

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

**ALPHA IOTA OMEGA CHRISTIAN  
FRATERNITY, an unincorporated association;  
TREVOR J. HAMM, an individual; and  
CARLON D. MYRICK, an individual,**

**Plaintiffs,**

**v.**

**JAMES MOESER, Chancellor of the University  
of North Carolina at Chapel Hill; RICHARD T.  
WILLIAMS, Chairman and member, Board of  
Trustees of the University of North Carolina at  
Chapel Hill; NELSON SCHWAB III, Vice  
Chairman and member, Board of Trustees of the  
University of North Carolina at Chapel Hill;  
JEAN ALMAND KITCHIN, Secretary and  
member, Board of Trustees of the University of  
North Carolina at Chapel Hill; TIMOTHY B.  
BURNETT; PHILIP G. CARSON; RUSSELL M.  
CARTER; JOHN G. B. ELLISON, JR.; PAUL  
FULTON, JR.; KAROL V. MASON; ROGER L.  
PERRY, SR.; A. DONALD STALLINGS;  
ROBERT W. WINSTON III; members, Board of  
Trustees of the University of North Carolina at  
Chapel Hill; JONATHAN CURTIS, Assistant  
Director of Student Affairs and Organizations,  
University of North Carolina at Chapel Hill;  
MOLLY CORBETT BROAD, President,  
University of North Carolina; J. BRADLEY  
WILSON, Chair and member, Board of  
Governors of the University of North Carolina; J.  
CRAIG SOUZA, Vice Chairman and member,  
Board of Governors of the University of North  
Carolina; PATSY B. PERRY, Secretary and  
member, Board of Governors of the University of  
North Carolina; BRADLEY T. ADCOCK; G.  
IRVIN ALDRIDGE; JAMES G. BABB; BRENT  
D. BARRINGER; J. ADDISON BELL; R.  
STEVE BOWDEN; F. EDWARD  
BROADWELL, JR.; WILLIAM L. BURNS, JR.;**

**CASE NO. \_\_\_\_\_**

**VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF AND NOMINAL DAMAGES**



the Division of Student Affairs. The University of North Carolina's policy violates the First and Fourteenth Amendments to the United States Constitution.

## **II.**

### **JURISDICTION AND VENUE**

2. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 42 U.S.C. §§ 1983 and 1988.

3. This Court has original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

4. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

5. This Court has authority to issue the requested injunctive relief under 28 U.S.C. § 1343(a)(3).

6. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(a)(3).

7. This Court is authorized to award attorneys fees under 42 U.S.C. § 1988.

8. Venue is proper in the United States District Court for the Middle District of North Carolina under 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the claim occurred within the District.

## **III.**

### **IDENTIFICATION OF THE PLAINTIFFS**

9. Alpha Iota Omega Christian Fraternity ("AIO") is, and was at all times relevant to this Complaint, an unincorporated student organization of the University of North Carolina at

Chapel Hill (“UNC-CH”). It is capable of suing in its own name.

10. Trevor J. Hamm is, and was at all times relevant to this Complaint, a student at the University and president of the AIO chapter at the UNC-CH.

11. Carlton D. Myrick is, and was at all times relevant to this Complaint, a student at the University and a member of the AIO chapter at the UNC-CH.

#### **IV.**

#### **IDENTIFICATION OF THE DEFENDANTS**

12. James Moeser is, and was at all times relevant to this Complaint, Chancellor of the UNC-CH. This Defendant’s duties include, among others, the oversight of the UNC-CH and the execution of policies that govern that University.

13. Richard T. Williams is, and was at all times relevant to this Complaint, Chairman and member of the Board of Trustees of the UNC-CH. This Defendant’s duties include, among others, the adoption of polices that govern UNC-CH.

14. Nelson Schwab III is, and was at all times relevant to this Complaint, Vice Chairman and member of the Board of Trustees of the UNC-CH. This Defendant’s duties include, among others, the adoption of polices that govern UNC-CH.

15. Jean Almand Kitchin, is, and was at all times relevant to this Complaint, Secretary and member of the Board of Trustees of the UNC-CH. This Defendant’s duties include, among others, the adoption of polices that govern UNC-CH.

16. Timothy B. Burnett is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant’s duties include, among others, the adoption of polices that govern UNC-CH.

17. Philip G. Carson is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

18. Russell M. Carter is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

19. John G. B. Ellison, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

20. Paul Fulton, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

21. Karol V. Mason is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

22. Roger L. Perry, Sr. is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

23. A. Donald Stallings is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

24. Robert W. Winston III is, and was at all times relevant to this Complaint, a member of the Board of Trustees of the UNC-CH. This Defendant's duties include, among others, the adoption of policies that govern UNC-CH.

25. Jonathan Curtis is, and was at all times relevant to this Complaint, the Assistant Director of Student Affairs and Organizations, UNC-CH. This Defendant's duties include, among others, the oversight of the official recognition process for student organizations at the UNC-CH and the application of University policies to those student organizations.

26. Molly Corbett Broad is, and was at all times relevant to this Complaint, the President of the University of North Carolina ("UNC"). This Defendant's duties include, among others, executing the policies of the UNC.

27. J. Bradley Wilson is, and was at all times relevant to this Complaint, Chair and member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

28. J. Craig Souza is, and was at all times relevant to this Complaint, Vice Chair and member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

29. Patsy B. Perry is, and was at all times relevant to this Complaint, Secretary and member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

30. Bradley T. Adcock is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

31. G. Irvin Aldridge is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

32. James G. Babb is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

33. Brent D. Barringer is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

34. J. Addison Bell is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

35. R. Steve Bowden is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

36. F. Edward Broadwell, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

37. William L. Burns, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

38. Anne W. Cates is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

39. John F.A.V. Cecil is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

40. Bert Collins is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

41. John W. Davis III is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

42. Ray S. Farris is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

43. Dudley E. Flood is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

44. Hannah D. Gage is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.



45. Willie J. Gilchrist is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

46. H. Frank Grainger is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

47. Peter D. Hans is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

48. Peter Keber is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

49. Adelaide Daniels Key is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

50. G. Lerory Lail is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

51. Charles H. Mercer, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the oversight of the UNC, including the UNC-CH campus, and the adoption of policies that govern the UNC

52. Charles S. Norwood is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

53. Cary C. Owen is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

54. Jim W. Phillips, Jr. is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

55. Gladys Ashe Robinson is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

56. Estelle "Bunny" Sanders is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

57. Priscilla P. Taylor is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

58. Robert F. Warwick is, and was at all times relevant to this Complaint, a member of the Board of Governors of the UNC. This Defendant's duties include, among others, the adoption of policies that govern the UNC, including the UNC-CH campus.

59. Each of these defendants is sued in his or her official capacity only.

## V.

### STATEMENTS OF FACT

#### **Fraternity Background**

60. The Alpha Iota Omega Fraternity (“AIO”) is a male fraternity on the UNC-CH campus.

61. Trevor J. Hamm, Carlon D. Myrick, and Jonathan Park are the three current members of AIO at the University.

62. Mr. Hamm is the president of the AIO chapter at the UNC-CH.

63. Mr. Hamm, Mr. Myrick, and Mr. Park are all full-time, registered students at the UNC-CH.

64. The plaintiffs have joined together to promote AIO’s goal for undergraduate

which this organization is founded, members shall be selected according to the standards set by the organization, in accordance with the statement of faith.

*See Ex. 2 at 1.*

68. AIO believes that to achieve success in reaching its religiously-motivated goals of promoting the Christian faith to men belonging to fraternities at UNC-CH, it must require its members and officers to adhere to a Christian statement of faith, Christian tenets of belief, and Christian standards of conduct.

69. AIO's statement of faith is contained on page 3 of its "Undergraduate Manual." A true and correct copy of the Undergraduate Manual is attached as Exhibit 3.

70. AIO's tenets of belief and standards of conduct are also included in its Undergraduate Manual. *Id.* at 4-7.

71. Individuals who refuse to adhere to AIO's statemal.

76.

83. The Agreement informs prospective student organizations that it is a “binding agreement between your organization and the University of North Carolina at Chapel Hill.” *Id.*

84. As a condition of official recognition, the Agreement requires that a student organization must, among other things, comply with all UNC and UNC-CH policies, including UNC and UNC-CH policies on non-discrimination. *Id.*

85. Specifically, the Agreement states that “membership and participation in your organization must be open without regard to age, race, color, national origin, religion, disability, veteran status, or sexual orientation.” *Id.*

86. The Agreement states that “[o]fficial recognition does not mean that the University endorses the viewpoints of the organizations.” *Id.*

87. The UNC and the UNC-CH do not endorse the viewpoints of officially-recognized student co-curricular organizations that are considered “University-affiliated.”

88. The Agreement states that “[r]ecognition may be withdrawn or denied should it be determined . . . the organization fails to comply with University policies, including University policies on non-discrimination.” *Id.*

89. Student organizations are provided a hyperlink to the UNC and UNC-CH Policy on Non-Discrimination on the Student Activities and Organizations section of the University’s website.

90. As linked on the Student Activities and Organizations website, the Policy on Non-Discrimination is in the form of a September 6, 2001 memo from Defendant James Moeser to “Deans, Directors, and Department Chairs” (“Non-Discrimination Policy”). A true and correct copy of the Non-Discrimination Policy is attached as Exhibit 5.

91. The Non-Discrimination Policy states in relevant part:

It is our policy with respect to employment terms and conditions and educational programs not to discriminate on the basis of age, sex, race, color, national origin, religion, or disability.

....

In addition, the University has adopted an internal policy on non-discrimination on the basis of sexual orientation. That policy provides that educational and employment decisions should be based on individuals' abilities and qualifications and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance. Among the traditional factors which are generally "irrelevant" are age, sex, race, color, national origin, religion, and disability. It is the policy of The University of North Carolina at Chapel Hill that an individual's sexual orientation be treated in the same manner. Such a policy ensures that only relevant factors are considered and that equitable and consistent standards of conduct and performance are applied.

<http://www.unc.edu/campus/policies/nondiscrim.html> (last visited on August 21, 2004); *see also* Ex. 5.

92. The Non-Discrimination Policy reflects the official policy of both the UNC Board of Governors and the UNC-CH Board of Trustees.

93. An exception to the Non-Discrimination Policy is that officially recognized student organizations may be exclusively male or female if exempted under Title IX, 28 U.S.C. § 1681.

94. Student organizations are also provid

individual's sexual orientation be treated in the same manner. Such a policy ensures that only relevant factors are considered and that equitable and consistent standards of conduct and performance are applied.

<http://hr.unc.edu/Data/SPA/employeerelations/harassment/sexual-orientation> (last visited on August 21, 2004).

### **AIO Unrecognized**

96. AIO has previously been an officially-recognized, student co-curricular organization at the UNC-CH for a number of years.

97. As a male fraternity, AIO is allowed to limit its membership to males under Title IX.

98. As an officially-recognized organization, AIO had an UNC-CH student organization account and space on the UNC-CH website.

99. In September of 2003, AIO notified Defendant Jonathan Curtis that it would no longer subscribe to the Non-Discrimination and Sexual Orientation Policies to the extent that those policies conflicted with the requirement that all AIO members and officers adhere to a Christian statement of faith, adhere to tenets of belief, and conform to certain standards of conduct.

100. In December 2003, Plaintiff Trevor Hamm attempted to access the AIO portion of the UNC-CH website.

101. UNC-CH had removed AIO's information on the UNC-CH website.

102. UNC-CH had also frozen AIO's student organization account.

103. AIO and its members contacted Defendant Curtis about the AIO website and account.



104. Defendant Curtis informed AIO that AIO's official recognition had been withdrawn by the UNC-CH for AIO's failure to certify its compliance with the Non-Discrimination Policy and the Sexual Orientation Policy.

105. AIO desires official recognition as a student co-curricular organization at the UNC-CH.

106. Plaintiffs object to the Non-Discrimination and Sexual Orientation Policies that require AIO to open its membership and elected positions to all students regardless of religion or sexual orientation.

107. Plaintiffs' objections to the Non-Discrimination and Sexual Orientation Policies stem from their sincerely held religious beliefs.

108. Plaintiffs do not object to the UNC and UNC-CH policies forbidding discrimination on age, race, color, national origin, and disability.

## **VI.**

111. Unless and until the enforcement of the Defendants' Non-Discrimination and Sexual Orientation Policies are enjoined, Plaintiffs will suffer and continue to suffer irreparable harm to their constitutional rights.

## **VII.**

### **FIRST CAUSE OF ACTION: FREEDOM OF ASSOCIATION**

112. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein by reference.

113. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have unconstitutionally conditioned UNC-CH benefits on Plaintiffs and other student organizations yielding their clearly established right to freedom of association for expressive purposes secured by the First and Fourteenth Amendments to the Constitution.

114. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have deprived Plaintiffs and other student organizations of their clearly established right to freedom of association for expressive purposes secured by the First and Fourteenth Amendments to the Constitution.

115. The Defendants have no compelling reason that would justify the burden imposed upon the association of the Plaintiffs and other student organizations.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

## VIII.

### SECOND CAUSE OF ACTION: FREEDOM OF SPEECH

116. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein by reference.

117. Speech, including religious speech, is protected by the First and Fourteenth Amendments to the United States Constitution.

118. A corollary of the right to speak is the right not to speak.

119. By their policies, Defendants are unconstitutionally forcing Plaintiffs to express approval of other religions, non-traditional and meretricious relationships, and homosexual behavior and other sexual activity outside of marriage, or else surrender the privileges granted to them as an officially recognized student organization on campus.

120. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have unconstitutionally conditioned UNC-CH benefits on Plaintiffs and other student organizations yielding their clearly established right to freedom of speech secured by the First and Fourteenth Amendments to the Constitution.

121. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have deprived Plaintiffs and other student organizations of their clearly established rights of relig

122. The Defendants have no compelling reason that would justify the burden imposed upon the speech of the Plaintiffs and other student organizations.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

## **IX.**

### **THIRD CAUSE OF ACTION: FREE EXERCISE OF RELIGION**

123. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein by reference.

124. The wording of Plaintiffs' Constitution, By-Laws and Undergraduate Manual is motivated by their sincerely held religious beliefs.

125. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have unconstitutionally conditioned UNC-CH benefits on Plaintiffs and other student organizations yielding their clearly established right to free exercise of their religion secured by the First and Fourteenth Amendments to the Constitution.

126. By enacting and enforcing the Non-Discrimination and Sexual Orientation Policies forbidding officially-recognized student co-curricular organizations to discriminate on the basis of religion and sexual orientation, Defendants have deprived Plaintiffs and other student organizations of their clearly established right to free exercise of their religion secured by the First and Fourteenth Amendments to the Constitution.

127. The Defendants have no compelling reason that would justify the burden imposed upon the religion of the Plaintiffs and other student organizations.

WHEREFORE, Plaintiffs respectf

E. That this Court grant such other and further re

## **VERIFICATION**

I, Trevor J. Hamm, a citizen of the United States and a resident of the State of North Carolina, am president of and agent for Alpha Iota Omega Christian Fraternity, a student organization at the University of North Carolina at Chapel Hill. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and Nominal Damages and declare under the penalty of perjury under the laws of the State of North Carolina that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_

Trevor J. Hamm

## **VERIFICATION**

I, Carlon D. Myrick, a citizen of the United States and a resident of the State of North Carolina, am a member of Alpha Iota Omega Christian Fraternity, a student organization at the University of North Carolina at Charlotte