To: Elle Boeding, President, Northern Iowa Student Government
Hugh Zehr, Speaker, Northern Iowa Student Government Senate
Bekah Bass, Chief Justice, Northern Iowa Student Government Supreme Court
Sophia Schuster, President, UNI Students for Life

From: Mark A. Nook, President, University of Northern Iowa

Regarding: Appeal of the UNI Students for Life v. Northern Iowa Student Government Legislative Branch, No. 2021-11, Decided Oct. 14, 2020

Date: 25 October, 2020

Cc: Bart Schmitz, Program Manager, John Pappajohn Entrepreneurial Center
Steffoni Schmidt, Advisor, Northern Iowa Student Government
Dr. Paula Knudson, Vice President, Student Affairs
Tim McKenna, Legal Counsel

**Appeal**

On October 20, 2020, Ms. Sophia Schuster, President of UNI Students for Life, filed an appeal with the President of the University of Northern Iowa regarding the decision of the Northern Iowa Student Government ("NISG") Supreme Court to deny their appeal in the case: *SCC 2020-1; UNI Students for Life v. Northern Iowa Student Government Legislative Branch*, No. 2021-11 Argued October 7, 2020 – Decided October 14, 2020.

This appeal conforms to University Policy 3.10 which states in part:

> *The NISG Senate is charged with approving, denying, and/or revoking registration of student organizations. Appeals of registration decisions will be heard by the NISG Supreme Court. The President of the University or designee shall have appellate jurisdiction over rulings of the Supreme Court.*

The basis for Students for Life's appeal to the president is that, if the decisions by the NISG Senate and NISG Supreme Court are allowed to stand, the rights afforded to Students for Life by the First Amendment of the Constitution of the United States would be violated. Supporting their appeal on First Amendment grounds is the dissenting opinion of the NISG Supreme Court. Given the serious nature of this request and the language of UNI policy 3.10, this appeal was accepted for review.

**Decision**

For the reasons described more fully below, the UNI Students for Life's appeal is approved and the decision of the NISG Supreme Court is overturned. As a result, UNI Students for Life is a fully recognized student organization at the University of Northern Iowa, with all rights and responsibilities afforded any and all registered student organizations at the university.

**Relevant Materials and Process**

In anticipation of an appeal to the president being filed, relevant records and materials were requested from the NISG Legislative Branch and Supreme Court on October 19, 2020. In addition, Ms. Sophia Schuster submitted materials in support of this appeal by the UNI Students for Life on October 20, 2020.

Prior to making this appeal decision, I reviewed the following documents:

*Appeal of UNI Students for Life v. Northern Iowa Student Government Legislative Branch, No. 2021-11, Decided Oct. 14, 2020,* Letter from Ms. Sophia Schuster, President of UNI Students for Life to Mark A. Nook, UNI President, Dated: October 20, 2020.

Relevant Materials from the NISG Senate meeting of October 7, 2020:

*SSB 2021-11, A Bill for UNI Students for Life, Sponsored by Organization and Finance Committee*, Dated October 7, 2020.

UNI Students for Life Application approved by the NISG Senate Organizations and Finance Committee on October 6, 2020.

*UNI Students for Life Constitution*, shared electronically during the meeting of October 7, 2020.

Agenda from the NISG Senate Meeting of October 7, 2020.

Minutes of the NISG Senate Meeting of October 7, 2020.

Transcript of the NISG Senate Meeting of October 7, 2020.

Video Recording of the NISG Senate Meeting of October 7, 2020.

Relevant Materials from the NISG Supreme Court meeting of October 14, 2020:

Decision of the UNI Supreme Court in *UNI Students for Life v. Northern Iowa Student Government Legislative Branch*, No. 2021-11 Argued October 7, 2020 – Decided October 14, 2020, including the opinions of the majority and minority.

UNI Students for Life Appeal to the NISG Supreme Court.

Supreme Court of the Northern Iowa Student Government, Complaint Form, filed by Sophia Schuster, UNI Students for Life, Plaintiffs v. Northern Iowa Student Government Legislative Branch, Defendants, Dated October 12, 2020.

Plaintiff Basic Arguments

Northern Iowa Speaker of the Senate Hugh Zehr, *Memorandum for Record to NISG Supreme Court regarding NISG Supreme Court Case 2020-01 Defendant*, entering a guilty plea to not abiding by University Policies 3.10 – Registration of a Student Organization and 13.10 – Freedom of Expression, Dated October 13, 2020.

Supreme Court Trial 2020-1 (Agenda/Script).

Clerk of Northern Iowa Student Government Supreme Court notes on the closed door discussion.

University of Northern Iowa and Board of Regents – State of Iowa Policies and State and Federal Laws:

*University of Northern Iowa Student Government Constitution*, Last Modified October 16, 2017 (A new NISG Constitution was ratified by the UNI Student Body on October 16, 2020 and was not in effect during the time of relevant meetings and decisions.).

*University of Northern Iowa Student Government By-Laws*, Last Updated: December 05, 2018. https://docs.google.com/document/d/1cxO6SxgfwhxXOiFcR6zXTfUdDQlLh4mZWzCCEjTvsoE/edit?ts=5d9f4b6d

University of Northern Iowa Student Government Registration of Student Organizations Policy and Procedures Document https://nisg.uni.edu/sites/default/files/studentorgreg.sec_.pdf

*University of Northern Iowa Policy 3.02§VIII Student Rights, (A).*
Referenced in SCC 2020-1, majority opinion.
https://policies.uni.edu/302#VIII

*University of Northern Iowa Policy 3.10 Registration of Student Organizations.*
https://policies.uni.edu/310

*University of Northern Iowa Policy 13.02§14 Prohibited Conduct, (C) Harassment.*
Referenced in SCC 2020-1, majority opinion.
https://policies.uni.edu/sites/default/files/13.02.pdf

*University of Northern Iowa Policy 13.10 Freedom of Expression*
https://policies.uni.edu/1310

*Board of Regents – State of Iowa Policy 4.2 Freedom of Expression*
https://www.iowaregents.edu/plans-and-policies/board-policy-manual/42-freedom-of-expression

*Iowa Code – 2020 Chapter 261H Speech and Expression – Public Institutions of Higher Education.*
https://www.legis.iowa.gov/docs/code/2020/261H.pdf

*United States Constitution, First Amendment.*
https://constitution.congress.gov/constitution/amendment-1/

Other documents reviewed and cited.

*Healy v. James, 408 U.S. 169 (1972)*, Findlaw.com.
https://caselaw.findlaw.com/us-supreme-court/408/169.html

The record of material associated with this appeal is extensive and sufficient to render a decision without the need for further written materials or oral arguments.

**Review and Analysis**

This is an appeal of the ruling by the NISG Supreme Court in *UNI Students for Life v. Northern Iowa Student Government Legislative Branch, No. 2021 -11.* The NISG Supreme Court found in favor of the respondent NISG Legislative Branch in a split 5 to 3 vote, upholding the determination by the NISG Legislative Branch not to register UNI Students for Life as a student organization at the University of Northern Iowa.

The majority opinion of the NISG Supreme Court based its denial of the UNI Students for Life appeal on University Policy 3.10: Registration of Student Organizations and University Policy 13.02, §14(C.i).

In reference to Policy 3.10, the majority claims that the UNI Students for Life lacked "good faith" in their application because the majority found the UNI Students for Life Constitution to be vague. In describing what they mean, the majority states that the good faith that is needed is "evidence of being an equitable, just, and welcoming student organization for our students and community found on the University of Northern Iowa."

Nowhere in Policy 3.10 Registration of Student Organization is this stated or inferred. No such language is part of the University of Northern Iowa Student Government Registration of Student Organizations Policy and Procedures Document (https://nisg.uni.edu/sites/default/files/studentorgreg.sec_.pdf). The majority creates a standard for UNI Students for Life that is not in policy or procedures and has not been applied to other student organizations. It is not to be inferred from this statement that UNI Students for Life is not an equitable, just, and welcoming student organization, only that it is inappropriate to ask them to prove that they are when this is not part of the university's policies or procedures. Additionally, the First Amendment makes no such stipulation on peoples' right to assemble or to speak. The records and materials reviewed fail to show that UNI Students for Life is not formed in good faith for a lawful purpose. As reflected by the NISG Organization and Finance Committee minutes and NISG Senate Resolution, the UNI Students for Life met the guidelines for a registered student organization.

The majority of the NISG Supreme Court further held that UNI Students for Life "through the vagueness and the ties to the national chapter that this organization has the potential to create a hostile environment on the University Campus." They state that this would violate University of Northern Iowa Policy 13.02, §14(C.i) Discriminatory Harassment.

The minority opinion of the NISG Supreme Court accurately pointed out that this policy is not applicable to the appeal because the majority failed to acknowledge the first paragraph of University of Northern Iowa Policy 13.02§14(C) where it states:

> *When speech or conduct is protected by the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted.*

The First Amendment to the Constitution of the United States protects the right of individuals and organizations to speak against laws with which they disagree. The UNI Students for Life Constitution states clearly that this is part of their purpose.

Further, the majority does not state nor attempt to demonstrate that UNI Students for Life or the national organization with which they are affiliated has *engaged* in discriminatory harassment as defined in University of Northern Iowa Policy 13.02, §14(C.i), but only that " … this organization has the *potential* [emphasis added] to create a hostile environment…". Policy 13.02, §14 applies to actual conduct and not potential conduct.

The US Supreme Court case, *Healy v. James*, 408 U.S. 169 (1972), addressed a similar argument to another university's refusal to recognize a student organization based on concerns about potential disruptive conduct. President James of Central Connecticut State College denied registration of Healy's group as a student organization in part for its affiliation with a national organization implicated in violence on other college campuses and the potential for the local organization to be "a disruptive influence (on campus)". President James' refusal to recognize Healy's group as a student organization of the college was overturned by the United States Supreme Court.

The University of Northern Iowa is a public university under the authority of the Board of Regents – State of Iowa. As such all entities within the university are subject to the policies of the University of Northern Iowa and Board of Regents – State of Iowa, and all state and federal laws.

The principle of freedom of expression is embodied in University of Northern Iowa Policy 13.10 which states in part:

> *Providing a forum for the free expression of ideas is a cherished and time-honored feature of university life....*
>
> *As a university of the state of Iowa, the University of Northern Iowa bears a collective responsibility to ensure that freedom of expression is protected....*
>
> *To this end, it is the responsibility of every university employee and student to abide by the legal requirements ensuring freedom of expression.*

Board of Regents – State of Iowa Policy 4.2(B) provides guiding principles for freedom of expression at Iowa's regent universities. These principles include:

i. *... the universities must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the First Amendment of the Constitution of the United States.*

ii. *It is not the proper role of the Regent universities to shield individuals from speech protected by the First Amendment of the Constitution of the United States, which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.*

iii. *It is the proper role the Regent universities to encourage diversity of thoughts, ideas, and opinions and to encourage, within the bounds of the First Amendment to the Constitution of the United States, the peaceful, respectful, and safe exercise of First Amendment rights.*

iv. *Students, faculty, and staff have the freedom to discuss any problem that presents itself, assemble, and engage in spontaneous expressive activity on campus, within the bounds of established principles of the First Amendment to the Constitution of the United States, and subject to reasonable time, place, and manner restrictions that are consistent with established First Amendment principles.*

The Board of Regents – State of Iowa Policy 4.2(F.i) addresses the issue of this appeal directly when it states:

> *The universities shall not deny benefits or privileges available to student organizations based on the viewpoint of a student organization or the expression of the viewpoint by the student organization or its members, as protected by the First Amendment to the Constitution of the United States.*

See also Iowa Code section 261H.3(3).

University of Northern Iowa Policy 3.10 states that

> *The registration process is the mechanism through which student organizations are able to access University facilities and University and NISG services.*

When the university registers a student organization, the university grants them the right to organize, to reserve rooms in the student union and other campus facilities, to publically post notices and bulletins, and to request funds to support publications and lectures, as provided in the applicable guidelines for UNI student organizations. In short, the university provides an opportunity for a group to organize and to share their opinions and beliefs. UNI Policy 13.10, Board of Regents – State of Iowa Policy 4.2(F), Iowa Code – 2020, Title VII, Chapter 261H.3(3), and the First Amendment of the Constitution of the United States of America protect the right of groups to assemble and to express their opinions.

The issues involved in the Students for Life Appeal are nearly identical to the U.S Supreme Court case *Healy v. James*, 408 U.S. 169 (1972). In that case, Healy was a student at Central Connecticut State College (CCSC) who requested to register a student organization. Such recognition would provide the student group with access to campus facilities for meetings and to use campus bulletin boards and school newspaper. The student organization was affiliated with a national organization whose members on some campuses had been alleged to be involved in campus protests and violence. The application was initially approved by the committee that included students and administrators, but was denied by the president of CCSC on several grounds. The president rejected the student group on the ground that:

> *He found that the organization's philosophy was antithetical to the school's polices ... and concluded that approval should not be granted to any group that 'openly repudiates' the College's dedication to academic freedom.*

408 U.S. at 174-176. The president later reaffirmed his decision on the basis that *"the group would be a 'disruptive influence' at CCSC and that recognition would be 'contrary to the orderly process of change' on the campus."* 408 U.S. at 179.

His statements are echoed in the statements by NISG senators and the majority opinion of the NISG Supreme Court regarding UNI policies and our stated commitment to diversity and campus harmony.

The U.S. Supreme Court decided in favor of the plaintiff, Healy, holding that it was inappropriate under the First Amendment to deny his student organization recognition. The opinion delivered for the court by Justice Powell stated:

> *The mere disagreement of the President with the group's philosophy affords no reason to deny it recognition. As repugnant as these views may have been, especially to one with President James' responsibility, the mere expression of them would not justify the denial of First Amendment rights. Whether petitioners did in fact advocate a philosophy of "destruction" thus becomes*

*immaterial. The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.*

408 U.S. at 187-188.

The parallels between the circumstances of *Healy v. James* and the circumstances in the NISG Senate's and NISG Supreme Court's denial(s) of UNI Students for Life's registration as a student organization, make clear that the NISG Senate's and Supreme Court's decision(s) must be reversed.

The final paragraphs of the NISG Supreme Court minority opinion demonstrate a clear understanding of the importance of the First Amendment rights of the UNI Students for Life. There final paragraphs are clear, elegant, and worthy of repeating:

> *The argument of multiple senators that their constituents would not support the creation of this group and its use of student fees is unbased and highly problematic. The opinion of a majority of students is not the only opinion that exists or matters on campus. University Policy 13.10 states that*
>
> > *As a university of the state of Iowa, the University of Northern Iowa bears a collective responsibility to ensure that freedom of expression is protected...it is the responsibility of every university employee and student to abide by the legal requirements ensuring freedom of expression*
>
> *By silencing a group of students who have shown no interest or indication of harming others, the NISG Senate and the Supreme Court majority are robbing these students of their fundamental right to speak freely and assemble as a group.*

The recognition that embracing free speech means permitting speech that disagrees with our viewpoints, the policies and principles of the university, or laws of the state or nation is encapsulated in the language of University of Northern Iowa Policy 3.10, which states:

> 3. *Registration of a student organization does not constitute University or NISG endorsement or approval of the viewpoints or activities of the organization. It is the policy of the University and NISG to register any student organization formed in good faith for a lawful purpose.*

Neither the University nor NISG endorse any student organization's viewpoints by approving them as student organizations. By denying them recognition when they intend, in good faith, to engage in lawful activities, we deny them their right to free speech and assembly guaranteed to them by the First Amendment of the Constitution of the United States. As noted in UNI policy 13.10, "*it is the responsibility of every university employee and student to abide by the legal requirements ensuring freedom of expression.*"

**Decision**

Based on the review of the documents and recordings, the NISG Senate appears to have denied recognition of the UNI Students for Life based on the content of the student organization's viewpoint, speech and assumed potential activities. This decision, if allowed to stand, would deny the student organization with access to University facilities and University and NISG services due to the viewpoint of the student organization and would thereby violate UNI Policy 13.10. Board of Regents – State of Iowa

Policy 4.2(F), Iowa Code – 2020, Title VII, Chapter 261H.3(3), and the First Amendment of the Constitution of the United States of America.

Therefore, the UNI Students for Life appeal of NISG Supreme Court SSC 2020-1 decision is approved. As of this moment, UNI Students for Life is a fully recognized student organization at the University of Northern Iowa, with all rights and responsibilities afforded any and all registered student organizations at the university.

**Conclusion**

Universities exist to give students and all members of the university community an opportunity to wrestle with a vast diversity of ideas and opinions, to challenge their perception of their own identity and the beliefs and opinions of others, and to grow in their understanding of natural and social systems.

These last few weeks provided an incredibly rich learning environment for our students, faculty, staff and many people off-campus. This has been an opportunity to struggle with what it means to be a member of a representative body within a democracy, and to balance the competing priorities of personal beliefs and viewpoints, university priorities, university policies, state and federal laws, and the United States Constitution. This learning moment will extend into the future as we continue to understand the impacts of the final decision of this appeal.

As difficult as this process is for all involved, all will gain greater insights into the process of a democracy and better understand how truly difficult and complicated representational democracy is. This process has revealed the importance, if not the necessity, of the checks and balances within a representational democracy. Most importantly this process demonstrated the incredible value of the protections of the First Amendment of the Constitution of the United States. Justice Black's statement bears repeating:

> *"I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." Communist Party v. SACB, 367 U.S. 1, 137 (dissenting opinion) (1961).*

This process certainly provided me personally with an opportunity to better understand the breadth and depth of the First Amendment to the Constitution of the United States.