconsin-Madison; Elton J. Crim, Jr., Associate Dean of Students at the University of Wisconsin-Madison (Interim); and Yvonne Fangmeyer, Director of the Student Organization Office at the University of Wisconsin-Madison, hereby state as follows:

INTRODUCTION

1. This is the second appearance of these parties before this Court in less than a year. Last fall, Plaintiffs Roman Catholic Foundation, UW-Madison, Inc. (RCF) and Planton sued Defendants because they forced RCF to abide by an unconstitutional “non-discrimination” policy and refused to fund RCF’s religious expression through the segregated student fee system. After obtaining preliminary injunctive relief on the free association issue, which prevented the University of Wisconsin System from enforcing its “non-discrimination” policy, RCF and Defendants herein entered into a settlement agreement (hereinafter the “Agreement”) on RCF’s claims regarding discriminatory treatment in the student activity fee system. RCF thought Defendants’ good will in the settlement process would assure an end to this discrimination. Unfortunately, RCF was wrong.

2. Less than a month after entering into the Agreement, Defendant Wiley and other University of Wisconsin-Madison (“UW-Madison”) officials began contacting Bishop Robert C. Morlino of the Diocese of Madison about “problems” with RCF’s 2006-07 segregated student fee budget—“problems” that had been settled by the Agreement. Chancellor Wiley and other UW-Madison officials told the Bishop that they would not fund certain portions of RCF’s already-approved budget because those items contained excessive religious content. Defendant Wiley and other UW-Madison officials did not communicate these objections to any member of RCF until a meeting was held in early July 2007.

3. After RCF met with Defendants it became clear that UW-Madison refused to fund any religious expression of RCF because Defendants believed that doing so gave state funds to “the Church.” When repeatedly told that the Agreement covered this and all future funding decisions of UW-Madison, Defendant Wiley and other UW-Madison officials told RCF that the Agreement was inapplicable. In three subsequent meetings, UW-Madison officials and Defendants stated that they will not fund any of RCF’s religious expression that involves “worship,” “prayer,” and/or “proselytizing.” During these meetings Defendants scrutinized all of RCF’s outstanding reimbursement requests from the 2006-07 academic years, and asked detailed questions about the content and purpose of each activity funded for the 2007-08 years and future years. Essentially, Defendants assumed a line-item veto power—in direct contradiction of the Agreement—over RCF’s previously approved budgets. Defendants have not applied this same level of scrutiny to other student organizations at UW-Madison.

4. By treating RCF differently than other similarly situated student organizations, and announcing that RCF cannot receive segregated fee funding for religiously expressive activities, Defendants have repudiated the Agreement, violated RCF’s constitutional rights for a

second time in a year, and caused irreparable injury to Plaintiffs. Through these policies and practices, Defendants and UW-Madison officials violate RCF's First and Fourteenth Amendment rights to free expression, free exercise of religion, equal protection of law, and RCF's rights under the State of Wisconsin's common law. Defendants' unconstitutional actions must be stopped.

JURISDICTION AND VENUE

5. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

6. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. § 2201-02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988.

7. This Court has supplemental jurisdiction over the state law claims made herein pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

PLAINTIFFS

9. Plaintiff Roman Catholic Foundation, UW-Madison, Inc. is an expressive association, not a church, incorporated under Chapter 181 of the Wisconsin Statutes and recognized as a non-profit under § 501(c)(3) of the Internal Revenue Code. RCF has been an

expressive student organization serving the University of Wisconsin-Madison community since the 1880s and was the first Catholic campus ministry at a public university in the United States. RCF was known in previous litigation before this Court as University of Wisconsin-Madison Roman Catholic Foundation, Inc.

10. Plaintiff Elizabeth A. Planton is a student at the University of Wisconsin-Madison and a member of the Board of Directors of the Roman Catholic Foundation, UW-Madison, Inc.

11. Plaintiff Elizabeth A. Czarnecki is a student at the University of Wisconsin-Madison and Chair of the Board of Directors of the Roman Catholic Foundation, UW-Madison, Inc.

DEFENDANTS

12. Defendant David G. Walsh, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for overseeing the Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

13. Defendant Mark J. Bradley, the President of the University of Wisconsin System Board of Regents, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

14. Defendant Jeffrey Bartell, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-

making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

15. Defendant Elizabeth Burmaster, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

16. Defendant Eileen Connolly-Keesler, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

17. Defendant Judith V. Crain, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

18. Defendant Mary Quinnette Cuene, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

19. Defendant Danae Davis, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

20. Defendant Michael J. Falbo, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

21. Defendant Thomas Loftus, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

22. Defendant Milton McPike, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

23. Defendant Charles Pruitt, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-

making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

24. Defendant Peggy Rosenzweig, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

25. Defendant Jesus Salas, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

26. Defendant Brent Smith, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

27. Defendant Michael J. Spector, a Regent of the University of Wisconsin System, a public university system organized and existing under the laws of the State of Wisconsin, is responsible with other Regents and officials for Board of Regents administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

28. Defendant Kevin P. Reilly, the President of the University of Wisconsin System, a public university organized and existing under the laws of the State of Wisconsin, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in his individual and official capacities.

29. Defendant John D. Wiley, the Chancellor of the University of Wisconsin-Madison, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in his individual and official capacities.

30. Defendant Lori M. Berquam, the Dean of Students at the University of Wisconsin-Madison, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in her individual and official capacities.

31. Defendant Elton J. Crim, Jr., the Interim Associate Dean of Students at the University of Wisconsin-Madison, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in his individual and official capacities.

32. Defendant Yvonne Fangmeyer, the Director of the Student Organization Office for the Offices of the Dean of Students at the University of Wisconsin-Madison, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in her individual and official capacities.

FACTUAL BACKGROUND

A. Overview of the Segregated Student Fee System at the University of Wisconsin.

33. The University of Wisconsin System (“UW System”) is a public university organized and existing under the laws of the State of Wisconsin, and receives funding from the State of Wisconsin in order to operate. Upon information and belief, the funds distributed to the

UW System by the State of Wisconsin are raised, in part, by taxing state residents, tuition and fees paid by students, general operating receipts, gifts, trusts and federal funds.

34. The UW System is composed of various branch campuses throughout the State of Wisconsin. The UW System Board of Regents (“Regent Defendants”) issues policies and procedures that each branch campus must adopt.

35. Wisconsin law gives the power of university governance to the Regent Defendants, president (Defendant Reilly), chancellors (Defendant Wiley) and faculty. Wis. Stat. § 36.09 (2007).

36. Wisconsin law also gives students a limited role in university governance:

The students of each institution or campus subject to the responsibilities and powers of the board, the president, the chancellor and the faculty shall be active participants in the immediate governance of and policy development for such institutions. . . . Students in consultation with the chancellor and subject to the final confirmation of the board shall have the responsibility for the disposition of those student fees which constitute substantial support for campus student activities.

Wis. Stat. § 36.09(5).

37. Most students pay tuition to attend one of the UW System’s branch campuses and receive a degree. The UW System uses student tuition, in part, to fund the departments, programs, research, salaries, and other activities in which each branch university engages. Students are also required to pay a separate student activity fee every semester they attend the university. This is called the Segregated University Fee (“SUF”).

38. The Regent Defendants’ Policy F37 “Segregated Fee Determination and Distribution” states that each student will be charged a “segregated university fee . . . in addition to instructional fees.” A copy of Policy 37 “Segregated Fee Determination and Distribution” is attached as Exhibit A to this Complaint.

39. The SUF is divided into “allocable” and “nonallocable” fees.

40. “The allocable portion of the SUF includes monies designated for student activities, such as student organizations, concerts, some athletics and recreation.” *Id.* The “nonallocable charges represent claims on SUF revenue that are determined by contracts, personnel commitments, bond agreements, conference commitments, operation of physical plants, etc.” (*See Ex. A.*)

41. Policy F37 gives the Regent Defendants, chancellor and students responsibility for “disposition of those student fees which constitute substantial support for campus student activities, and has designated those fees as ‘allocable’ [Segregated University Fees].” (*Id.*)

42. The allocable portion of segregated fees are not state funds. These funds come from students paying the SUF, a student activity fee.

43. The Regent Defendants have also issued Policy F20 “Segregated Fee Expenditures.” This policy states: “Only student organizations which meet the institutional qualifications for official recognition and are so recognized and University departments may receive SUF [Segregated University Fees] support.” A copy of Policy F20 “Segregated Fee Expenditures” is attached as Exhibit B to this Complaint.

44. Defendant Reilly is charged with implementing the Regent Defendants’ policies across the UW System. Defendants Wiley, Berquam, Crim, and Fangmeyer are charged with implementing Regent policy at UW-Madison.

45. UW-Madison invites students to form student organizations and engage in expressive activities on campus. The Student Organization Office (“SOO”) is dedicated to overseeing all aspects and policies pertaining to student organizations on campus.

46. The SOO’s website contains the following statement:

The mission of the Student Organization Office (SOO) is to promote student involvement as an integral part of a University education, register student organizations, and provide services, information, education, support, and advising to assist with the development and strengthening of students and student groups. Working with university and community partners, including student group advisors, alumni, and national organizations, and through education on university resources, policies, and procedures, SOO provides leadership development, organizational management, and skill development opportunities in an effort to empower students, to support quality learning experiences outside of the classroom, and to encourage active, thoughtful, involved community citizens.

A copy of the Student Organization Office's website is attached as Exhibit C to this Complaint.

47. SOO issues the Student Organization Handbook ("SOO Handbook"), which guides students in establishing and maintaining student organizations. The SOO Handbook contains policies and procedures governing the formation and operation of student organizations at UW-Madison.

48. The SOO Handbook distinguishes between registered and non-registered student organizations. Registered student organizations ("RSOs") receive many benefits from UW-Madison that non-registered student organizations do not receive.

49. The SOO Handbook contains the following statement:

Benefits of Registered Student Organizations (RSOs)

Registered Student Organizations benefit by receiving access to university facilities and services not available to non-registered groups or to the general public. As an RSO, your group:

- May reserve and use university facilities in the Wisconsin Union, and elsewhere on campus, that are available for non-instructional use.
- May take advantage of services, events and programs developed for RSOs by SOO and other university offices, programs and departments.
- Are eligible to apply for grants from the student government, Associated Students of Madison (ASM), the Multicultural Council (MCC), and other sources of funding specifically available to RSOs.

- May receive free publicity by being placed on SOO’s official list of RSOs on the web and in print.
- Are eligible to participate in all membership recruitment opportunities offered through the SOO, including but not limited to, the Student Organization Fair, Get Connected SOAR Interest Inventory, and Kick Off Meetings Promotion. In addition, SOO promotes student organizations in a variety of ways including at the many campus resource fairs, on the Fall Fair Poster announcing the Student Organization Fair and Specific Promotional Brochures, at Transfer Student Involvement Session presentations and other campus involvement/recruitment activities.
- May use the name of the University of Wisconsin-Madison to identify the group’s affiliation. **Note:** Any form of the UW’s name may not be placed as the beginning words in the name of the organization, but must follow at the end of the name, i.e., Checkers Club, UW-Madison.

Copies of the relevant portions of Defendants’ 2006–07 and 2007-08 SOO Handbooks are attached as Exhibit D to this Complaint.

50. Non-registered student organizations do not have access to any of the benefits listed in the SOO Handbook.

51. UW-Madison and Defendants Wiley, Berquam, Crim and Fangmeyer follow UW System Policy F20, “Segregated Fee Expenditures,” in creating policies and procedures for distributing segregated fees to student organizations.

52. UW-Madison provides several ways for RSOs to apply for and receive funding from the allocable portion of the Segregated University Fees.

53. One source of funding is the Associated Students of Madison (“ASM”), the student government at UW-Madison, which allocates the SUF. ASM provides funding to student organizations through Event Grants, Operations Grants, Travel Grants, the Open Fund, and General Student Services Fund (GSSF) Grants.

54. The Events Grant provides funding for events sponsored by RSOs in the Madison area and which are open to all University students.

55. Operations Grants provide support to the ongoing organizational needs of student organizations. For example, this funds printing, postage and office supplies of student organizations.

56. The Travel Grants support transportation, lodging, and registration fees for travel that is central to the purpose of the RSO.

57. The Open Fund “reserves small amounts of support, not to exceed \$200, for printing, postage, office supplies, membership dues and advertising.”

58. The Student Services Finance Committee (“SSFC”) of the ASM allocates GSSF Grants to various UW-Madison student organizations and other campus operations. The GSSF is funded by segregated student fees (SUF). Copies of the ASM Financial Policies & Procedures and the Finance Committee’s websites explaining Operations, Travel, and Event Grants are attached as Exhibit E to this Complaint.

59. SSFC provides substantial operations funding to student and nonstudent-run organizations that provide non-classroom educational opportunities (e.g., tutoring, legal services, multicultural education groups, etc.) to a significant portion of the UW-Madison student body. SSFC, composed of seventeen (17) voting student members as well as a non-voting Chancellor’s appointee, has the authority to recommend raising, freezing, or lowering the funding of existing GSSF organizations and to recommend accepting or denying new funding requests. Those recommendations are sent to ASM for approval, then to the UW-Madison Chancellor (Defendant Wiley), and finally to the Regent Defendants for final approval. A copy of the SSFC website is attached as Exhibit F to this Complaint and can be accessed at <http://www.asm.wisc.edu/cms/index.php?option=content&task=view&id=34>.

60. Prior to applying for GSSF funding, SSFC requires each student organization, whether or not it is an RSO, to file a GSSF Eligibility Application. This Application contains certain eligibility criteria that a student organization must meet before SSFC will accept its funding request. Copies of the 2006–07 and 2007–08 GSSF Eligibility Applications are attached as Exhibit G to this Complaint.

61. Further, as a condition of applying for GSSF funding, SSFC requires each organization to sign a statement of agreement, in which the organization agrees to abide by State, University, and ASM policies and procedures. A copy of the 2007-08 GSSF Statement of Agreement is attached as Exhibit H to this Complaint.

62. Once ASM approves an organization's eligibility, the organization may file a GSSF Funding Request. Copies of the 2006-07, 2007-08, and 2008-09 GSSF Funding Request forms are attached as Exhibit I to this Complaint.

63. UW-Madison reviews GSSF funding applications a year in advance. Thus, during the fall of 2007, SSFC and ASM will review RSO funding applications for the 2008-09 academic years.

64. RSOs that receive a GSSF budget do not receive a lump sum payment of the entire budget to use throughout the academic year. An RSO receives funding on a reimbursement basis by submitting receipts and invoices for activities UW-Madison and Defendants approved in the RSO's budget.

B. The History of Defendants Discrimination Against RCF.

65. RCF, formerly known as University of Wisconsin-Madison Roman Catholic Foundation, Inc., has been an expressive student organization serving the UW-Madison

community since the 1880s, and was the first Catholic campus ministry at a public university in the United States.

66. Over the course of its ministry, RCF has been a home away from home for over fifty thousand (50,000) students. Many of its alumni serve society with great distinction and approximately four hundred (400) alumni currently serve the UW System as staff and faculty. RCF was created to promote the religious, charitable, and educational interests of Roman Catholic and non-Roman Catholic students, faculty, and staff at UW-Madison. Copies of RCF's Articles of Incorporation and Bylaws are attached as Exhibit J to this Complaint.

67. RCF allows any person who supports its mission to become a member of the organization. Each year thousands of Catholic, as well as non-Catholic, students take advantage of RCF's many programs and services.

68. In 2003, RCF became eligible to receive GSSF funding. It applied for funding, but during hearings before the SSFC on RCF's budget request, SSFC members singled out for excessive scrutiny any RCF activity that included religious expression. SSFC members expressed great concern over funding religious activities. After this viewpoint based interrogation, SSFC funded only seven percent (7%) of RCF's budget. On information and belief, other GSSF groups (all non-religious) received virtually one hundred percent (100%) of their budget during the 2003 funding cycle.

69. During the 2003 GSSF application cycle and subsequent funding cycles, Defendants Wiley, Berquam, Crim, Fangmeyer, and UW-Madison administrators singled out RCF's religious expression as problematic and not fundable. RCF's budget was given much more scrutiny than other non-religious organizations. Historically, non-religious organizations received virtually one hundred percent (100%) of their student programming needs from GSSF

and UW-Madison, but SSFC and Defendants funded just seventeen percent (17%) of RCF's overall budget. Relative to its overall budget and size, RCF was the lowest funded GSSF organization on the UW-Madison campus.

70. In the fall of 2004, RCF again applied for funding for the 2005-06 academic years. Again, SSFC and Defendants inquired into the religious viewpoint of RCF's expressive activities and subjected RCF to further discriminatory treatment in GSSF funding.

71. In October 2004, UW-Madison officials distributed two (2) memoranda to SSFC instructing it that religious student organizations could not receive segregated fees.

72. On or about October 11, 2004, Dean of Students Luoluo Hong sent a memorandum to the SSFC with the following statement:

University/State funds cannot be used to directly support the operating costs of a church or strictly church-related activity (e.g., worship service) if the funds being transferred could be characterized as a donation to the church or as being in lieu of other contributions to the church normally used to cover similar costs.

A copy of the October 11, 2004, memorandum from Dean Luoluo Hong to the SSFC is attached as Exhibit K to this Complaint.

73. On or about October 15, 2004, the UW System General Counsel, Patricia Brady, sent a memorandum to the Chief Student Affairs Officers with the following statement:

Segregated fees may not be used to provide gifts, donations or contributions to political or religious organization, campaigns or candidates. [University Financial Policy] F20 prohibits the funding of gifts, donations and contribution in general, and applies to all such distribution, including those that are directed to political and religious groups. . . .

A copy of the October 15, 2004, memorandum from UW System General Counsel to the Chief Student Affairs Officers is attached as Exhibit L to this Complaint.

74. These memoranda and other similar statements by UW-Madison officials at the direction of Defendants herein resulted in RCF being subjected by the SSFC to a steady barrage

of discriminatory remarks and inquiries into the nature of their religious activities over the next two years. After the 2004 budget process, SSFC funded only fourteen percent (14%) of RCF's budget.

75. During the 2005 budget cycle, which funds the 2006-07 budget year, on November 8, 2005, Defendant Berquam sent a memorandum to the members of SSFC stating that the University cannot apportion segregated fees to support religious expression. A copy of Defendant Berquam's November 8, 2005, memorandum to SSFC members is attached as Exhibit M to this Complaint.

76. The evening of RCF's 2005 budget hearing began with RCF addressing SSFC with a plea for fairness. Immediately following RCF's comments, Defendant Crim, as the Chancellor's representative at the SSFC meeting, expressed his objections to organizations like RCF being funded with segregated fees. Defendant Crim argued that such organizations should not get their funding from the SSFC, but from non-SSFC sources. A copy of the November 18, 2005, Badger Herald news article reviewing Defendant Crim's comments is attached as Exhibit N to this Complaint.

77. After Defendant Crim's remarks, the SSFC debated RCF's 2005 budget. During the budget hearing, the SSFC cut those aspects of RCF's budget that the SSFC and Defendant Wiley's office perceived to be religious in nature. SSFC explicitly refused to fund a Lenten booklet because it was too Catholic and because SSFC believed that UW-Madison cannot fund worship according to Defendant Berquam's memorandum. The Lenten booklet was authored by forty (40) different UW-Madison students and was distributed on campus to approximately eight thousand (8,000) students. When the meeting concluded, the SSFC reduced RCF's budget to \$94,000.

78. The week following the SSFC budget hearing, RCF appealed the budget cuts to UW-Madison's Student Judiciary. A copy of UWRCF's complaint against SSFC is attached as Exhibit O to this Complaint.

79. On December 17, 2005, the Student Judiciary, citing numerous viewpoint neutrality violations on the part of SSFC, overturned the budget cuts and then forwarded the budget onto the ASM Student Council for reconsideration. A copy of the Student Judiciary's Judgment is attached as Exhibit P to this Complaint.

80. On February 15, 2006, after further debate, and against the protest of Defendant Berquam, the ASM Student Council approved a RCF budget of \$145,000 and forwarded it along with all other budgets to Defendant Wiley for approval. During this time, counsel for Plaintiffs sent a letter on behalf of RCF advising Defendant Wiley to approve all of RCF's requested budget. A copy of the March 1, 2006, letter from counsel for Plaintiffs to Defendant Wiley is attached as Exhibit Q to this Complaint.

81. On April 4, 2006, Defendant Wiley sent a letter to Mr. Eric Varney, Chair of ASM, and Rachelle Stone, Chair of SSFC, objecting to RCF's budget request because of the religious activities and message of the organization.

82. Defendant Wiley stated that because "segregated fees represent a component of state monies . . . numerous aspects of the funding approved for [RCF] potentially violate" the "Establishment Clause of the First Amendment to the U.S. Constitution." Defendant Wiley noted several "items of concern" in RCF's budget, including: religious activities of the organization, personnel who may support the "on-going operations of a religious organization," and printing fees for "weekly bulletins . . . and student-authored Lenten Booklets." A copy of

the April 4, 2006, letter from Defendant Wiley to Eric Varney and Rachelle Stone is attached as Exhibit R to this Complaint.

83. Despite Defendant Wiley's requests for closer scrutiny, ASM and SSFC approved RCF's 2006–07 budget. They did not make any deductions from the budget as Defendant Wiley suggested.

84. On April 28, 2006, Defendant Wiley issued another letter to Eric Varney, Chair of ASM, and Rachelle Stone, Chair of SSFC. In addressing his previous concern over providing segregated fees for religious expression and activity, Defendant Wiley said the following:

I find it very uncomfortable to be placed in a position of recommending approval of funding for activities and/or personnel I do not know enough about to determine whether their proposed content/application are violative of constitutional requirements. . . .

. . . . I am provisionally recommending approval of the UWRCF budget. I will express my view, however, that it may be necessary to elicit from the UWRCF additional information before funding that may be provisionally approved can actually be released. I also caution that, in future budgets, *I will be very reluctant to recommend approval for any budget that has not been submitted with sufficient information to allow for a thorough examination of constitutional requirements regarding use of state funds by religious organizations.*

(Emphasis added.)

85. Defendant Wiley's statement made it clear that RCF and other religious organizations will not receive segregated fee funding in future SSFC budgets.

86. Defendant Wiley also stated that because RCF applied for segregated fee funding in reliance on ASM's bylaws (which allowed for non-registered student organizations to receive funding), he would exempt RCF from the registration requirement this year, but that he does "not contemplate any future exemptions to the mandate of [Policy F20] regarding RSO status."

87. Defendant Wiley forwarded the ASM/SSFC budget to the Regent Defendants, with these comments noted, for final approval. A copy of Defendant Wiley's April 28, 2006, letter to Eric Varney and Rachelle Stone is attached as Exhibit S to this Complaint.

88. Defendant Wiley even confirmed his opposition to funding religious expression on campus when he told the Badger Herald: "We're not allowed to use public funds to fund direct religious observation." A copy of the May 3, 2006, Badger Herald article entitled "Wiley hands UWRCF decision to Regents" is attached as Exhibit T to this Complaint.

89. Based upon RCF's and Plaintiffs' concern that Defendants would not approve RCF's 2006-07 budget and fund religious expression in future budgets, on May 12, 2006, counsel for Plaintiffs sent a letter to Defendants Walsh and Reilly regarding Defendant Wiley's recommendations for the 2006-07 academic year and cautioned against reversal of the submitted budget. Counsel for Plaintiffs outlined the applicable law regarding student activity fee funding and requested that the UW System and the Regent Defendants consider the legal principles when finalizing the 2006-07 ASM/SSFC budget and all future budgets. A copy of the May 12, 2006, letter from counsel for Plaintiffs to Defendants Walsh and Reilly is attached as Exhibit U to this Complaint.

90. During the summer of 2006, ASM's segregated fee budget, including RCF's budget request, was approved by the Regent Defendants. However, new policies and actions by Defendants herein have repudiated the Regent Defendants' approval of RCF's 2006-07 budget.

C. The Litigation History Between RCF and Defendants.

91. RCF previously sued Defendants in this Court in case number 06-C-649-S, for violating their First and Fourteenth Amendment rights to free speech, free association, free exercise of religion, due process, and equal protection of law.

92. RCF sued Defendants because they illegally applied a non-discrimination policy for student organizations to prevent RCF from making membership and leadership decisions on the basis of faith. RCF also sued Defendants for discriminating against RCF with respect to segregated student fee funding.

93. After this Court preliminarily enjoined Defendants' non-discrimination policy, the parties moved for summary judgment on the segregated student fees issue.

94. On May 2, 2007, shortly before submitting the final briefs for summary judgment, the parties negotiated the Agreement whereby the RCF would not seek segregated student fee funding for "masses, weddings, funerals, or other sacramental acts requiring the direct control of ordained clergy." RCF has complied with this term. RCF also agreed to drop its claims against Defendants on the segregated student fee issue.

95. Defendants agreed to approve in full RCF's 2007-08 GSSF budget in the amount of two hundred fifty-three thousand two hundred seventy-three dollars and eighty-eight cents (\$253,273.88). Defendants also agreed to the following obligations when reviewing RCF's segregated student fee budget applications:

- (b) For those programs or activities not covered by (a), ***the university's consideration of that budget item shall be made without reference to the religious viewpoint of the program or activity***, but may consider viewpoint-neutral factors, including without limitation because of enumeration, whether the program or activity has been recommended and approved as part of a previous RCF-UWM budget and whether a reasonably comparable secular counterpart exists for the proposed program or activity.
- (c) ***The university will review RCF-UWM's budget requests in the same manner as it reviews the budget requests of other RSOs.*** RCF-UWM will provide information about its programs, activities and expenditures in response to requests for such information reasonably related to the budget review process.

(Emphasis added.) A copy of the executed settlement agreement between Plaintiffs RCF and Planton and Defendants is attached as Exhibit V to this Complaint.

D. Defendants Breach of the Agreement and New Unconstitutional Conduct.

96. On June 1, 2007, less than one month after Defendants entered into the Agreement, Casey A. Nagy, Executive Assistant to Defendant Wiley, sent a letter to the Most Reverend Robert C. Morlino, Bishop of the Roman Catholic Diocese of Madison. The letter referred to a phone conversation between Mr. Nagy and Bishop Morlino.

97. Mr. Nagy wrote:

I noted three items from last year's student budget allocation to the Roman Catholic Foundation that were problematic: publication of a series of Holy Rosary pamphlets, and two ads for evangelical ministry/counseling programs. I suggested that the aggregate cost of these items was in the range of approximately \$1,000. This estimate was based on the costs of the ads and the publication of the pamphlets. I now understand that, in addition to the ads for the ministry/counseling programs, reimbursement is being sought by the RCF for the costs of the actual programs that were advertised. This brings the aggregate cost to approximately \$10,000. Clearly, this is a much more significant financial consequence than we had in mind during our conversation, in which you agreed to withdraw these three items from consideration.

A copy of Mr. Nagy's June 1, 2007 letter to the Most Reverend Robert C. Morlino is attached as Exhibit W to this Complaint.

98. Mr. Nagy's letter proposes that that he and the Bishop discuss these items further because there remained an "underlying difficulty associated with providing state support for these specific activities."

99. Mr. Nagy then writes: "The Church undoubtedly participates in a variety of activities that have broad community benefit, not necessarily tied to religious affiliation or practice (e.g., food pantries). Is there a way that the university could help to support some of these community-based activities that would lessen the Church's support obligation, thus making

it somewhat easier for the Church to make any necessary recompense to the RCF for these items (and others that may trickle in through the guise of reimbursement requests)?”

100. Neither Mr. Nagy, nor any of the Defendants, nor any UW System or UW-Madison official contacted the student leaders of RCF to discuss these “issues.”

101. Bishop Morlino is not a leader or member of RCF.

102. Instead of discussing these matters with Plaintiffs, Mr. Nagy and Defendants simply denied RCF’s requests for reimbursement on these particular activities and several others.

103. On information and belief, Defendant Wiley and Mr. Nagy then scheduled a meeting between Wiley and Bishop Morlino to discuss RCF’s activities.

104. The meeting was held on Tuesday, July 10, 2007 at 9:00 a.m. in Madison, Wisconsin. On Monday, July 9, 2007, RCF’s student leaders learned of the meeting from Bishop Morlino. Defendants did not inform RCF’s student leaders about the meeting.

105. Nevertheless, present at the July 10, 2007, meeting were Bishop Morlino, Defendant Wiley, Defendant Crim, Nancy R. Lynch (University Legal Counsel, UW-Madison Administrative Legal Services), Charles D. Hoornstra (Director, UW-Madison Administrative Legal Services), Mr. Nagy, Plaintiff Czarnecki, Father Eric Nielson, counsel for RCF, and other unknown persons from the Dean of Students office.

106. At this meeting Defendant Wiley stated that because segregated student fees are “state funds” UW-Madison cannot fund certain activities of RCF, including prayer, worship, proselytizing, and inculcation of values. He also suggested that RCF operate itself like Hillel, a Jewish student organization at UW-Madison.

107. Mr. Hoornstra stated that RCF cannot receive segregated student fees for activities that involve worship.

108. Ms. Lynch and Defendant Wiley listed several specific RCF activities that involved what they thought was “worship” and that they were concerned about funding. These activities included: RCF’s Lenten booklets, Rosary booklets, Busy Persons Retreat, a drum shield for RCF’s band, and the Evangelical Catholic Institute. Although RCF has submitted reimbursement requests to SSFC for these activities, SSFC has withheld payment due to Defendants’ intervention.

109. As previously stated, the Lenten booklets were written by student members of RCF and included the students’ views and thoughts on the Catholic period of Lent. The rosary booklets were purchased by RCF and used by its student members to learn more about the Catholic act of praying the rosary.

110. RCF’s Busy Persons Retreat involved career, personal, spiritual and educational counseling for UW-Madison students. RCF hosted priests and nuns that counseled students by meeting with them individually for a half hour each day for free. Students could also choose to spend a half hour per day in prayer about these topics, however, this was optional and was conducted on the students’ own time. RCF’s budget included fifteen (15) “entertainment contracts” to bring these counselors on campus, totaling one thousand four hundred dollars (\$1,400.00) in GSSF budget expenses. RCF’s budget also included one hundred seventy-five dollars (\$175.00) for parking for the speakers; one hundred ninety-four dollars and eighty-eight cents (\$194.88) for food; and two hundred twenty-five dollars (\$225.00) for newspaper advertisements in the Badger Herald.

111. The Evangelical Catholic Institute was an activity that brought various speakers to campus to discuss matters of Christian faith and belief. RCF hosted Avery Cardinal Dulles and Rich Cleveland at UW-Madison to discuss Models of Evangelization and Facilitating Small

Groups. RCF's budget included three hundred dollars (\$300.00) in airfare and five hundred dollars (\$500.00) in honorarium for Rich Cleveland; it also included a one thousand dollar (\$1,000.00) honorarium for Avery Cardinal Dulles; eight hundred thirty-two dollars (\$832.00) in speaker lodging and food/beverages for UW-Madison students; five hundred eighty-six dollars and thirty-three cents (\$586.33) in printing expenses; and four hundred ninety-five dollars (\$495.00) in newspaper advertisements in the Badger Herald.

112. RCF also requested a drum shield for its student band that plays during the weekly Alpha & Omega meeting. The drum shield helps the band achieve the right sounds and amplification when the students sing at the event. RCF's budget provided three hundred fifty-six dollars and fifteen cents (\$356.15) for the drum shield.

113. After stating the Defendants objections to these activities, Ms. Lynch and Defendants Wiley and Crim stated that they would like RCF to engage in more educational programming, and activities that give students opportunities for knowledge acquisition.

114. RCF informed Defendants that the University's actions violated the Agreement between the parties and that all of its activities were entitled to funding on an equal basis as all other student organizations.

115. Defendant Wiley and Ms. Lynch denied that the Agreement governed Defendants' actions.

116. Defendant Wiley told Plaintiff Czarnecki that the segregated student fee system is on the brink of collapse because other RSOs will see how much funding RCF received and want the same for their organizations.

117. RCF and the University officials present at the meeting agreed to meet again to discuss RCF's 2006-07 outstanding budget expenses and to discuss RCF's 2007-08 and 2008-09

segregated fee budgets. A copy of RCF's 2006-07 and 2007-08 GSSF budget applications and the same budgets as approved by SSFC and Defendants are attached as Exhibit X to this Complaint.

118. On July 27, 2007, Ms. Lynch, Defendant Crim, Rich Sterkowitz (SSFC Financial Specialist), Heidi Arbisi-Kelm (SSFC Advisor), Plaintiff Czarnecki, Dan Gryskiewicz (RCF member), and RCF counsel met at RCF's student organization offices on the UW-Madison campus.

119. The University officials asked Ms. Czarnecki and Mr. Gryskiewicz detailed questions about the religious purpose and content of each activity in RCF's 2006-07 and 2007-08 budgets. In the course of the conversation, these university officials suggested that RCF refrain from requesting funding for many of these activities in the 2008-09 budget.

120. University officials refused to provide RCF with concrete answers as to whether UW-Madison would release the segregated student fees that it was holding up—activities and expenses that were previously approved in RCF's 2006-07 budget. The University officials also told RCF that they may not be able to fund the same or similar activities in RCF's 2007-08 budget. The funding of RCF's 2007-08 budget is governed by the Agreement.

121. For some activities, the University officials were unable to tell RCF at the meeting whether the activity would be fundable because they were unsure if the amount of prayer and worship included in the activity would make it fundable or unfundable. Ms. Lynch said that some prayer at the beginning of an activity was acceptable but that it became hard to draw the line when an activity consisted of more prayer. The University officials continued to refuse to fund any RCF activity that involved worship, proselytizing or prayer.

122. RCF and the University officials agreed to meet again, when the University would give RCF its final answers on what the University can and cannot fund in RCF's budget.

123. On August 13, 2007, Ms. Lynch, Mr. Hoornstra, Tomas Stafford (UW Senior System Legal Counsel), Ms. Arbisi-Kelm, Plaintiff Czarnecki, Mr. Gryskiewicz, Father Nielson, and RCF counsel met to discuss the University's position on RCF's outstanding reimbursements for the 2006-07 budget and upcoming expenses for the 2007-08 budget.

124. Ms. Lynch also informed RCF what the University would not fund in RCF's 2006-07 budget: the drum shield for Alpha & Omega band (\$356.15), all of the expenses from the Evangelical Catholic Institute (\$3,713.33), and all of the expenses from the Busy Persons Retreat (\$1,994.88).

125. Ms. Lynch also informed RCF what the University would not fund in RCF's 2007-08 budget: the Evangelical Catholic Training Camps (\$6,300.00), Samuel Group (\$3,800.00), Mentoring for Busy Students (\$2,847.00), Evangelical Catholic Ministry Institute (\$7,500.00), rosary booklets, and Lenten booklets (\$3,000.00). In addition, Ms. Lynch stated that if Evangelicum, the Theater Arts program, any of the small groups, any of the retreats, or the dorm interns were activities that involved worship, prayer or proselytizing, then the University would not allow RCF to receive segregated student fee funding for them. The Agreement states that Defendants were to approve in full RCF's 2007-08 budget.

126. Ms. Lynch also suggested that RCF not request funding for these same activities and events in its 2008-09 segregated student fee budget because Defendants would not approve them.

127. On August 20, 2007, Ms. Lynch confirmed with Plaintiffs' counsel the precise activities that Defendants would no longer fund. Moreover, Ms. Lynch also stated that the

University would not fund any portion of Alpha & Omega because it contains religious worship and prayer. A copy of the August 20, 2007 email from Ms. Lynch to Plaintiffs' counsel is attached as Exhibit Y to this Complaint.

128. All of these actions constitute explicit viewpoint discrimination and prevent RCF from receiving segregate student fee funding.

E. The Effect of Defendants' Discriminatory Actions on Plaintiffs.

129. As a result of Defendants' refusal to fund RCF's religious student expression on campus through the segregated student fee system, RCF is left to pay expenses from its 2006-07 budget that Defendants now refuse to reimburse.

130. RCF has submitted reimbursement requests for the Busy Persons Retreat, the Evangelical Catholic Institute and the Alpha and Omega drum shield. Defendants refuse to pay these reimbursements even though these items are approved budget expenditures in RCF's 2006-07 GSSF budget. In total, RCF has six thousand sixty-three dollars and forty-eight cents (\$6,063.48) in outstanding reimbursement requests. Without payment by Defendants, RCF students will have to find a way to pay these bills.

131. RCF also is unable to continue many of its previously scheduled and approved 2007-08 student organization activities and will be forced to shut down much of its expression on campus.

132. In particular for the 2007-08 budget, RCF already held its 2007 Evangelical Catholic Training Camp for its various student leaders on August 13-17, 2007. It received an invoice from the Bishop O'Connor Center in the amount of \$7,500.00 and has requested payment of six thousand three hundred dollars (\$6,300.00) from SSFC. RCF expected payment for this expense from Defendants per the Agreement. At this event, students are trained on how

to become better campus leaders and organize RCF activities that will have the most impact and benefit at UW-Madison. RCF brought nineteen (19) students to this event. The invoice on this event is already past due. RCF secured a thirty-day extension to pay this invoice, but does not have the funds to pay it after that extension because Defendants will not release GSSF funds for the payment.

133. RCF also has many outstanding invoices and bills for activities that Defendants refuse to fund from RCF's previously-approved 2006-07 and 2007-08 budgets. In total, twenty-nine thousand five hundred ten dollars and forty-eight cents (\$29,510.48) has not and will not be reimbursed by Defendants.

134. Defendants have failed to comply with funding agreements. If RCF does not receive these funds the invoices and bills will be sent to collection agencies and it will be forced to find enough money from its own members—college students—to pay these expenses. Students who pay into the segregated student fee system and who applied for and were approved to receive funding through the GSSF process, are now responsible for paying debts that Defendants promised to pay.

135. Defendants' shameful disregard for the United States Constitution and the State of Wisconsin's common law must be stopped. Otherwise, RCF as a student organization at UW-Madison may no longer exist.

FIRST CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Freedom of Speech **(42 U.S.C. § 1983)**

136. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

137. By conditioning student organization benefits on compliance with the University's unlawful policies, by refusing to fund religious expression and activities of student

organizations, by refusing to fund certain budget requests of religious student organizations that are funded for other student organizations, by requiring Plaintiffs to change their religiously expressive activities to subjects preferred by UW-Madison, and by singling out religious activities for differential treatment, among other things, Defendants by policy and practice have discriminated on the basis of viewpoint and deprived Plaintiffs of their ability to express their ideas freely on issues of religious concerns at UW-Madison and associate with those of likeminded concern.

138. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

139. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages, including punitive damages, and equitable relief.

140. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SECOND CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Free Speech Compelled Speech (42 U.S.C. § 1983)

141. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

142. By conditioning student organization benefits on compliance with the University's unlawful policies, by refusing to fund religious expression and activities of student organizations, by refusing to fund certain budget requests of religious student organizations that

are funded for other student organizations, by requiring Plaintiffs to change their religiously expressive activities to subjects preferred by UW-Madison, and by singling out religious activities for differential treatment, among other things, Defendants by policy and practice have compelled Plaintiffs to speak in favor of subjects with which they disagree, thereby depriving Plaintiffs of their ability to express their ideas freely on issues of religious concerns at UW-Madison and associate with those of likeminded concern.

143. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

144. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages, including punitive damages, and equitable relief.

145. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

THIRD CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Free Exercise of Religion **(42 U.S.C. § 1983)**

146. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

147. By conditioning student organization benefits on compliance with the University's unlawful policies, by refusing to fund religious expression and activities of student organizations, by refusing to fund certain budget requests of religious student organizations that are funded for other student organizations, by requiring Plaintiffs to change their religiously

expressive activities to subjects preferred by UW-Madison, by singling out religious activities for differential treatment, and by enforcing a University policy that is not neutral and not generally applicable to all student organizations, among other things, Defendants by policy and practice have prevented Plaintiffs and members and officers of RCF from freely exercising their religious beliefs and tenets at UW-Madison.

148. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to free exercise of religion secured by the First Amendment to the United States Constitution.

149. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages, including punitive damages, and equitable relief.

150. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

Violation of Plaintiffs' Fourteenth Amendment Right to Equal Protection of the Law **(42 U.S.C. § 1983)**

151. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

152. By conditioning student organization benefits on compliance with the University's unlawful policies, by refusing to fund religious expression and activities of student organizations, by refusing to fund certain budget requests of religious student organizations that are funded for other student organizations, and by treating Christian students and student organizations differently than similarly situated students and student organizations, among other

things, Defendants by policy and practice have deprived Plaintiffs of the equal protection of law and their ability to express freely their ideas on issues of religious concern at UW-Madison and associate with those of likeminded concern.

153. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to equal protection of the law secured by the Fourteenth Amendment to the United States Constitution.

154. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages, including punitive damages, and equitable relief.

155. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

Breach of Settlement Agreement

156. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

157. By refusing to fund Plaintiffs religious expression and activities, by refusing to fund certain budget requests of Plaintiffs' religious student organization that are funded for other student organizations, by requiring Plaintiffs to change their religiously expressive activities to subjects preferred by UW-Madison, by singling out Plaintiffs religious activities for differential treatment, by refusing to fund Plaintiffs' 2006-07 and 2007-08 GSSF budgets, and by failing to perform its obligations under the May 2, 2007 Release and Settlement Agreement, among other things, Defendants by policy and practice have breached the Settlement Agreement with

Plaintiffs and have prevented Plaintiffs from freely expressing their religious beliefs and tenets at UW-Madison.

158. Defendants, acting collectively and individually, and by policy and practice, have caused Plaintiffs to detrimentally rely on the Settlement Agreement and have therefore deprived Plaintiffs of their clearly established legal rights under Wisconsin common law.

159. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages and equitable relief, including specific performance of the terms of the settlement agreement and GSSF budgets.

160. Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Promissory Estoppel

161. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

162. By refusing to fund Plaintiffs 2006-07 and 2007-08 GSSF budgets, by failing to perform its obligations under the May 2, 2007 Release and Settlement Agreement, and by repudiating the parties' Agreement, among other things, Defendants by policy and practice have breached their contract with RCF to provide segregated student fees and breached the Agreement with Plaintiffs and have prevented Plaintiffs from freely exercising their religious beliefs and tenets at UW-Madison.

163. Defendants, acting collectively and individually, and by policy and practice, have caused Plaintiffs to detrimentally rely on the Agreement and have therefore deprived Plaintiffs of their clearly established legal rights under Wisconsin common law.

164. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They, therefore, are entitled to an award of monetary damages and equitable relief, including specific performance of the settlement agreement and approved GSSF budgets.

165. Plaintiffs are entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants Walsh, Bradley, Bartell, Burmaster, Connolly-Keesler, Crain, Cuene, Davis, Falbo, Loftus, McPike, Pruitt, Rosenzweig, Salas, Smith, Spector, Reilly, Wiley, Berquam, Crim, and Fangmeyer, and provide Plaintiffs with the following relief:

- (A) A declaration stating that Defendants' application of the segregated fee policies to Plaintiffs discriminated on the basis of viewpoint and violated Plaintiffs' freedom of speech;
- (B) A preliminary and permanent injunction invalidating and restraining enforcement of the Defendants' unconstitutional segregated fee funding policies contained in the Associated Students of Madison and Student Services Finance Committee policies, as well as any Board of Regents, University system, or individual

University policy that purports to prohibit Plaintiffs from applying to receive funding for religious expression;

- (C) Actual damages in the amount of \$29,510.48 (including punitive damages for Defendants actions in their individual capacities) for infringing Plaintiffs' exercise of their First and Fourteenth Amendment rights and breaching the terms of the 2006-07 and 2007-08 GSSF budgets;
- (D) Compensatory damages in the amount of \$10,000.00 (including punitive damages for Defendants actions in their individual capacities) for infringing Plaintiffs' exercise of their First and Fourteenth Amendment rights;
- (E) Punitive damages for the continued violation of Plaintiffs' constitutional rights;
- (F) Specific performance of the Release and Settlement Agreement entered into between Plaintiffs and Defendants on May 2, 2007;
- (G) Specific performance in the form of reimbursement of all expenses in RCF's 2006-07 and 2007-08 GSSF budgets;
- (H) Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (I) All other further relief to which Plaintiffs may be entitled.

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Respectfully submitted this 10th day of September, 2007,

/s/David A. French

DAVID A. FRENCH
Tennessee Bar No. 16692
Kentucky Bar No. 86986
Alliance Defense Fund
12 Public Square
Columbia, Tennessee 38401
(931) 490-0591
(931) 490-7989—facsimile
dfrench@telladf.org

NATHAN W. KELLUM
Tennessee Bar No. 13482
Mississippi Bar No. 8813
Alliance Defense Fund
699 Oakleaf Office Lane, Suite 107
Memphis, Tennessee 38117
(901) 684-5485
(901) 684-5499—facsimile
nkellum@telladf.org

BENJAMIN W. BULL (*of counsel*)
Arizona Bar No. 009940
TRAVIS C. BARHAM
Arizona Bar No. 024867
Alliance Defense Fund
15333 N. Pima Road, Suite 165
Scottsdale, Arizona 85260
(480) 444-0020
(480) 444-0028—facsimile
tbarham@telladf.org

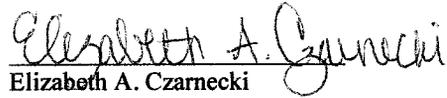
DAVID J. HACKER
California Bar No. 249272
Illinois Bar No. 6283022
Alliance Defense Fund
101 Parkshore Drive, Suite 100
Folsom, CA 95630
(916) 932-2850
(916) 932-2851—facsimile
dhacker@telladf.org

Attorneys for Plaintiffs

VERIFICATION OF COMPLAINT

I, Elizabeth A. Czarnecki, a citizen of the United States and resident of the State of Wisconsin, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 30 day of August, 2007, at Madison, Wisconsin.



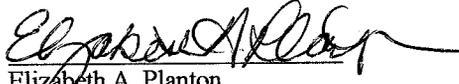
Elizabeth A. Czarnecki
Chair of the Board of Directors
Roman Catholic Foundation, UW-Madison, Inc.

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VERIFICATION OF COMPLAINT

I, Elizabeth A. Planton, a citizen of the United States and resident of the State of Wisconsin, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 31st day of August, 2007, at Madison, Wisconsin.



Elizabeth A. Planton
Member of the Board of Directors
Roman Catholic Foundation, UW-Madison, Inc.

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