ALLIANCE DEFENSE FUND
Defending Our First Liberty

September 11, 2006

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Re: Decision Not to Renew Covenant Agreements with Affiliated Ministries

Dear President DeGioia, Ms. Genster, and Reverends Godfrey, Wheeler, and Rogers,

It has come to our attention that Georgetown University's Office of Campus Ministry (OCM) has effectively ejected from campus a group of six evangelical student organizations, which include a mixture of Protestant and Catholic students. The Alliance Defense Fund (ADF) is a legal alliance that defends America's first liberty, religious liberty. ADF's Center for Academic Freedom is dedicated to ensuring that religious students enjoy rights to speak, associate, and learn on an equal basis as students of different faiths or of no faith at all. We urge you to correct OCM's discriminatory decision.

The following represents ADF's understanding of the facts of this case, drawn from University documents, e-mails, the University's website, and public press accounts. Before the prior

school year, OCM executed a covenant agreement with the six organizations that together comprise the so-called "Affiliated Ministries." Through this agreement, the Affiliated Ministries received access to campus benefits, including (1) occasional office and programmatic support, (2) access to space on campus, (3) access to lists of self-identified students of the Protestant faith tradition, and (4) listing in official University publications. Because they had access to benefits, the Affiliated Ministries also participated in the SAC Fair and the Campus Ministry Open House.

However, on August 14, 2006, the Affiliated Ministries received a terse, unanticipated letter from the Office of the Director of Campus Ministry. Without clear explanation, the letter stated that OCM would not renew any covenant agreements with the Affiliated Ministries. As a result, none of these organizations would be allowed to meet on campus, to participate in the SAC Fair or Campus Ministry Open House, to use the University's name, or to advertise that the University would be a site for their ministry in the 2006–07 school year. Although the change in the Affiliated Ministries' status was clear, the reason for it remained ambiguous and mysterious. The letter indicated simply that the Protestant Ministry "has decided to move in another direction" and that the decision was the result of "much dialogue with the Lord."

Obviously, this letter greatly disappointed the Affiliated Ministries. It effectively ended their activities on campus because a campus ministry cannot exist without access to the campus and its facilities. OCM's letter specifically prohibited the Affiliated Ministries from holding "any activity or presence . . . on campus." In addition, the letter specifically instructed these groups to remove any reference to the University from their websites, as well as from their "literature, media, advertisement, etc." With prohibitions like these, the letter's congenial opening (i.e. "Blessings and may God's peace be upon you!") rings hollow.

In later press coverage of this issue, University spokesmen have provided the media with a more extensive explanation of its actions than it provided the Affiliated Ministries in the August 14, 2006, letter. In an August 27, 2006, article in the *Washington Post*, University spokesman Erik Smulson alleged that there were "communication and coordination problems" with some members of the Affiliate Ministries and that there was a "desire within the Protestant chaplaincy to build the ministry from within." These are insufficient reasons for a decision that has effectively shut down ministries that were a source of joy and purpose for many Protestant *and* Catholic students at the University. For example, in one of the expelled ministries, three of the five planned Bible studies were to be led by Catholic students.

The affected students have made every effort to reconcile with the University and open a dialogue with relevant University officials. They have met personally with administrators in an effort to hear a complete explanation for the ejection of the Affiliated Ministries and to address any administrative concerns. Unfortunately, these efforts have been greeted only with vague promises of further study and future meetings.

Georgetown's Mission, Policies, and Values

OCM's actions completely betray the goals, ideals, and values that have given Georgetown University the reputation for excellence it enjoys today. They also highlight a disturbing double standard when compared to the way that the University treats Jewish and Muslim student organizations.

First, OCM's actions contradict the values encapsulated in Georgetown's mission statement. Ever since 1789, the University has sought to uphold its foundational principle: "the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical, and spiritual understanding." Georgetown Univ., *University Mission Statement*, *available at* http://www3.georgetown.edu/president/mission_statement.html (last visited Aug. 28, 2006). According to the mission statement, this principle is embodied in "our intellectual openness." *Id.* This principle and the atmosphere it produces set a high benchmark for any university, something that sets Georgetown University apart from other institutions.

But when one contrasts this mission statement with OCM's recent letter, a sizeable credibility gap emerges. How is it possible to have "serious and sustained discourse among people of different faiths" when the Affiliated Ministries cannot meet on campus? What type of message does this send to the students who were active in those ministries? Certainly, it does not reinforce in their minds the University's commitment to "intellectual openness."

This credibility gap expands when one examines how the University treats Jewish and Muslim organizations. Several years ago, the University celebrated its new relationship with Hillel. On that occasion, Rev. Godfrey expressed his hope that this partnership would "encourage the Jewish students to grown in their faith and culture." Georgetown Univ., Office of Communications, *Georgetown Partners with Hillel Foundation*, Sept. 8, 2005, *available at* http://explore.georgetown.edu/news/?ID=2814 (hereinafter "*Hillel*"). Similarly, the University has recognized the Muslim Students Association, an organization "dedicate[ed] to the service of Islam" and committed to the "development and growth of the diverse Muslim community at Georgetown University." Georgetown Univ., Muslim Student Ass'n, *Constitution and By Laws of the Muslim Student Association*, Feb. 1999, *available at* http://www.georgetown.edu/organizations/msa/const.htm (hereinafter "*MSA Constitution*"). These organizations, even with their religious focus, fit comfortably within the University's umbrella of "different faiths, cultures, and beliefs." On the other hand, evangelical Christian organizations do not. The Affiliated Ministries, Jewish Students Association, and Muslim Students Association have identical purposes and goals: promoting their respective religious beliefs on campus. The only difference is that they are promoting different religions. But rather than celebrating this diversity, OCM has banished one religious tradition from campus.

Second, OCM's letter violates the University's speech and expression policy, a policy designed to "ensure the 'untrammeled expression of ideas and information.'" Georgetown Univ., Student Affairs & Related Policies, *available at* http://www.georgetown.edu/student-affairs/policies.html (last visited Aug. 28, 2006) (hereinafter "Policies"). The policy itself stated:

> First, all members of the Georgetown University academic community . . . enjoy the right to freedom of speech and expression. This freedom includes the right to express points of view on the widest range of public and private concerns and to engage in the robust expression of ideas. The University encourages a balanced approach in all communications and the inclusion of contrary points of view. . . .

Id. In explaining this policy, Rev. James Walsh, S.J. observed that a "university is many things but central to its being is discourse, discussion, debate: the untrammeled expression of ideas and information." Free speech is so vital that "[t]o forbid or limit discourse contradicts everything the university stands for." *Id.* After all, "the exchange of ideas will lead to clarity, mutual un-

derstanding, the tempering of harsh and extreme positions, the softening of hardened positions and ultimately the attainment of truth." *Id.* Thus, Rev. Walsh concluded: "The long and the short of the matter is that 'time, place and manner' are the only norms allowable in governing the expression of ideals and sharing of information that is the very life of the university." *Id.*

While the University's policies on free speech are admirable, they pale when compared to OCM's actions. How is it possible to have "untrammeled expression of ideas and information" when the University has banished the Affiliated Ministries from campus? How can the exchange of ideas on campus be "untrammeled" when the University has chosen to allow Jewish and Muslim students to advance their perspectives but has made it impossible for evangelical Christians to do the same? Has OCM suddenly decided that the Affiliated Ministries—and the students involved in them—are no longer part of the Georgetown academic community so that they no longer have the right to free expression on campus? Do their ideas (which represent the theological views of millions of Americans) no longer fit within Georgetown's definition of the "widest range of public and private concerns"? Has the University suddenly decided that the "robust expression of ideas" can no longer include evangelicals? If the University truly "encourages a balanced approach . . . and the inclusion of contrary points of view," why has it chosen to celebrate its connections with Hillel and recognize the Muslim Students Association while it is eliminating from campus the perspective of evangelical Protestants and Catholics?

Third, not only has OCM betrayed values inherent in the University's mission statement and violated the speech policy, it has also contradicted the principles that President DeGioia laid out in his 2003 speech before the Student Speech and Expression Forum. *See* John J. DeGioia, Pres., Georgetown Univ., *Principles of Speech and Expression at Georgetown* (Feb. 3, 2003), *available at* http://www.president.georgetown.edu/speeches/jjd02032003.html. He began by contrasting two visions of a university: one that curtails speech to limit the spread of dangerous ideas versus one that celebrates free speech and expression. Georgetown, he said, had chosen the latter:

> Georgetown has chosen to permit the widest possible discourse, limited only under certain exceptional circumstances, because we believe in three things: the value of intellectual inquiry, the integrity of individuals, and the ability of members of this university community to think rationally about ideas and work toward truth. We cannot be a university dedicated to intellectual excellence and at the same time place limits on what might be said and thought and discussed.

Id. Not only was this a part of the University's history, but maintaining an open forum was also part of its Catholic and Jesuit tradition. *Id.* Recognizing that many students would find some ideas offensive or inappropriate, he admonished them:

> Be thoughtful in how you express yourself. And please do not take it upon yourself to attempt to silence a speaker, to shout someone down. . . . Such actions are not in keeping with our tradition and it is not the kind of speech that we protect.

Id. After all, the goal behind this policy of free speech and free expression is for "each person to thoughtfully consider opposing points of view." *Id.*

Once again, OCM's letter to the Affiliated Ministries highlights the wide gap between rhetoric and reality at Georgetown University. By revoking the privileges of the Affiliated Min-

istries, OCM has moved Georgetown toward becoming a university where speech is curtailed for whatever unstated reason may suit a few officials. If Georgetown values the "widest possible discourse," why does this not include the Affiliated Ministries? How is it that this "widest possible discourse" includes two of the world's major religions—Judaism and Islam—to access the campus freely but prohibits a large portion of the third—evangelical Protestants and Catholics—from having the same freedoms? By exiling the Affiliated Ministries from campus while allowing the Jewish Students Association and Muslim Students Association to operate unfettered, hasn't OCM "place[d] limits on what might be said and thought and discussed"? How can the students at Georgetown "thoughtfully consider opposing points of view" on religion when two religions—Judaism and Islam—are recognized on campus but a third—evangelical Protestantism and Catholicism—is not? This type of campus conversation seems rather lopsided because it is hard to hear the voice that OCM has silenced.

Fourth, OCM has violated the University's policies regarding student organizations. The University recognizes the importance that extra-curricular organizations play in the "development of knowledge, the cultivation of virtues and the formation of character." Policies, *supra*. In addition, student organizations use University resources "to enrich the university community and reflect its diversity." *Id.* As a result, "Georgetown University is committed to fostering the integrity of its student organizations. Groups are encouraged to follow their own constitutions [and] to remain true to their purpose. . . ." *Id.*

Yet again, the University's policies and OCM's actions diverge. Georgetown cannot have it both ways. It cannot tell students that it is "committed to fostering the integrity of its student organizations" while booting several of those organizations from campus.

Yet again, this divergence is magnified when one looks at how the University treats Jewish and Muslim groups. Georgetown celebrates its relationship with Hillel precisely because not only does it encourage the Jewish students but also because—as Rev. Godfrey notes—"it . . . provide[s] an opportunity for all of us to deepen our appreciation of this rich heritage that exists within our Georgetown community." *Hillel*, *supra*. Similarly, it recognizes the Muslim Students Association, which strives to "act as a resource to the whole campus community" on Islamic-related issues. *MSA Constitution*, *supra*. As even the Muslim Students Association observes, "Georgetown values spirituality and has recognized the need to promote it on within in each faith community." Georgetown Muslim Students Ass'n, *About Us*, *available at* http://studentorgs.georgetown.edu/msa/aboutus.htm (last visited Sept. 5, 2006). This is part of what makes "the Georgetown MSA a great example of a dynamic and diverse community." *Id.* Sadly, Georgetown does not apply the same standard to the evangelical Protestants and Catholics in the Affiliated Ministries. Rather than promoting spirituality among the faith communities that the Affiliated Ministries represent, the Protestant Ministry at Georgetown has chosen to "move in a different direction," one that paradoxically requires it to exclude the Affiliated Ministries from the University's "dynamic and diverse community." *Id.*

Fifth, OCM's actions are incompatible with the type of behavior that the University expects of its students. As part of a Catholic and Jesuit University, Georgetown expects its students to honor several commitments, including the following:

- "A commitment to treat others in a respectful manner, regardless of differences such

as . . . religion. . . ."

- "A commitment to open discourse and the free exchange of ideas."

Georgetown Univ., Code of Conduct: 2006–2007 Academic Year 2, *available at* http://studentconduct.georgetown.edu/CODE%20-%202006-2007%20[booklet]%20Final.pdf. Certainly, Georgetown expects at least as much from its administrators and leaders. Yet, OCM has singled out Protestant groups—particularly the Affiliated Ministries—for different treatment than Catholic, Jewish, and Muslim groups receive. In so doing, they have treated students differently based on religion. How can OCM maintain a commitment to "open discourse and the free exchange of ideas" when it allows some viewpoints to access the campus unfettered but banishes others completely? Has OCM adopted the Orwellian notion that "open discourse" and "free exchange of ideas" extend only to perspectives that bear its official stamp of approval?

In short, OCM's letter is not consistent with the mission, policies, and values that Georgetown represents. From its mission statement to its student expectations, OCM's treatment of the Affiliated Ministries underscores the tremendous chasm between rhetoric and reality.

Georgetown University & the First Amendment

Not only do OCM's actions contradict the mission, values, and policies of Georgetown University, but if the University were a public institution, they would violate the First Amendment. However, on its own accord, the University has adopted the First Amendment as the minimum level of free speech protections that its students receive. Commenting on the University's speech policy, Rev. Walsh observed:

> The category "free speech" suggests another realm of life and argument, that of American constitutional law. Indeed, members of a university community exercise "dual citizenship": we are academics and we are Americans. The rights and obligations that flow from our participation in each of the two orders—academic and constitutional—are not reducible to those of either one, nor superceded by one or the other, but neither are they in conflict.

See Policies, *supra*. Despite the University's rhetoric, OCM's actions violate the First Amendment.

First, OCM's actions have violated the free speech principles that specifically apply to universities. The Supreme Court has echoed Rev. Walsh's statements when it concluded "that state colleges and universities are not enclaves immune from the sweep of the First Amendment." *Healy v. James*, 408 U.S. 169, 180 (1972). In fact, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Especially in the university context, the First Amendment preserves a "marketplace of ideas." *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). In words remarkably similar to Georgetown's mission statement, speech policy, and leading administrators, the Court wrote: "The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues rather than through any kind of authoritative selection." *Id.* (citations and internal quotations omitted). Like Rev. Walsh and President DeGioia, the Court realized that this can only occur on campus through the free exchange of ideas and viewpoints:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. *To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . .* Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957) (emphasis added).

However, when OCM effectively exiled the Affiliated Ministries off campus, it diminished the "marketplace of ideas" at the University. While the Protestant Chaplain may still be on campus, students will not be able to interact with the student-run Protestant ministries. Thus, they will experience only that spectrum of Protestant thought, beliefs, and perspectives that is approved by the University. This decision directly contradicts the constitutional role of the university as a vital center of debate and the open exchange of ideas.

Second, OCM's actions have burdened the expressive association rights of the students involved in the Affiliated Ministries. The right of expressive association—the right to band together with others who share common views to advance common goals—is deeply embedded in American history and the American character. *See Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 294 (1981) (pointing to the Committees of Correspondence and the *Federalist Papers* as examples). In addition, "'implicit in the right to engage in activities protected by the First Amendment' is 'a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, religious, and cultural ends.'" *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)). This right is vital to a free people because it is "an indispensable means of preserving other individual liberties," *Roberts*, 468 U.S. at 619, including free speech. After all, "[t]he right to speak is often exercised most effectively by combining one's voice with the voices of others." *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR)*, 126 S. Ct. 1297, 1312 (2006); *see also Citizens Against Rent Control*, 454 U.S. at 294 (noting that the value of expressive association is that "by collective effort individuals can make their views known, when individually, their voices would be faint or lost").

In the public university context, "[t]here can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right." *Healy v. James*, 408 U.S. 169, 181 (1972). The Protestant Ministry may have "decided to move in another direction," but this does not justify its decision not to recognize the Affiliated Ministries or to deny them access to benefits such as access to campus facilities, advertising, and affiliation with the University.

Third, OCM's actions constitute viewpoint discrimination, which would violate the First Amendment. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995). The Supreme Court has said repeatedly that when a public university opens a forum, through use of space or funding, it cannot favor one speaker over another. *Id.* But OCM has targeted only Protestant organizations. This "new direction" has not caused OCM to remove other groups from campus. Georgetown still permits Jewish Students Association, the Muslim Students As-

sociation, the Knights of Columbus, Catholic Daughters of the Americas, and the Holy Land Christian Community to operate on campus. But it will not allow the Affiliated Ministries, a group of Protestant organizations, to do so. This is blatant viewpoint discrimination because the University recognizes religious organizations, except those with a particular perspective (i.e. evangelical Protestants). *See, e.g.*, *Christian Legal Society v. Walker*, 453 F.3d 853, 866 (7th Cir. 2006) (concluding that allowing Muslim groups to operate on campus while derecognizing Christian groups with similar policies constituted viewpoint discrimination). In the university setting, the dangers of viewpoint discrimination are magnified because "[f]or the University . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." *Rosenberger*, 515 U.S. at 836.

Conclusion

ADF recognizes that Georgetown University is a private institution and that it is not bound by the constitutional principles detailed above. It is, however, bound by the moral values it has long proclaimed in its own promises and policies. There is no conceivable harm to the University in granting the Affiliated Ministries the same rights and access given to Jewish and Muslim student organizations.

Very truly yours,

David A. French /rv

David A. French
Director, Center for Academic Freedom

DAF/tcb