

CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 535-0500  
Attorneys for Seton Hall University

ANTHONY ROMEO, individually  
and on behalf of himself and  
student applicants for  
"TRUTH", a gay and lesbian  
student organization denied  
Provisional Recognition by  
Seton Hall University,

Plaintiff,

vs.

SETON HALL UNIVERSITY, Inc.,  
A.B.C. Corp.'s 1-100, John  
Does 1-100 and DEF Non-Profit  
Corp.'s or Institutions 1-100  
that may be necessary but  
currently unknown to Plaintiff  
for purposes of effectuating  
the equitable relief sought  
herein,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. ESX-L-1866-04

Civil Action

**CERTIFICATION OF DANIA M.  
BILLINGS, ESQ. IN SUPPORT OF  
DEFENDANT'S NOTICE OF MOTION  
TO DISMISS PURSUANT TO RULE  
4:6-2(e)**

**DANIA M. BILLINGS, ESQUIRE**, hereby certifies and states:

1. I am an associate with the law firm of Connell Foley LLP, which represents the Defendant Seton Hall University in this matter. I am fully familiar with the facts set forth herein.

2. I submit this Certification in support of Seton Hall University's Motion to Dismiss Plaintiff's Complaint.

3. Attached hereto as Exhibit A is a true and complete copy of Plaintiff's Complaint with its attached exhibits A through C.

4. Attached hereto as Exhibit B is a true copy of the relevant sections of the Seton Hall Student Handbook.

5. Attached hereto as Exhibit C is a true and complete copy of Seton Hall's Mission Statement.

6. Attached hereto as Exhibit D is a true and complete copy of Seton Hall's by-laws.

7. Attached hereto as Exhibit E is a true and complete copy of a March 20, 1992 letter from the Office of Legislative Services explaining the breadth of the exemption for religious institutions under the new amendments to the LAD.

8. Attached hereto as Exhibit F is a true and complete copy of the Letter To The Bishops On The Pastoral Care Of Homosexual Persons by the Congregation for the Doctrine of the Faith published October 1, 1986.

9. Attached hereto as Exhibit G is a true copy of the relevant sections of the Official Catholic Directory for 2003 published by P.J. Kennedy & Sons, listing Seton Hall University.

I certify under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Dania M. Billings

Date: June 9, 2004

# **EXHIBIT A**

Thomas D. Shanahan  
Shanahan & Associates, P.C.  
521 Lincoln Avenue  
Maywood, New Jersey  
(201) 291-1992  
Fax (201) 845-5751

Marianne Auriemma, Esq.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
- (201) 712-9663  
Fax (201) 845-5751

Co-Counsel for Plaintiff

ANTHONY ROMEO, individually and on behalf of  
himself and student applicants for "TRUTH", a gay  
and lesbian student organization denied Provisional  
Recognition by Seton Hall University,

Plaintiff,

- against -

SETON HALL UNIVERSITY, Inc., A.B.C. Corp.'s  
1-100, John Does 1-100 and DEF Non-Profit Corp.'s  
or Institutions 1-100 that may be necessary but currently  
unknown to Plaintiff for purposes of effectuating the  
equitable relief sought herein,

Defendant.

Anthony Romeo, by and through his attorneys, does hereby complain of the  
defendant named herein as follows:

### PARTIES

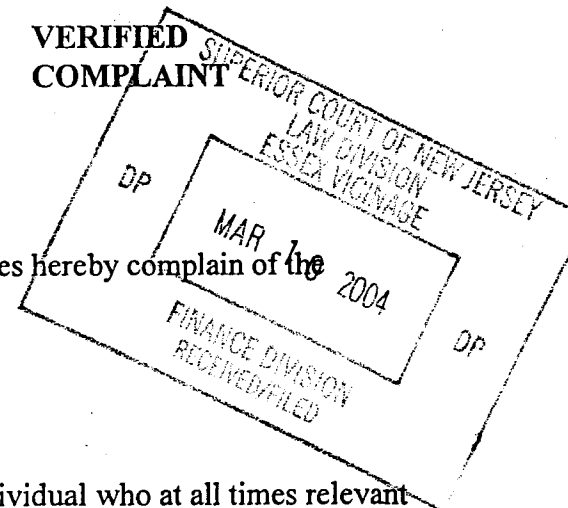
1. Plaintiff Anthony Romeo ("Romeo") is an individual who at all times relevant  
is a resident of New York currently residing at South Orange, New Jersey as a student at  
Seton Hall University.
2. Romeo is the named applicant on an Application for Provisional Recognition  
filed by students to initiate a gay and lesbian student organization at the defendant. The

SUPERIOR COURT OF  
NEW JERSEY:  
LAW DIVISION

ESSEX COUNTY

DOCKET: L-1866-04

VERIFIED  
COMPLAINT



proposed name for the organization is "TRUTH". See Exhibit B.

3. Defendant Seton Hall University ("Seton Hall") is a not-for-profit organization incorporated under the laws of the State of New Jersey with its principle place of business located at 400 South Orange Avenue, South Orange, New Jersey, 07079.

3a. A.B.C. Corp.'s 1-100, John Does 1-100 and DEF Non-Profit Corp.'s or Institutions that may be necessary but currently unknown to Plaintiff for purposes of effectuating the equitable relief sought herein.

4. Romeo is an openly gay male. His sexual orientation is homosexual.

#### VENUE

5. Venue is appropriate as the cause of action accrued in Essex County.

#### STATUTES RELEVANT HEREIN

6. The actions of Seton Hall violate the New Jersey Law Against Discrimination ("NJLAD"), N.J. Stat. Ann. §§ 10:5-1, et seq., which prohibits discrimination by a place of public accommodation based upon sexual orientation.

7. Seton Hall is an educational institution and place of public accommodation as defined by the NJLAD §10:5-5(1). The exemption for bona-fide education institutions operated by religious organizations is inapplicable to Seton Hall for the reasons that follow herein.

#### FACTS GIVING RISE TO CAUSE OF ACTION

8. During his formative years growing up in Upstate New York, Romeo remained "in-the-closet" and did not disclose his sexual orientation to family or friends

for fear of repercussion or violence.

9. During his senior year in highschool, Romeo engaged in extensive research into institutions of higher learning which could offer a first-rate education in an environment accepting of his sexual orientation.

10. Romeo applied to and was accepted by the State University of New York at Albany ("SUNY Albany") and Seton Hall.

11. After his acceptance by the foregoing institutions, Romeo engaged in research to ascertain which of the institutions prohibited discrimination based upon sexual orientation.

12. Seton Hall and SUNY Albany both prohibited discrimination based upon sexual orientation.

13. The Seton Hall website states in pertinent part:

"The University supports and implements all state and federal anti-discrimination laws,...No person may be denied employment or related benefits or admission to the University or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, **sexual orientation**, handicap and disability or veteran's status...[these] policies are to be applied in all decisions regarding hiring, promotion, retention, tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs." [emphasis added] See Exhibit A, also available on the Seton Hall website at <http://admin.shu.edu/complianceprogram/EOAApolicy.html>.

14. Romeo's research also revealed that Seton Hall Law School maintained a gay and lesbian student organization. His research revealed that Seton Hall University did not.

15. Romeo chose to attend Seton Hall based upon the anti-discrimination policy

as stated on its website which prohibits discrimination based upon sexual orientation.

16. Romeo chose to attend Seton Hall based upon the opportunity to initiate with student colleagues a gay and lesbian student organization at Seton Hall. SUNY Albany has an existing gay and lesbian student organization.

17. During the first semester of his freshman year at Seton Hall, Romeo was subjected to discrimination based upon his sexual orientation (hereinafter "the bias incident").

18. The bias incident occurred in the dormitory where Romeo resided.

19. The bias incident included perpetrators writing in red ink on Romeo's door and the wall outside of his room, the terms "Faggot", "Queer" and "Homo".

20. Seton Hall held a program on sexual orientation discrimination and the prohibited nature of this conduct after the incident to sensitize students to the effects of discrimination and its prohibited nature on the campus.

21. The bias incident increased Romeo's determination to initiate a gay and lesbian student organization.

22. The bias incident seemingly reaffirmed the policy contained on the Seton Hall website which prohibits discrimination based upon sexual orientation.

23. On or about November 13, 2003, consistent with policy and procedure of the Department of Student Affairs, Romeo submitted an application for Provisional Recognition of "TRUTH", an organization for openly gay and lesbian students at Seton Hall. See Exhibit B.

24. On December 18, 2003, Dr. Laura A. Wankel corresponded with Romeo.

Dr. Wankel rejected the application filed by Romeo on behalf of TRUTH. See Exhibit

C.

25. Since the rejection by Dr. Wankel on December 18, 2003, meetings have been held between Romeo and Seton Hall representatives in an effort to resolve the dispute giving rise to the complaint filed herein.

26. The efforts to resolve the dispute have been unavailing.

27. Seton Hall continues to deny Romeo and TRUTH Provisional Recognition at Seton Hall.

28. The actions of Seton Hall violate its own internal policy against sexual orientation based discrimination and the NJLAD.

29. The discriminatory conduct of Seton Hall will continue absent an order of this Court.

**FIRST CAUSE OF ACTION  
VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION**

30. The allegations in paragraphs 1 to 29 are reincorporated herein fully by reference.

31. The NJLAD prohibits discrimination by places of public accommodation based upon sexual orientation.

32. Seton Hall is a place of public accommodation as defined by the NJLAD.

33. Seton Hall has affirmatively waived the religious exemption to the NJLAD by and through its anti-discrimination policy which states:

“The University supports and implements all **state** and federal anti-discrimination laws,...No person may be denied employment or related benefits or admission to the



University or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, **sexual orientation**, handicap and disability or veteran's status...[these] policies are to be applied in all decisions regarding hiring, promotion, retention, tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs." [emphasis added] See Exhibit A, also available on the Seton Hall website at <http://admin.shu.edu/complianceprogram/EOAApolicy.html>.

34. The policy constitutes an affirmative waiver of the religious exemption codified in the NJLAD and affirmatively acknowledges jurisdiction of the NJLAD and its prohibition against sexual orientation based discrimination.

35. Seton Hall has and continues to violate the NJLAD by and through its refusal to recognize a gay and lesbian student organization based upon the sexual orientation of Romeo and its proposed membership.

36. Seton Hall will continue to violate the NJLAD to the detriment of Romeo and all those similarly situated absent an order of this Court.

## SECOND CAUSE OF ACTION BREACH OF CONTRACT

37. The allegations in paragraphs 1 to 36 are reincorporated herein fully by reference.

38. Seton Hall maintains an anti-discrimination policy which states in pertinent part:

"The University supports and implements all **state** and federal anti-discrimination laws,...No person may be denied employment or related benefits or admission to the University or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, **sexual orientation**, handicap and disability or veteran's status...[these] policies are to be applied in all decisions regarding hiring, promotion, retention, tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs." [emphasis added] See Exhibit A, also

available on the Seton Hall website at  
<http://admin.shu.edu/complianceprogram/EOAApolicy.html>.

39. The Seton Hall policy stated herein is available on its official website and disseminated publically via the internet throughout the world.

40. The Seton Hall policy stated herein has the intent to bind Seton Hall to the NJLAD.

41. Romeo and similarly situated students are aware of the Seton Hall policy stated herein.

42. Romeo in actual reliance upon the policy stated herein affirmatively chose to attend Seton Hall and not SUNY Albany in part for the opportunity to establish a gay and lesbian student organization with the full recognition of Seton Hall.

43. The policy stated herein constitutes a unilateral contract upon which Romeo detrimentally relied.

44. The policy stated herein constitutes a unilateral contract which Romeo accepted to his detriment.

45. Seton Hall has breached its contract with Romeo based upon its failure to provide Provisional Recognition to gay and lesbian students as it does for other student groups.

46. Based upon the continuing breach of contract by Seton Hall, Romeo has and continues to be damaged absent an order of this Court.

**WHEREFORE**, Romeo prays for an order of this Court in his favor as follows:

**ON THE FIRST AND SECOND CAUSES OF ACTION:**

(a) Declaring the policy of Seton Hall which states as follows:

“The University supports and implements all state and federal anti-discrimination laws,...No person may be denied employment or related benefits or admission to the University or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, **sexual orientation**, handicap and disability or veteran’s status...[these] policies are to be applied in all decisions regarding hiring, promotion, retention, tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs.” [emphasis added] See Exhibit A.

To be an enforceable contract as to Seton Hall and Romeo;

(b) Declaring the actions of Seton Hall by and through its failure to afford Provisional Recognition to Romeo and the gay and lesbian student organization and Romeo to constitute breach of contract;

(c) Declaring that Seton Hall has waived its exemption from the NJLAD based upon the aforementioned anti-discrimination policy which expressly includes sexual orientation and the NJLAD;

(d) Declaring the actions of Seton Hall to have violated its anti-discrimination policy by and through its failure to afford Provisional Recognition to Romeo and the gay and lesbian student organization based upon their sexual orientation;

(e) Declaring the actions of Seton Hall to constitute a violation of the NJLAD prohibition against discrimination based upon sexual orientation based upon its failure to afford Provisional Recognition to Romeo and the gay and lesbian student organization based upon their sexual orientation;

(f) Enjoining and permanently restraining continuing violation of the NJLAD and the Seton Hall policy as described in subsections (a), (b), (c), (d), (e);

(g) Directing Seton Hall to take such affirmative steps as this Court deems necessary to ensure the effects of the unlawful practices of Seton Hall do not continue to effect Romeo and those similarly situated;

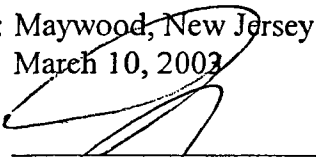
(d) Directing Seton Hall to place Romeo in the position he would have occupied but for defendants' discriminatory treatment of him, and making him whole for the loss of his participation in a gay and lesbian student organization during the past academic year and for the benefits he would have received but for defendant's discriminatory treatment, including but not limited to compensatory damages, mental pain and suffering, humiliation and the value of socialization with fellow openly gay and lesbian students;

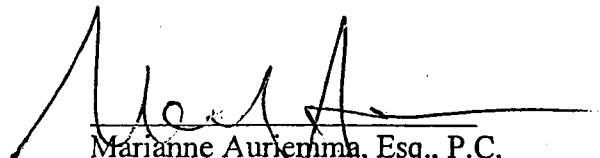
(e) Awarding costs of this action, together with reasonable attorneys' fees, as provided by statute and common law;

**GRANTING SUCH OTHER AND FURTHER RELIEF** as the Court deems necessary and proper.

Dated: Maywood, New Jersey  
March 10, 2003

By:

  
Thomas D. Shanahan, Esq.  
Shanahan & Associates, P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 291-1992

  
Marianne Aurienima, Esq., P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 712-9663

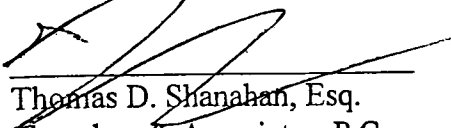
**NOTICE PURSUANT TO RULE 1:5-1a AND RULE 4:17-4C**


Demand is hereby made pursuant to the above cited Rules that each party to this civil action who serves pleadings, interrogatories, or receives answers thereto shall serve a copy of each such pleading, interrogatory and answer including all documents, papers

and other materials annexed thereto upon the undersigned. This is a continuing demand.

Dated: March 10, 2004

By:

  
Thomas D. Shanahan, Esq.  
Shanahan & Associates, P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 291-1992

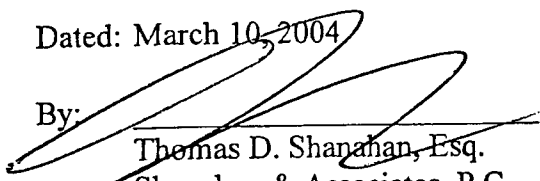
  
Marianne Auriemma, Esq., P.C.  
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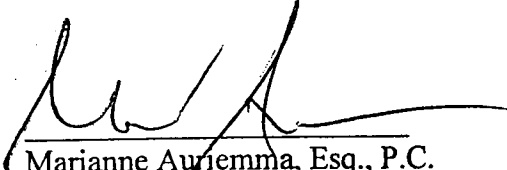
**CERTIFICATION UNDER R. 4:5-1 (B)(2)**

I certify pursuant to R. 4:5-1(B)(2) that to the best of my knowledge, information and belief, this matter is not the subject of any other action pending in the Superior Court of New Jersey or any other jurisdiction, any arbitration proceeding, no arbitration proceeding is contemplated and that all known parties are joined.

Dated: March 10, 2004

By:

  
Thomas D. Shanahan, Esq.  
Shanahan & Associates, P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 291-1992


  
Marianne Auriemma, Esq., P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
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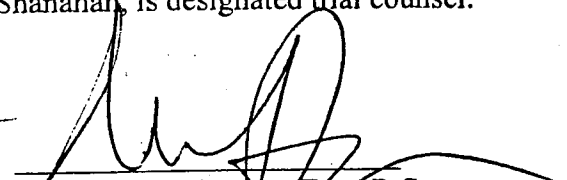
**DESIGNATION OF TRIAL COUNSEL**

In accordance with R. 4:5-1(c), Thomas D. Shanahan, is designated trial counsel.

Dated: March 10, 2004

By:

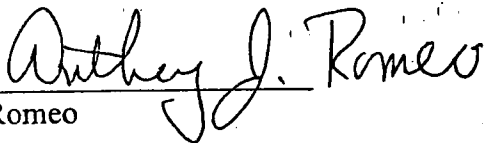
  
Thomas D. Shanahan, Esq.  
Shanahan & Associates, P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 291-1992

  
Marianne Auriemma, Esq., P.C.  
521 Lincoln Avenue  
Maywood, New Jersey 07607  
(201) 712-9663

**CERTIFICATION**

Plaintiff has read the foregoing statements made in this Verified Petition and those statements are true. Should they be willfully false, I am subject to punishment.

Dated: March 10, 2004

  
\_\_\_\_\_  
Anthony Romeo

# **EXHIBIT A**



## Compliance Program

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### ADMINISTRATIVE ANNOUNCEMENT NO. 2000-08

**Policy:** Equal Employment Opportunity/Affirmative Action

**Effective Date:** October 2000

**Reference:** Non Discrimination Policy

(Replaces and Supercedes Administrative Announcement No. 96-20)

Seton Hall University is committed to programs of equal employment opportunity and affirmative action (EEO/AA). These programs are consistent with our basic mission, enjoy a high priority among our institutional goals and objectives, and are carried out in accordance with the teachings of the Catholic Church and the proscriptions of the law.

The University supports and implements all state and federal anti-discrimination laws, including Executive Order 11246 as amended, which prohibits discrimination in employment by institutions with federal contracts; Titles VI and VII of the 1964 Civil Rights Act, which prohibits discrimination against students and all employees on the basis of race, color, religion, national origin or sex; Title IX of the Education Amendments of 1972, which prohibits discrimination against students and all employees on the basis of sex; Sections 503 and 504 of the Rehabilitation Act of 1973, which requires affirmative action to employ and advance in employment qualified disabled veterans of the Vietnam Era; the Equal Pay Act of 1963, which prohibits discrimination in salaries; the Age Discrimination in Employment Acts of 1967 and 1975, which prohibits discrimination on the basis of age; and the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

No person may be denied employment or related benefits or admission to the University or to any of its programs or activities, either academic or nonacademic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, sexual orientation, handicap and disability, or veteran's status. All executives, administrators, faculty and managers, both academic and administrative, are responsible for individual and unit support of Seton Hall University's EEO/AA programs. EEO/AA policies are to be applied in all decisions regarding hiring, promotion, retention, tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs.

Mr. Richard Hill, Senior Human Resources Generalist, is the University's Equal Employment Opportunity/Affirmative Action Officer who is responsible for providing information regarding the provisions of the laws and regulations referred to in the preceding paragraphs and their applicability to the services, programs, and activities offered by the University. Mr. Hill is located in the Department of Human Resources in the lower



level of Presidents Hall and may be contacted via e-mail at [hillrich@shu.edu](mailto:hillrich@shu.edu) or by telephone at (973) 761-9284.

Mr. James Gillson is the University Compliance Officer who is responsible for providing information regarding sexual harassment and for investigating complaints of sexual harassment. Mr. Gillson is located in Presidents Hall and may be contacted via e-mail at [gillsoji@shu.edu](mailto:gillsoji@shu.edu) or by telephone at (973) 313-6132.

Ms. Gerri Budd is the Chair of the Council Against Racial and/or Ethnic Discrimination (CARED). CARED provides education and training regarding racial and ethnic discrimination and monitors the investigation of complaints of this nature. Ms. Budd is located on the third floor of Presidents Hall and may be contacted via e-mail at [buddgerri@shu.edu](mailto:buddgerri@shu.edu) or by telephone at (973) 761-7699.



Tuesday December 04, 2001

Seton Hall University  
Compliance Program  
400 South Orange Avenue  
South Orange, New Jersey 07079

# **EXHIBIT B**

DEPARTMENT OF COMMUNITY DEVELOPMENT


*Leadership Development*

PROVISIONAL ORGANIZATION FORM

APPLICATION FOR PROVISIONAL RECOGNITION

Name of Proposed Organization: TRUTH (Trust, Respect, Unity at The Hall)

Name of Contact Person: Anthony J. Romeo

Contact number or email address: 

The first step in the Recognition Process is to obtain Provisional Recognition from the Student Organization Advisory Council. An organization must submit the following to the committee:

CHECKLIST

1.  A 500 word statement or less that describes your proposed organization and how it will benefit the Seton Hall Community; explaining specifically its goals and mission as it relates to the university's catholic mission.
2.  In order to establish a fraternity or sorority, your application will be reviewed by the Greek Life Office, the Interfraternity Council or the College Panhellenic Council and the Student Organization Advisory Council (SOAC). Additional requirements must be met for fraternities and sororities to gain provisional recognition.
3.  The names of three or more potential members.
4.  Organizations must adhere to Seton Hall's Catholic mission and to conduct themselves in accordance with the University Community Standards of Student Conduct (please refer to the online Student Handbook 2003-2004)
5.  A list of proposed activities that your organization activities you plan to initiate during your provisional period.
6.  A list of programs you plan to sponsor once permanent recognition is granted.
7.  A letter from a full-time faculty member, administrator or professional staff member who will serve as the advisor to your organization.

Please attach the above documents to this application and return the completed packet to the Office of Community Development, University Center, Room 107. Please retain a copy for your files. A member of the SOAC committee will contact you to arrange an appointment.

---

For Office Use Only:  
Date Received:

The name of our proposed organization is **TRUTH** (Trust, Respect, and Unity at The Hall).

The purposes of this organization, **TRUTH**, shall be to oppose discrimination against students, faculty, and staff on the basis of sexual orientation. We would seek to provide a forum for discourse, education, discussion, and the exchange of views. Also, this organization would serve as a support group for the lesbian, gay, bisexual, transgender, and heterosexual students of Seton Hall University, rooting that support in programs which would educate the campus community about the injustice of discrimination on the basis of sexual orientation.

We would like to engage in a continuing and regular dialogue with the administration of Seton Hall University on issues that affect lesbian, gay, bisexual, transgender, and heterosexual members of the Seton Hall community.

Our organization will not represent its views as those of the University, nor will it permit any ambiguous use of the University's name to imply that the University approves of homosexual lifestyles, of homosexual activity, or of homosexual behavior as morally neutral.

We strive to offer educational programming that would assist lesbian, gay, bisexual, transgender and heterosexual students in living a comfortable student life here at Seton Hall University.

**TRUTH** would benefit the Seton Hall Community in many ways, through its goals as they relate to the University's particular Catholic mission. Our organization would respect the dignity of each person, foster openness to opinions and points of view different from one's own and provide an understanding and respect for persons whose background may be different from one's own. We would also respect persons and groups who are in the search for their own truth, and support affirmations of differences and commonalities of human experience and endeavors.

As an organization, **TRUTH** would hope to provide lesbian, gay, bisexual, transgender, and heterosexual students with the courage to face conflicts with integrity and maturity, using education as a humanizing force for all members of the community.

Seton Hall University prides itself on acknowledging its obligation to safeguard and enhance the dignity of every member of our University community, and seeks to foster an understanding of cultural differences. It encourages and supports the ethical and moral values that are the basis of a humane social order. Thusly, we look forward to forming a club that would accomplish the multi-faceted mission of students, faculty, administration, and the Catholic heritage to which we all hold steadfast.

November 13, 2003

## **Proposed Activities for Provisional Recognition**

### **A. Community Service**

1. Volunteer at food shelters, soup kitchens
2. Work with DOVE to help less fortunate youth

### **B. Education**

1. Work with NCBI to establish "Safe Zones" programming
2. Co-sponsor public speakers on this issue
3. Create a resource guide of internal/external resources
4. Invite an attorney with expertise in civil rights to outline the laws with respect to these issues
5. Allow students to examine their sexual orientation vis-à-vis the Catholic mission

### **C. Weekly Discussion Group**

1. Allow students the possibility to find support, share ideas, raise questions, and share resources
2. Provide a confidential forum for people to raise issues and concerns

## **Proposed Activities for Permanent Recognition**

### **A. Community Service**

1. Volunteer at food shelters, soup kitchens
2. Work with DOVE to help less fortunate youth

### **B. Education**

1. Work with NCBI to establish "Safe Zones" programming
2. Co-sponsor public speakers on this issue
3. Create a resource guide of internal/external resources
4. Invite an attorney with expertise in civil rights to outline the laws with respect to these issues
5. Allow students to examine their sexual orientation vis-à-vis the Catholic mission
6. Research regional or national conferences that will provide students with tools to integrate a student's sexual orientation with our specific Catholic mission
7. Promote an on-going sense of community and respect for the individuality of the human person between all members of the Seton Hall community

### **C. Weekly Discussion Group**

1. Allow students the possibility to find support, share ideas, raise questions, and share resources
2. Provide a confidential forum for people to raise issues and concerns

**Seton Hall University**  
*College of Arts and Sciences*

November 12, 2003

Dear Members of the Student Organization Advisory Committee:

I write to you on behalf of the proposed student group TRUTH. I am pleased to represent them as their faculty advisor and I look forward to working with them. It is most important that this group of conscious and caring individuals have the appropriate recognition accorded to any other properly constituted student group on this campus.


Please feel free to contact me should you have concerns or questions.

Most respectfully,

W. King Mott, Ph.D.  
Associate Dean, College of Arts and Sciences  
Associate Professor, Department of Political Science

# **EXHIBIT C**



  
**SETON HALL UNIVERSITY.**  
1 8 5 6

TO: Mr. Anthony Romeo  
*Student Representative for Proposed Student Organization "TRUTH"*

Dr. W. King Mott  
*Faculty Advisor*

FROM: Dr. Laura A. Wankel  
*Vice President for Student Affairs*

RE: Application for Provisional Recognition

Date: December 18, 2003

The Dean for Community Development shared the recommendations of the recent Student Organization Activities Committee (SOAC) meeting with me. I am grateful to them for their careful work and sincere effort to fairly review the applications for proposed new student groups.

Due to the complexities of issues surrounding your application for an organization called "TRUTH", it was my obligation to more fully explore its consistency with the University's Catholic mission. I appreciated SOAC's review of the Catechism of the Catholic Church and the University's Catholicity Statement; however, the nature of your proposal required deeper examination of Catholic teachings and the mission of Seton Hall.

I consulted with the Vice President for Mission and Ministry and reviewed the pertinent Church teachings and documents addressing the pastoral care of homosexual persons. Further, I sensitively explored the issues with members of the University's Executive Cabinet and others.

The most compelling guidance from the Church directs us to care for the human person whose fundamental identity is as a "child of God" – not as a "heterosexual" or a "homosexual". The Church teaches that an exclusive focus on a person's sexual orientation denies the fullness of human dignity and diminishes persons in a way that is both reductionist and marginalizing. As a result, although SOAC did recommend to me that "TRUTH" be approved, I am informing you that your application for provisional recognition has been denied. No organization based solely upon sexual orientation may receive formal University recognition.

Be assured, in our pastoral care for all our students, the University will continue to work through the initiatives outlined by the Executive Cabinet in response to the Task Team on Sexual Orientation report issued earlier this semester. The Executive Cabinet Initiatives ensure tangible and comprehensive institutional action.

Further, the Division of Student Affairs remains prepared to work with gay and lesbian students to meet their needs. I am committed to working collaboratively with you and other students in fostering a positive, safe and caring community. To that end, I am providing the following plan that outlines how we may move forward. I have forwarded a copy of this letter and the proposed plan to all students who expressed an interest in the application. It is my sincere hope that all interested students actively participate in creating this initiative.

Student Affairs  
Tel: 973.761.9075 • Fax: 973.761.9797  
400 South Orange Avenue • South Orange, New Jersey 07079

## Memorandum of Understanding

The University will permit the students to operate at the South Orange campus under the following guidelines and understandings:

### **Name and Relationship**

- An identifying name will be mutually agreed upon between your representatives and the Vice President for Student Affairs.
- The group will stand in "special relationship" to the Office of the Vice President for Student Affairs through which all of its privileges, benefits and responsibilities will be coordinated.

### **Purpose.** *The purpose of this group will be to:*

- provide education to the campus community, in a manner consistent with the teachings of the Catholic Church, about the injustice of discrimination on the basis of sexual orientation;
- oppose discrimination against students, faculty, and staff on the basis of sexual orientation;
- provide a forum for discourse, discussion and the exchange of views;
- support the lesbian and gay students of Seton Hall University through programs to educate the campus community about the injustice of discrimination on the basis of sexual orientation;
- work with the University to foster a safe environment for all students;
- work with the University to promote support groups for parents and family members who ask for pastoral help or spiritual guidance.

### **Privileges.** *The group will be permitted to:*

- sponsor educational events, meetings and programs;
- sponsor volunteer and community service initiatives;
- provide a forum for discourse, discussion and the exchange of views;
- support lesbian and gay students of Seton Hall University through programs that educate the campus community about the injustice of discrimination on the basis of sexual orientation;
- elect officers and or create ad hoc committees;
- submit requests for funds for particular activities, and or other resources to the Vice President for Student Affairs.

### *The group shall not be permitted to:*

- sponsor activities that are contrary to, or involve advocacy contrary to, Church teachings on human sexuality;
- use the University's name in a fashion that would imply that the University approves of homosexual behavior, or any lifestyle that is contrary to the Church's teachings on human sexuality;
- sponsor religious services or activities;
- sponsor social activities.

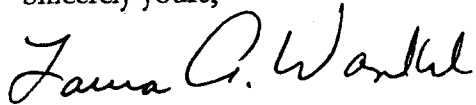
### **Responsibilities:**

- The Vice President for Student Affairs shall have the responsibility to serve as the direct liaison to the group and to approve the advisor(s) to the group.
- The group shall have the responsibility to furnish the Vice President for Student Affairs with a report of activities, programs and achievements at the end of each semester.
- The group shall have the responsibility to ensure that any outline of proposed activities will include clear communication of the Church's teachings on human sexuality.

These guidelines are subject to change at the discretion of the University at any time. The group acknowledges that, in accepting these guidelines, it will neither seek nor expect formal recognition by the University or elsewhere. The University reserves the right to terminate this arrangement in the event of a violation of the guidelines.

I hope that this outline will provide us with an opportunity to move forward in a significant and meaningful way. The University is steadfast in its faith commitments and will do all that it can to preserve human dignity in an authentically human community. It is within this context that I look forward to our dialogue.

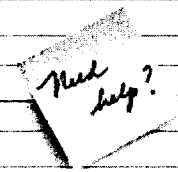
Sincerely yours,

A handwritten signature in cursive script that reads "Laura A. Wankel".

Laura A. Wankel, Ed.D.  
*Vice President for Student Affairs*

cc: Executive Cabinet  
Dean for Community Development  
SOAC members

# **EXHIBIT B**

**community standards****II. Student Rights and Responsibilities****A. Self-Determination**

Students have the right to self-determination in their own affairs within the parameters of sound and reasonable judgment, and which are respectful of the values and mission of the University.

Students may:

1. elect and maintain in office student officials and representatives by the student body at large as defined by the Student Government Association (SGA) constitution;
2. request to organize the structure of the SGA as they see fit;
3. recommend the distribution of funds within the SGA, in accordance with University policy;
4. select student representatives as needed to committees, councils and larger governance bodies of the University; and
5. seek to join or organize clubs, organizations or associations that promote their common interests, and respect the values and mission of the University. Such organizations are required to submit a statement of purpose, a statement of compliance with all anti-discrimination policies of the University and a list of current officers.

**B. Freedom of Speech and Inquiry in a Catholic Institution**

Intellectual inquiry and pursuit of truth is at the core of the institution's Catholic tradition and values. As such, students are encouraged to:

1. express their views in a reasonable manner;
2. examine and discuss all questions of interest to them;
3. take seriously the right to learn in the spirit of free inquiry; and
4. be informed of the purposes of all research in which they are expected or encouraged to participate, either as subject or researchers.

All students and recognized groups have the right to hold public meetings and, with prior approval from the Division of Student

**Mission****Student rights and responsibilities****University community standards of conduct****Preamble****Structure of the University community standards system****The university community standards review process****Other administrative action**

Affairs, may post authorized notices on approved bulletin boards on the University campus.

### **C. Fairness, Privacy and Protection in a Catholic Institution**

1. All University students enjoy the same basic rights and are bound by the same standards of conduct of a Catholic institution.
2. Freedom of religion and political beliefs are the rights of each student.
3. Each student has the right to expect reasonable privacy by University officials and personnel.
4. The University uses its best efforts to provide students with a safe campus environment. However, students are expected to take reasonable steps to protect their own security.
5. Students are afforded the right to have the University comply with all federal, state and local laws regarding nondiscrimination in accordance with the mission of the University.

### **D. Academic Rights**

1. Students are free to pursue their educational goals within the prescribed curriculum of the University and its constituent schools.
2. Students are responsible for learning the content of material assigned and/or discussed in all courses in which they are enrolled.
3. Students should receive a written syllabus that clarifies course objectives and details course requirements, textbooks used and methods of evaluation for each course in which they are enrolled.
4. Discussion and expression of views contributing to the understanding of a subject matter are permitted in the classroom.
5. Students have the right to take reasoned exception to the data or views offered in any course study.
6. Students have the right to protection, through fair procedures, against arbitrary and capricious academic evaluations. Should a student believe that he or she has received a capricious evaluation, the student has the right to initiate the University Academic Grievance Procedure.
7. Personal information about a student, acquired by University

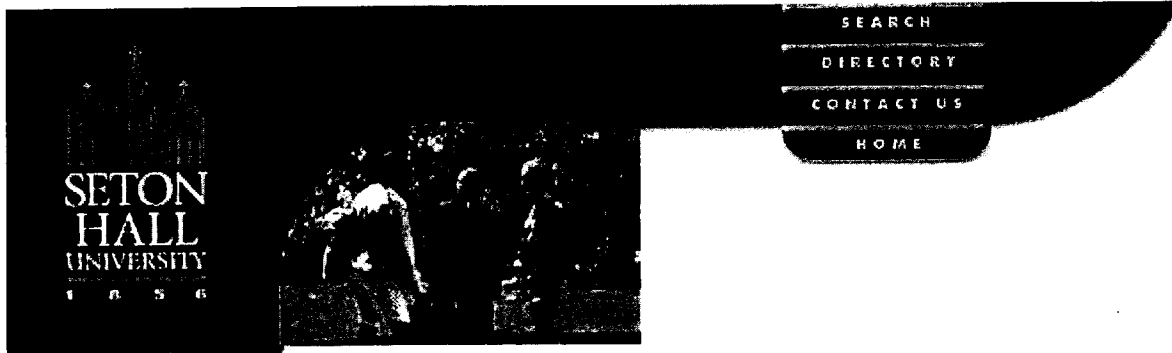
personnel in the course of teaching and advisory duties, is confidential and may be shared only with the student, the student's adviser or other appropriate University personnel. Confidential information is protected in accordance with University policy and applicable law.

8. The University has an obligation to define academic policy for students.
9. All forms of dishonesty, whether by act or omission, including but not limited to cheating, plagiarism or knowingly furnishing false information to the University, are prohibited and may subject the student to disciplinary action and sanctions.
10. Intentional disruption and obstruction of teaching, research or administrative proceedings at the University are prohibited and may subject the student to sanctions.
11. Students have the obligation to advise their parents or legal guardians of developments or occurrences that affect or potentially affect the student's life, health or safety while enrolled at the University. If a student fails to discharge this obligation, the University reserves the right to do so on the student's behalf.



# **EXHIBIT C**





## Mission

Seton Hall University is a major Catholic university. In a diverse and collaborative environment it focuses on academic and ethical development. Seton Hall students are prepared to be leaders in their professional and community lives in a global society and are challenged by outstanding faculty, an evolving technologically advanced setting and values-centered curricula.

As approved by the Seton Hall University Board of Regents, Thursday, June 6, 1996.

- Mission
- History
- Catholic Tradition
- Fast Facts

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- Campus Map
- Directions

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- President's Page
- Provost's Page
- Senior Administration

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- About Seton Hall
- Admissions & Financial Aid
- Academic Programs & Resources
- News & Events
- Student Life

Seton Hall University  
400 South Orange Avenue  
South Orange, NJ 07079  
973.761.9000

**! Frequently Asked  
• Questions!**

# **EXHIBIT D**

**SETON HALL UNIVERSITY**  
**BY-LAWS**

**BY-LAWS OF  
SETON HALL UNIVERSITY**

**PREAMBLE**

As set forth in the original Act of Incorporation of Seton Hall College approved on March 8, 1861, the entire management of the affairs and concerns of Seton Hall University, and all of the corporate powers granted under that Act and subsequent Acts of the Legislature and all amendments to the Certificate of Incorporation, shall be vested in the Board of Trustees and, where specified in these By-laws, the Board of Regents of the University. That these responsibilities can be executed in an orderly manner, these By-laws are adopted.

**ARTICLE I**

**NAME AND STRUCTURE**

**Section 1 Legal Title**

The legal title of the corporation is: SETON HALL UNIVERSITY, hereinafter referred to as the "corporation" or "University."

In any legal instruments requiring further identification under the laws of the State of New Jersey, the corporation shall be identified as follows: "SETON HALL UNIVERSITY, an educational corporation of New Jersey."

## Section 2 Educational Structure

The University shall consist of those schools and colleges as may be approved by the Board of Trustees.

## Section 3 Locations

The purposes and objectives of the corporation shall be implemented at those campuses as from time to time may be established by the Board of Trustees.

## Section 4 Seal

The legal seal of the corporation shall be as impressed hereon:

### ARTICLE II

### PURPOSES AND FUNCTION

#### Section 1 Purposes

The purposes of the corporation are: the advancement of education for all persons who seek and qualify for the services of the corporation in the traditions of liberal arts education and ~~the Indeo-Christian heritage~~; to provide education at all levels and primarily in the field of higher education; to offer its services to persons of whatever race, nationality, ethnic background, state or nation of residence, with recognition of the corporation's primary responsibility to persons resident in the State of New Jersey; to promote and advance the education of all persons regardless of sex, age, race, ethnic background, marital status, or religious belief, ~~recognizing and reaffirming its traditional~~ affiliation and faith in the Roman Catholic Church.

## Section 2 Function

In accomplishing the purposes of the corporation, all members of Boards, officers and others shall at all times conduct the affairs of the corporation as a non-profit corporation so that no individual shall have any right to any property of the corporation nor shall acquire any profit from the operation of the corporation and, further, to the end that the assets and income of the corporation shall be exempt from income taxes, either federal, state or local and any other forms of taxation, and so that gifts, grants and contributions to the corporation shall qualify for income tax deduction by the donors under provisions of the federal or state Internal Revenue or Income Tax laws now in effect, or as may hereafter be adopted.

## ARTICLE III

### ~~BOARD OF TRUSTEES~~

#### Section 1 Functions and Powers

The Board of Trustees shall stand in the stead of the original incorporators of Seton Hall College. The Board of Trustees shall have the following functions, rights, duties, powers and responsibilities:

- A. ~~The Board of Trustees shall maintain the essential character of the University as a Catholic institution of higher learning, it being the stated intention of the University that the University shall retain in perpetuity its identity as such an institution.~~ The Board of Trustees shall have the power to take all action necessary to achieve this purpose.

~~B. The Board of Trustees shall elect members of the Board of Regents giving due~~  
consideration to nominations submitted and recommended by the Board of Regents.

- C. The Board of Trustees shall have the sole and exclusive right, power and responsibility to perform any and all acts relating to the sale, transfer or other conveyance of any real property of the University. No other Board, person, or entity may perform any such act affecting said real property unless specific authorization is so granted by the Board of Trustees by resolution.
- D. ~~The Board of Trustees shall have the right to amend these By-Laws and the~~ Certificate of Incorporation and to reject, approve, or veto any amendments to these By-Laws or the Certificate of Incorporation which may be recommended by the Board of Regents.
- E. The University, recognizing its debt and obligation to the Roman Catholic Archdiocese of Newark as the source of its institution in 1856 and the grantor by gift of its original and present major campus in South Orange, New Jersey, its initial financial support, and the services rendered and to be rendered by the President of the Archdiocese and significant numbers of priests of the Archdiocese, specifically and forever directs that, upon dissolution for any reason of the corporation of Seton Hall University, the assets of this corporation, being rendered free and clear of all debts and obligations, shall vest in said Roman Catholic Archdiocese of Newark for use by the Archdiocese for its endeavors in other fields

of education, including but not limited to higher education, as the Archdiocese may in its sole discretion determine.

It shall be the responsibility and authority of the Board of Trustees, in the event of such corporate dissolution, to act as Trustees in Dissolution under the laws of the State of New Jersey to insure and direct the transfer of the remaining assets of the corporation to the Roman Catholic Archdiocese of Newark as aforesaid.

Upon dissolution, no individual in any capacity in the corporation shall have any interest in, nor be entitled to any share of distribution of, any remaining assets of the corporation available after payment of all debts.

## Section 2 Membership

~~A.~~ The Board of Trustees shall consist of not less than thirteen (13) members.

B. Ex-officio Members. The following persons, by virtue of their office shall be members of the Board of Trustees with full voting privileges: The Most Reverend Archbishop of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop, the Administrator), as President; the Vicar General of the Roman Catholic Archdiocese of Newark; ~~the~~ Chancellor and President of the University; ~~the~~ Rector/Dean of the Darlington Seminary of the Immaculate Conception; ~~the~~ Chair of the Board of Regents; the Vice Chair of the Board of Regents; the Secretary of the Board of Regents; and the three (3) additional



~~members of the Board of Regents who serve on the Executive Committee of the Board of Regents as provided in Article V, Section 2.A.~~

C. Appointed Members. In addition to the aforesaid ex- officio members, there shall be three (3) priests appointed to the Board of Trustees by the Most Reverend Archbishop of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop, the Administrator).

D. Terms:

1. The terms of membership of the ex officio members shall be coterminous ~~with~~ their incumbency in the office on which their membership is based.
2. The term of office of each appointed member of the Board of Trustees shall ~~be three (3) years.~~ The term of office of each appointed member of the Board of Trustees shall commence as of the July 1st and expire on the June 30th of the calendar years specified in the notice of appointment. Each appointed member of the Board of Trustees shall serve until a successor is appointed.
3. Notwithstanding the foregoing, any appointed member of the Board of Trustees may be removed from the Board by the Most Reverend Archbishop of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop, the Administrator), with or without cause.

- E. ~~The Chairman~~ of the Board of Trustees shall always be the Most Reverend Archbishop of Newark, President of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop, the Administrator).
- F. A Vice Chair and Secretary of the Board of Trustees shall be elected from the membership of the Board of Trustees by the Board of Trustees.

### Section 3 Meetings

- A. There shall be one regular meeting of the Board of Trustees in each calendar year. The meetings shall be held at a place and on a date fixed by the Board.
- B. Special meetings of the Board of Trustees shall be held at any time at the request of the Chairman of the Board of Trustees or upon the written request of not less than six (6) members of the Board of Trustees. Notice of such special meetings shall be given to the membership by written notification, delivered by mail or in person, at least ten (10) days in advance of the date of such meeting.
- C. For the proper transaction of business of the Board of Trustees at any meeting, a quorum which shall consist of not less than nine (9) members of the Board then serving shall be required by personal presence and the affirmative vote of not less than nine (9) members of the Board of Trustees shall be required for any action or resolution affecting or relating to any matter referred to in Article III, Section 1. hereof.
- D. Agenda at meetings of the Board shall be as follows:
- a) Regular Meetings

1. Call to Order
2. Opening Prayer
3. Presentation and approval of minutes of the last annual meeting and of any regular or special meetings held since that meeting.
4. Presentation of the Annual Report, and such other reports as may be appropriate, of the Board of Regents.
5. Transaction of other business that may properly be brought before the meeting.
6. Closing Prayer
7. Adjournment

b) Special Meetings

1. Call to Order
2. Opening Prayer
3. Reading of the official call for the meeting.
4. Transaction of the business for which the meeting is called, and such other business as may properly come before the membership of the corporation.
5. Closing Prayer
6. Adjournment

~~E~~ Notwithstanding the foregoing, in the event that the Chairman of the Board of Trustees determines that it is not practical to convene any meeting referred to

hereinabove, any business may be transacted by obtaining the unanimous written consent of the members of the Board of Trustees in lieu of such meeting.

## ARTICLE IV

### BOARD OF REGENTS

#### Section 1 Functions and Powers

Except to the extent that functions, powers, duties and responsibilities are hereinabove vested in and reserved to the Board of Trustees, the Board of Regents shall be responsible for the entire management of the affairs and concerns of the University, is vested with the responsibility, power and authority to govern the University, and shall exercise the corporate powers of the University under Law.

Without limiting the foregoing, ~~the~~ Board of Regents shall have the specific power and responsibility:

- A. to appoint and employ, fix the compensation of, and remove the Chancellor, President, the Provost and/or other officers of the University as the Board may deem to be necessary. The affirmative vote of two-thirds of the membership of the Board of Regents shall be required for the appointment or removal of the Chancellor and/or-President of the University;
- B. to review, approve, amend or disapprove all capital and operating budgets of the University and to exercise surveillance to ensure that all expenditures of the University are made pursuant to all pertinent laws, regulations, rule, policies,

- budgets and resolutions of the Board of Trustees and/or the Board of Regents in force;
- C. to establish all degrees in course to be granted by the University and to grant all such degrees after due consideration of nominations submitted by the faculty and to authorize and confer any and all honorary degrees;
  - D. to establish and prescribe, in consultation with the President of the University, and with due regard for the professional judgment of the faculty, the principal functions of major academic divisions, colleges, schools, departments and professional schools within the University;
  - E. to amend or repeal the Certificate of Incorporation of the University, as amended, and these By-Laws, provided, however, that any such amendment or repeal shall be valid only if approved by a vote of the membership of the Board of Trustees as provided in Article III, Section 3(C).

## Section 2 Membership

- A. The Board of Regents shall consist of ~~no less than twenty-five (25)~~, nor more than thirty-three (33) members.
- B. Ex-officio Members: The Most Reverend Archbishop of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop the Administrator); the Ordinaries of the Roman Catholic Dioceses of the Province of the State of New Jersey; the Bishop of the Byzantine Catholic Diocese of Passaic,

New Jersey; the Chancellor of the University; and the President of the University shall be ex officio members of the Board of Regents ~~with full voting privileges.~~

C Elected Members: There shall be twenty-five (25) non ex-officio members elected by the members of the Board of Trustees

D. Terms:

1. The term of membership of the ex officio members shall be coterminous with their incumbency in the office on which their ex officio membership is based.
2. The term of office of each elected member of the Board of Regents shall be three (3) years commencing on the first day of July specified in the Resolution of the Board of Trustees electing said member. Regents are eligible for re-election to a maximum of three full consecutive terms. Regents who have served for nine consecutive years (exclusive of any partial term) are eligible for re-election following a one-year hiatus. An officer of the Board may be exempt from this provision for at least one year following completion of the term of office as an officer or until the Committee on Regents and the Executive Committee otherwise determine.
3. Elected members are eligible for reelection at the end of their terms subject to the restrictions set forth in Section 2F of this Article IV.

4. Members may continue to hold office after the expiration of any term for which they are elected until their respective successors are elected provided such extension shall not exceed 365 days following the expiration of said term except as otherwise set forth in this Article IV.
- E. A vacancy which occurs because of discontinuance of membership for any reason by a member whose term has not expired may be filled by the Board of Trustees for the unexpired term. The unexpired term shall not count toward the consecutive full term limitation set forth in this Article.
- F. There shall be no limit on the total number of terms a Regent may serve, provided only, that there shall be at least a twelve (12) month period of separation between the date that a third consecutive full term expires and the commencement date of any subsequent term.
- G. Upon recommendation of the Committee on Regents, Regents who have served with distinction for at least two terms may be elected by the majority of Regents as Regent Emeriti. The term of office of Regent Emeriti shall be three years commencing on the first day of July specified in the Resolution of the Board of Trustees electing said Regent Emeriti. Regent Emeriti are eligible for re-election provided the number of Regents Emeriti does not exceed one-third of the total number of voting Regents. Except for the Executive Committee and Committee on Regents, Regent Emeriti are eligible to serve on Board Committees, with voting privileges, and may speak freely at all Board and

Committee meetings. Regents Emeriti ~~shall not have voting privileges~~ at Board meetings and shall not be counted as part of quorum determinations.

Regent Emeriti shall be sent notices and minutes of all Board meetings and are encouraged to attend Board meetings or otherwise accept special assignments that are helpful to the Board of Regents and the University.

- H. The office of any elected Regent shall be deemed vacant by reason of death, resignation, the expiration of the Regent's term, or the failure to attend three consecutive meetings unless excused by the Chair of the Board of Regents, which failure shall be determined to constitute voluntary resignation.

### Section 3 Meetings

- A. There shall be four (4) regular meetings in each calendar year. The meetings shall be held at a place and on a date fixed by the Board of Regents.
- B. Special meetings of the Board of Regents may be called at any time by the Chancellor, President or Chairman of the Board of Regents; or, upon written request of at least five (5) members, a special meeting shall be called by the Chair or Vice Chair of the Board of Regents.

Notice of a special meeting shall be given to the membership by written notification delivered by mail or in person not less than three (3) days before the date of such meeting. In all cases, such notice of a special meeting shall contain the purpose or purposes of such meeting and any action taken at such meeting shall be limited to such purpose.



Section 4 Order of Business

The Agenda for the meetings of the Board of Regents shall be as follows unless modified by direction of the Chair or by resolution of the Board:

A) Regular Meeting

- 1) Call to Order
- 2) Opening Prayer
- 3) Presentation and approval of minutes of the last regular meeting and of any special meetings held since that meeting.
- 4) Reports of Committees
- 5) Communications
- 6) Unfinished Business
- 7) Transaction of other business that may properly be brought before the meeting.
- 8) Closing Prayer
- 9) Adjournment

B) Special Meetings

- 1) Call to Order
- 2) Opening Prayer
- 3) Reading of the Official Call for the Meeting
- 4) Transaction of the Business for which the meeting is called.
- 5) Closing Prayer

6) Adjournment

ARTICLE V

STRUCTURE OF THE BOARD OF REGENTS

Section 1 Officers

The officers of the Board shall be the Chair, President, Vice-Chair and Secretary.

- A. The Chair of the Board of Regents shall be elected from the membership of the Board of Regents by a majority vote of the Board of Regents. The duties of the Chair of the Board of Regents shall be to preside at all meetings of the Board of Regents, to serve ex officio with full voting privileges on all committees, to establish Special Committees as the Chair may deem necessary, and to report to the Board of Trustees as the Board of Trustees may from time to time require.
- B. The President of the Board of Regents shall always be the Most Reverend Archbishop of Newark as President of the Roman Catholic Archdiocese of Newark (or if there is a vacancy in the office of the Archbishop, the Administrator). The President of the Board of Regents shall not be subject to any attendance requirement and may attend such meetings as he deems appropriate.
- C. The Vice Chair of the Board of Regents shall be elected from the membership of the Board of Regents by a majority vote of the Board of Regents. The duties of the Vice Chair shall be to preside at all meetings of the Board of Regents in the absence of the Chair, to serve ex officio with full voting privileges on all committees, and to assume the authority and duties of the Chair in the Chair's

absence or as the Chair may, from time to time, direct.

- D. The Secretary shall be elected from the membership of the Board of Regents. It shall be the Secretary's duty to have the minutes of all meetings of the Board recorded, including a statement of the names of the members present and absent and an accurate record of all business transacted. The Secretary or the Secretary's designee shall forward to each member of the Board of Regents, at least one week prior to each meeting, a copy of the minutes of the previous meeting. It shall be the Secretary's further duty to see that proper notice of each meeting of the Board of Regents is sent to all members at least seven (7) days before such meeting, including in such notice a statement of matters to be thereat considered. The Secretary or the Secretary's designee shall have custody of the official seal of the corporation and the Secretary or the Secretary's designee shall affix it, when required, to all written instruments of the corporation executed by the Trustees or in their name.

## Section 2 Operating Structure

There shall be standing operating committees of the Board of Regents. All matters which are within the authority and responsibility of these committees shall be referred automatically to these committees for evaluation and report before any consideration by the Board of Regents.

Those standing operating committees are as follows:

### A. The Executive Committee

1. The Executive Committee shall consist of not less than seven members of the Board of Regents. The Chair, Vice Chair, and Secretary of the Board of Regents

shall be ex officio with full voting privileges, members of the Executive Committee. The Chair of the Board of Regents shall be Chair of the Executive Committee. The Secretary of the Board of Regents shall be Secretary of the Executive Committee.

2. The Chancellor and President of the University shall be, ex officio with full voting privileges, members of the Executive Committee. In the absence of the Chair, the Vice Chair of the Board of Regents shall preside. The remaining members of the Committee shall be appointed from among the membership of the Board of Regents by the Chair of the Executive Committee.
3. The Executive Committee shall meet as necessary to ensure that matters within its jurisdiction are addressed timely and appropriately.
4. The Executive Committee, between meetings of the Board of Regents, shall have all the powers and functions of the Board of Regents except that the Executive Committee shall not have power to elect or remove the Chancellor or President of the University, or to grant degrees.
5. The minutes of the meetings of the Executive Committee shall be distributed regularly to each member of the Board of Regents. At each meeting of the Board of Regents, the actions taken by the Executive Committee subsequent to the last meeting of the Board of Regents shall be reported to, and ratified by, the Board of Regents.

B. Finance Committee

1. The Finance Committee shall consist of no less than five (5) members of the Board of Regents, one of whom shall be designated by the Chair of the Board of Regents to be Chair of the Committee. The Chancellor and President of the University shall be ex officio, with full voting privileges, member(s) of the Finance Committee. The members of the Committee shall be appointed by the Chair of the Board of Regents from among the membership of the Board of Regents.
2. This Committee shall have four prime responsibilities in addition to such other responsibilities as the Chair of the Board of Regents shall assign to it from time to time.
  - (a) Budget: The Finance Committee shall be responsible for review and investigation of the annual budget proposed for the ensuing fiscal year. To fulfill this responsibility, the Committee shall receive from the President of the University budget proposals and shall make a final report and recommendation for adoption of the budget at the regular meeting each calendar year of the Board of Regents which precedes the fiscal year for which the budget is proposed.
  - (b) Budget Control: The Finance Committee shall meet during the fiscal year to review, investigate and recommend in regard to the performance of the University under the current budget. It shall make such recommendations and reports to the Board of Regents in regard to such operations as it shall deem advisable.

- (c) **Project Costs:** The Finance Committee shall investigate and review all proposed projects of the University in regard to academic programs, special programs, capital improvements and maintenance in order that it can make its recommendations and reports to the Board of Regents on only such matters prior to required Board action.
- (d) **Endowment Fund:** The Finance Committee shall be responsible for general review and policy recommendations in regard to the Endowment Fund of the University and for periodic consultations with any investment counsel or advisors recommended by the Committee and appointed by the Board. In the course of the performance of its responsibilities, the Committee shall meet with such employees of the University as it or the Chancellor/President of the University may deem advisable.

C. Committee on Regents

1. The Committee on Regents shall consist of not less than five (5) members of the Board of Regents: the Vice Chair of the Board of Regents and four (4) additional members who shall be appointed by the Chair of the Board from the membership of the Board of Regents. The Chair of the Committee on Regents shall be designated by the Chair of the Board of Regents.
2. This Committee shall have the following responsibilities in addition to other responsibilities as the Chair of the Board of Regents shall assign to it from time to time:

- (a) Candidates for membership of the Board of Regents: The Committee on Regents shall be responsible for proposing all candidates for membership on the Board of Regents and all proposals as to such candidates shall be forwarded to the Chair of the Committee who shall maintain a record of the names of all proposed candidates and any information concerning such persons. The names of the candidates and all appropriate data shall be forwarded to the Board of Regents. From time to time as the terms of office of members of the Board of Regents approach expiration or as vacancies are created, the Committee on Regents shall meet and review the names and qualifications of all proposed candidates and shall report its recommendations to the Board of Regents. The Board of Regents shall vote upon the candidates and the Chair of the Board of Regents shall forward the names of the proposed candidates and all appropriate data to the Board of Trustees for appropriate action.
- (b) Candidates for Honorary Awards: The Committee on Regents shall be responsible for the investigation and review of all proposed candidates for Honorary Degrees or other awards. Nominees for all degrees and awards from any source shall be forwarded to the Chairman of the Committee who shall maintain a continuing file on all proposed candidates. As soon as practicable, in the beginning of the academic year in which the degree or award is proposed to be conferred, the Committee shall receive all

proposals for candidates from whatever source. The Committee shall thereafter make its report and recommendations at the first regular meeting of the Board of Regents each year. No candidates for Honorary Degrees or awards shall be considered by the Board without the report and recommendation of the Committee on Regents as set forth herein unless the Board of Regents determines to so act by a three-fourths vote of the membership.

- (c) Review of candidates for other offices: Upon request of the Chancellor/President of the University, the Committee on Regents shall investigate and review candidates for University positions as the Chancellor/President of the University proposes. It shall report and recommend on such candidates as required by the Board of Regents.

D. The Seminary Committee

1. The Seminary Committee shall consist of not less than seven (7) or more than eleven (11) members. The President of the Board of Regents, and the Chancellor/President of the University, or their designees, shall be ex officio members of the Seminary Committee with full voting privileges. The Rector/Dean of the Seminary shall be an ex officio member of the Seminary Committee without voting privileges. The Chair of the Board of Regents, with the approval of the President of the Board of Regents, shall appoint not less than five (5) nor more than nine (9) additional members to the Seminary Committee, two (2) of whom



shall be from the membership of the Board of Regents. The Chancellor/President of the University shall be Chair of the Seminary Committee. The Secretary of the Seminary Committee shall be designated by the President of the Board of Regents.

2. The Seminary Committee, as nearly as practicable, shall meet quarterly.
3. The Seminary Committee, between meetings of the Board of Regents, shall have all the powers and functions of the Board of Regents with respect to the management, operation, control and supervision of the Darlington Seminary of the Immaculate Conception Graduate School of Theology and Pastoral Ministry.
4. The minutes of the meetings of the Seminary Committee shall be distributed regularly to each member of the Board of Regents. At each meeting of the Board of Regents, the actions taken by the Seminary Committee subsequent to the last meeting of the Board of Regents shall be reported to, and ratified by, the Board of Regents.

E. Miscellaneous Committees

The Chair of the Board of Regents may, with the approval of the Board of Regents, create other standing committees such as the Academic Affairs Committee, Student Affairs Committee, Planning Committee, Development Committee, etc., which the Chair deems to be necessary and appropriate and to prescribe the functions and responsibilities of such other standing committees.

## ARTICLE VI

### OFFICERS OF THE CORPORATION

1. Election of Officers. The Board of Regents shall elect a Chancellor/President of the University and such other officers as it may from time to time deem necessary

to conduct the affairs of the University. Said officers shall serve at the pleasure of the Board of Regents. One person may hold two or more offices.

2. Duties and Authority of Chancellor/President. The Chancellor/President of the University shall always be a Roman Catholic priest who shall be the Chief Executive Officer of the University. Subject only to the authority of the Board of Regents, he shall have general charge and supervision over, and responsibility for, the business and affairs of the University. Unless otherwise directed by the Board of Regents, all other officers shall be subject to the authority and supervision of the Chancellor/President. The Chancellor/President may enter into and execute in the name of the University contracts or other instruments in the regular course of business or other instruments not in the regular course of business, which are authorized, either generally or specifically, by the Board of Regents. He shall have the general powers and duties of management usually vested in the chief executive officer of a corporation.
3. Duties and Authority of Secretary. The Secretary of the Board of Regents shall be the Secretary of the University and shall be empowered to act as provided in Article V, Section 1D of these By-Laws.
4. Duties and Authority of Other Officers. Subject to the approval and authority of the Chancellor/President of the University and the Board of Regents, those individuals elected as officers shall be empowered to act on behalf of the University in performing those duties and/or exercising such other powers as are

incident to their offices or as shall be assigned by the Chancellor/President or the Board of Regents.

## ARTICLE VII

### CONFLICTS OF INTEREST

A Trustee or Regent shall be considered to have a conflict of interest if:

- a. there exists or potentially exists financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his responsibilities to the University; or
- b. a member of the Trustee's or Regent's family (which for purposes of this article shall be a spouse, parent, sibling, child and any other relative if the latter resides in the same household as the Trustee or Regent), or any organization in which a trustee (or member of his family) is an officer, director, employee, member, partner, trustee, or controlling stockholder, has existing or potential financial or other interests.

Each Trustee and Regent shall disclose to the Board of Trustees and the Board of Regents any possible conflict of interest at the earliest practical time. No Trustee or Regent shall vote on any matter, under consideration at a Board or committee meeting, in which the Trustee or Regent has a conflict of interest. The minutes of such meeting shall reflect that a discourse was made and that the Trustee or Regent having a conflict of interest abstained from voting. Any Trustee or Regent who is uncertain whether there is a conflict or interest in any matter may request the Board of Trustees, Board of Regents, or committee to determine whether a conflict of interest exists, and

the Board of Trustees or Board of Regents or committee shall resolve the question by majority vote.

## ARTICLE VIII

### QUORUM

Except as specifically provided for otherwise, a simple majority of the members of any Board or Committee created under these By-Laws shall constitute a quorum for the transaction of business. At each meeting of such Board or Committee, each member of the Board or Committee shall be entitled to one vote on each matter submitted at the meeting. The vote upon any matter before the meeting shall be by voice vote unless a vote by ballot shall be directed by the Chair of the meeting or requested by one-third of the members present at the meeting. Except as otherwise provided in these By-Laws, a vote of the majority of the members present shall be sufficient for the adoption of a resolution.

## ARTICLE IX

### LIMITATION OF AUTHORITY

No member of the Board of Trustees, the Board of Regents, or any Committee of said Boards and no officer or employee of the University shall have the authority to legally or equitably bind the University to any policy, action or agreement unless granted such authority by specific resolution, formally adopted under the provisions of these By-Laws.

## ARTICLE X

### FISCAL YEAR

The fiscal year of the corporation shall begin on July 1 of each year and end on June 30 of the succeeding year.

# **EXHIBIT E**

JCT-29-1992 15:13 FROM FROM U NEW JERSEY

LEGISLATIVE SERVICES  
COMMISSIONSENATOR  
JOHN A. LYNCH  
ChairmanNew Jersey State Legislature  
OFFICE OF LEGISLATIVE SERVICESSTATE HOUSE, CN 068  
TRENTON, NEW JERSEY 08625-0068ALBERT PORRONI  
Executive Director  
(609) 292-4625ALBERT PORRONI  
Legislative Counsel  
LEONARD J. LAWSON  
First Assistant Legislative Counsel  
MARGI LEVIN HOCHMAN  
Assistant Legislative Counsel  
JAMES G. WILLSON  
Associate Legislative Counsel

## SENATE

LEANNA BROWN  
LEONARD V. CONNORS, JR.  
MATTHEW FELDMAN  
ROBERT E. LITTELL  
HENRY P. McNAMARA  
CARMEN A. ORECHIO  
LAURENCE S. WEISS

## GENERAL ASSEMBLY

BYRON M. BAER  
WAYNE R. BRYANT, KEO.  
JOSEPH V. DOMA, JR.  
JOHN PAUL DOYLE  
CLARE M. FARRAGHER  
NICHOLAS R. FELICE  
CHUCK HAROWICK  
WALTER J. KAVANAUGH

March 20, 1992

Honorable Gary W. Stuhltrager  
232 South Broad Street  
Woodbury, New Jersey 08096

Dear Assemblyman Stuhltrager:

You have asked for an opinion as to the effect on religious organizations of P.L. 1991, c. 519, enacted on January 19, 1992, which amends the Law Against Discrimination ("LAD") and related statutes<sup>1</sup> to prohibit discrimination on the basis of affectional or sexual orientation. I understand that you are particularly interested in the potential effect of Assembly Bill No. 1034 on the law. A-1034, sponsored by Assemblymen Kavanaugh, Romano and others, would exempt religious groups from the LAD's provisions concerning discrimination based on affectional or sexual orientation.

For reasons set forth herein, you are advised that the enactment of P.L. 1991, c. 519 will probably have little effect on religious organizations' ability to make religion-based decisions concerning the hiring and working conditions of their employees, or concerning the sale or rental of real estate that the organizations own. The enactment into law of A-1034 would not strengthen the religious groups' protections in this regard.

The "Law Against Discrimination" bars discrimination in employment, places of public accommodation, publicly assisted housing, the sale or rental of real estate, and other areas on the basis of specified grounds. Prior to the enactment of P.L. 1991, c. 519 (hereinafter referred to as "the amendments"), these grounds included race, creed, color, national origin, ancestry, age, sex, marital status, liability for service in the Armed Forces, nationality, and several others.<sup>2</sup>

<sup>1</sup> The LAD is set out in N.J.S.A. 10:5-1 et seq. P.L. 1991, c. 519 also amends N.J.S.A. 10:2-1, concerning discrimination in employment on public works, and N.J.S.A. 11A:7-1, concerning equal employment opportunity for State employees.

<sup>2</sup> Other prohibited grounds for discrimination are listed only in limited sections of the LAD. For example, "handicapped" persons are not included in the general anti-discrimination provisions, but are protected against discrimination in employment and housing under the more narrowly tailored N.J.S.A. 10:5-29.1 and 10:5-29.2. Persons with "atypical hereditary cellular or blood trait" are covered only by N.J.S.A. 10:5-12, concerning discrimination in employment.

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The amendments added "affectional or sexual orientation" to the lists of prohibited grounds for discrimination.

The amendments define "affectional or sexual orientation" as follows:

"Affectional or sexual orientation" means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation. [N.J.S.A. 10:5-5ff.]

The three types of "orientation" are also defined:

"Heterosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the other gender. [N.J.S.A. 10:5-5gg.]

"Homosexuality" means affectional, emotional or physical attraction or behavior which is primarily directed towards persons of the same gender. [N.J.S.A. 10:5-5hh.]

"Bisexuality" means affectional, emotional or physical attraction or behavior which is directed towards persons of either gender. [N.J.S.A. 10:5-5ii.]

The New Jersey Catholic Conference expressed strong opposition to the amendments while they were being considered by committee (as Senate Bill No. 3758 of 1990). In a statement submitted to the Senate Judiciary Committee for consideration at its January 9, 1992 meeting, William F. Bolan, Jr., Esq., executive director of the Conference, wrote that because Catholic teaching finds homosexual activity to be morally wrong, the legislation would undermine the rights of the Catholic Church and "force the Church to accept those who practice homosexual behavior as employees in its [the Church's] institutions."

Agudath Israel of America, an Orthodox Jewish group, also expressed its opposition to the amendments. In a January 6, 1992 memorandum to the Assembly Judiciary, Law and Public Safety Committee,<sup>3</sup> two officials of the group indicated their concerns that "promotion of gay rights" would cause religious rights to be diminished. As an example of how this could occur, the memorandum discussed the hypothetical example of a deeply religious couple owning a three-family house and

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<sup>3</sup> The Assembly Judiciary, Law and Public Safety Committee was in the process of considering Assembly Bill No. 634, which was identical to S-3758. The Assembly committee released A-634 on January 8, 1992, without recommendation. On January 13, 1992, the bill was substituted by S-3758.

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living in one of its apartments.<sup>4</sup> Under the amendments, the couple could be forced to rent out one of the apartments to practicing homosexuals, even though the couple's clergyman tells them that the rental is prohibited on religious grounds because the "religious and moral development" of the couple's young children might be harmed by the proximity. Memorandum to the members of the New Jersey Assembly Judiciary, Law and Public Safety Committee from David Zweibel, Esq., Agudath Israel Director of Government Affairs and General Counsel, and Rabbi Shmuel Blech, Agudath Israel Commission on Legislation and Civic Action, dated January 6, 1992, p. 2.

Religious institutions are specifically exempt from much of the LAD. The LAD provision which delineates unlawful employment practices and unlawful discrimination also provides that:

[I]t shall not be an unlawful employment practice . . . for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee . . . [N.J.S.A. 10:5-12a.]

Religious schools, unlike public schools, are excluded from the LAD's requirement that a "place of public accommodation" not discriminate. Subsection 1. of N.J.S.A. 10:5-5 provides in pertinent part:

Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution . . . (Emphasis supplied.)

In addition, religious institutions are exempt from complying with the provisions barring discrimination in the rental or sale of real estate:

Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, in the sale, lease or rental of real property, from limiting admission to or giving preference to persons of the same religion or

<sup>4</sup> Presumably, the authors used a three-family house as an example because the LAD, in N.J.S.A. 10:5-5n., exempts owner-occupied two-family dwellings from the provisions prohibiting discrimination in rental housing.



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denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. [N.J.S.A. 10:5-5n.]

Finally, the section of the LAD which prohibits nursing homes from discriminating against Medicaid patients also contains an exemption for religious institutions:

Nothing in this section shall be construed to prohibit a religiously affiliated skilled nursing or intermediate care facility from utilizing religious affiliation as a uniform qualification for admission. [N.J.S.A. 10:5-12.2.]

The statute seems unambiguous on its face concerning the exemptions granted to religious institutions. Interestingly, even the Agudath Israel representatives, in their memorandum opposing the amendments, conceded as much:

What is especially noteworthy in this regard [i.e., the hypothetical example of the religious landlords] is the fact that in the context of religious organizations and schools, the law does recognize that principles of religious freedom outweigh the secular ideal of non-discrimination . . . [emphasis in original].  
Memorandum from David Zweibel, et al., at 2.

Virtually no New Jersey case law addresses the scope of religious organizations' exemptions under the State LAD. However, federal cases interpreting the religious exemptions granted under Title VII of the federal Civil Rights Act,<sup>5</sup> as well as federal constitutional principles, are instructive.

The religious exemption provision in the Civil Rights Act is set out in §702 (42 U.S.C.A. §2000e-1) of the Act. The section provides in pertinent part:

This subchapter [Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §2000e et seq.] shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

The legislative history of this provision shows that Congress first enacted a religious exemption to the Civil Rights Act, and then later acted to broaden that exemption. As enacted in 1964, §702 had provided an exemption only for "religious activities" [emphasis supplied] of a religious corporation, association, or society. When §702 was amended in 1972, the word "religious" was deleted. Now, following the amendment, the "activities" of religious organizations are exempt.

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<sup>5</sup> Civil Rights Act of 1964, §701 et seq., as amended, 42 U.S.C.A. §2000e et seq.

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The §702 exemption was upheld by the United States Supreme Court in Corporation of Presiding Bishop v. Amos, 483 U.S. 327 (1987). The case involved a building engineer at a nonprofit gymnasium, open to the public, which was operated by the Church of Jesus Christ of Latter-day Saints. The employee was fired after 16 years when he failed to qualify as a member in good standing of the Church. The Supreme Court held that the employee's claim of discrimination on the basis of religion in violation of the Civil Rights Act was barred by the religious exemption in §702, even though the employee was clearly involved in non-religious activities. The Court held that applying the exemption to religious organizations' secular nonprofit activities does not violate the Establishment Clause of the First Amendment.<sup>6</sup>

The Court based its decision on the three criteria established in Lemon v. Kurtzman, 403 U.S. 602 (1971), which set the standards for determining the constitutionality of a statute that potentially conflicts with the Establishment Clause. The "Lemon test" provides that such a statute will be upheld only if: 1) it has a secular purpose; 2) its primary effect neither advances nor inhibits religion, and 3) it does not foster an excessive entanglement with religion.

The Court found that all three prongs of the "Lemon test" were satisfied by §702. The Court stressed that permissible state accommodation of religion is a far cry from the unlawful fostering of religion:

There is ample room under the Establishment Clause for 'benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.' [Citing to Walz v. Tax Comm'n, 397 U.S. 669, at 669, Amos, 483 U.S. at 334.]

In addition to successfully defending claims of religious discrimination brought under the civil rights laws, religious institutions have also successfully defended sex discrimination lawsuits on the basis of religious exemptions. In Dayton Christian Schools v. Ohio Civil Rights Com'n, 766 F.2d 932 (6th Cir. 1985), the United States Court of Appeals held that the Ohio Civil Rights Commission could not assert jurisdiction over a sex discrimination complaint involving a married religious school teacher who was fired after she became pregnant. The school asserted that two religious beliefs were at stake: the belief that a mother's place is in the home, and the belief that the teacher had violated the school's "Biblical chain of command" by consulting an attorney. The school made no other allegations that the teacher's religious beliefs or practices made her otherwise unfit for the position.

The court declined to make an inquiry as to whether the school's assertions were genuinely motivated by a sincere religious belief. The state Civil Rights Commission would be prohibited from exercising jurisdiction over employment discrimination charges at the school, the court held, because to do otherwise "necessarily results in an excessive state/church entanglement due to the issues of good faith and motivation necessarily raised in such proceedings . . ." Id. at 961.

<sup>6</sup> The clause provides: "Congress shall make no law respecting an establishment of religion . . ." U.S. Const. amend. I.

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The court noted that the lack of any religious exemption in the Ohio Civil Rights Act did not bar the school's exemption, which was found to exist on constitutional grounds. Allowing the state civil rights law to apply to the school would impermissibly burden the First Amendment rights of the people associated with the school to "free exercise" of their religion, the court held.

Similarly, a woman who was denied a pastoral position in a church was barred from moving forward with a Title VII suit based on sexual and racial discrimination grounds, in Rayburn v. General Conf. of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985). Even though the plaintiff had submitted some evidence in support of her sexual and racial discrimination claims, and even though the court found that Title VII applied to the case, the church's position was upheld on constitutional grounds. The Free Exercise clause prohibited "state intervention in the appointment [of clergy]," the court held, because it would "excessively inhibit religious liberty." The court found that "[a]ny attempt by government to restrict a church's free choice of its leaders . . . constitutes a burden on the church's free exercise rights." Id. at 1168.

E.E.O.C. v. Mississippi College, 626 F.2d 477 (5th Cir. 1980), went even further in delineating religious exemption bounds. In this case, brought under Title VII, a female college professor who was denied a full-time position at a Baptist college was prevented by the court from proceeding with an EEOC investigation into the matter. Because the college presented some evidence that the employment decision was religiously based, the court held that Title VII could not apply. Employment practices of a religious educational institution that discriminate on the basis of religion are exempt from Title VII, the court held, "regardless of whether the religious discrimination is a pretext for some other type of discrimination." [Emphasis supplied.] Id. at 489.

Constitutional grounds for a religious exemption were also found in Gay Rights Coalition v. Georgetown Univ., 536 A.2d 1 (D.C. App. 1987), which held that a District of Columbia civil rights ordinance did not require Georgetown University, a private religious school, to grant homosexual student groups official "university recognition." The court did find, however, that the District of Columbia had a "compelling governmental interest in eradicating sexual orientation discrimination," (id. at 38) and ruled that the university must allow the groups equal access to "facilities and services," as required by the D.C. ordinance. Those facilities and services, which the university itself conceded were "relatively insignificant," included the use of the university's mailing services and "the right to apply for (but not necessarily to receive) funding." Id. at 17. The court found that requiring equal access to the university services, without requiring a grant of "university recognition," imposed "a relatively slight burden on Georgetown's religious practice." Id. at 38.

It should be noted that the D.C. ordinance, unlike the federal Civil Rights Act and the New Jersey LAD, contained no exemption for religious organizations.

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It must also be noted that religious groups do not have free reign to make discriminatory decisions which are unconnected with religion.<sup>7</sup> In E.E.O.C. v. Pacific Press Publishing Ass'n, 676 F.2d 1272 (9th Cir. 1982), the court upheld a sex discrimination claim against a nonprofit publishing house affiliated with the Seventh-Day Adventist Church. The plaintiff, an editorial secretary at the publishing house and a member of the Church in good standing, had prevailed in her claim that male employees performing similar work received higher pay. Although the publishing house argued that the plaintiff's job duties involved religious activities because she had discretionary and administrative responsibilities, the court found that her involvement in religious activities was insufficient for a Title VII exemption to be triggered.

The court in Rayburn, supra, also noted that religious organizations are not free to make hiring decisions on the basis of race, sex or national origin.

The statutory exemption [in §702] applies to one particular reason for employment decision [sic] - that based upon religious preference. It was open to Congress to exempt from Title VII the religious employer, not simply one basis of employment, and Congress plainly did not. [Id. at 1166-1167.]

The broad language of the exemption in N.J.S.A. 10:5-12a of the LAD appears to be the most relevant to the concerns expressed by the Catholic Conference and Agudath Israel. The exemption provides in pertinent part that "[i]t shall not be an unlawful employment practice . . . for a religious association or organization . . . in following the tenets of its religion in establishing and utilizing criteria for employment of an employee . . ."

Thus, unlike Mr. Bolan's fears that the Catholic Church would now be "force[d]" to hire homosexual employees, quite the opposite seems to be the case. The language of the statute seems to give wide discretion to a religious organization to determine which "criteria" are required by "the tenets of its religion." Prior to the enactment of the amendments, the LAD prohibited discrimination on the basis of sex and marital status, among other grounds, with this same exemption for religious groups. If the LAD, prior to the amendments, did not force the Church to hire employees who, according to the Church, failed to reflect proper religious values (such as pregnant, unmarried teachers who wished to teach at religious schools), then there is no reason to think that the addition of "sexual orientation" to the statute now changes matters.

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<sup>7</sup> Perhaps other federal jurisdictions do not share the far-reaching view of the 5th Circuit, which asserted that even a "pretext" of religious discrimination by a religious institution will serve to immunize it from employment discrimination claims brought on other grounds. (E.E.O.C. v. Mississippi College, 626 F.2d at 489.)

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As the Appellate Division has noted, State courts have historically abstained from resolving disputes over sincerely held religious beliefs. Ran-Day's v. State, 243 N.J. Super. 232, 255 (App. Div. 1990). Thus, if a religious organization were to proclaim that the "tenets of its religion" prohibit it from hiring a homosexual janitor, for example, the courts might well decline to exercise jurisdiction of a lawsuit brought under the LAD.

We state clearly and unequivocally that the State cannot and will not resolve whether any person's religious tenet is true, or even whether it is correct within the bounds of the person's own organized religion. These issues are left for religious determination, if an acceptable forum exists to determine the issue. The forum, however, is not supplied by the State except in the most unusual circumstances. [Citing to Hardwick v. First Baptist Church of Perth Amboy, 217 N.J. Super. 85, 91-93 (App. Div. 1987), 243 N.J. Super. at 255.]

Thus, Assembly Bill No. 1034 would not add any needed protections for religious groups. The bill provides that:

The prohibition against discrimination on the basis of affectional or sexual orientation as provided within the "Law Against Discrimination," P.L. 1945, c. 169 (C. 10:5-1 et seq.) shall not apply to a church, religious association, religious denomination, religious institution, religious corporation organized under Title 16 of the Revised Statutes or to a non-profit corporation organized under Title 15A of the New Jersey Statutes which is affiliated or associated with a religious society.

*Wuu* In contrast to the sponsors' obvious intent, as evidenced by their statement on the bill, A-1034 could have the effect of limiting the exemptions that are provided to religious groups under current law. Because "affectional or sexual orientation" is singled out in the bill as the only exemption specifically allowed to religious groups, the courts could interpret this as an intent to discontinue the other religious exemptions in the LAD. *ad.*

The current religious exemptions cover a wide base: despite the law against employment discrimination, a religious organization may "[follow] the tenets of its religion" in making hiring decisions (N.J.S.A. 10:5-12a.), and despite the law prohibiting housing discrimination, the organization may "mak[e] such selection as is calculated by such organization to promote the religious principles for which it is established or maintained." (N.J.S.A. 10:5-5n.)

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Because State and federal law grants religious groups broad exemptions from the requirements of civil rights laws, it is unlikely that P.L. 1991, c. 519, or A-1034, if enacted, could affect these groups in a substantial manner.

Very truly yours,

Leonard J. Lawson  
Acting Legislative Counsel

By: M. Bavati  
Miriam Bavati  
Associate Counsel

LJL:B/kms

# **EXHIBIT F**



CONGREGATION FOR THE DOCTRINE OF THE FAITH

***LETTER TO THE BISHOPS OF THE CATHOLIC CHURCH  
ON THE PASTORAL CARE OF HOMOSEXUAL PERSONS***

1. The issue of homosexuality and the moral evaluation of homosexual acts have increasingly become a matter of public debate, even in Catholic circles. Since this debate often advances arguments and makes assertions inconsistent with the teaching of the Catholic Church, it is quite rightly a cause for concern to all engaged in the pastoral ministry, and this Congregation has judged it to be of sufficiently grave and widespread importance to address to the Bishops of the Catholic Church this Letter on the Pastoral Care of Homosexual Persons.

2. Naturally, an exhaustive treatment of this complex issue cannot be attempted here, but we will focus our reflection within the distinctive context of the Catholic moral perspective. It is a perspective which finds support in the more secure findings of the natural sciences, which have their own legitimate and proper methodology and field of inquiry.

However, the Catholic moral viewpoint is founded on human reason illumined by faith and is consciously motivated by the desire to do the will of God our Father. The Church is thus in a position to learn from scientific discovery but also to transcend the horizons of science and to be confident that her more global vision does greater justice to the rich reality of the human person in his spiritual and physical dimensions, created by God and heir, by grace, to eternal life.

It is within this context, then, that it can be clearly seen that the phenomenon of homosexuality, complex as it is, and with its many consequences for society and ecclesial life, is a proper focus for the Church's pastoral care. It thus requires of her ministers attentive study, active concern and honest, theologically well-balanced counsel.

3. Explicit treatment of the problem was given in this Congregation's "Declaration on Certain Questions Concerning Sexual Ethics" of December 29, 1975. That document stressed the duty of trying to understand the homosexual condition and noted that culpability for homosexual acts should only be judged with prudence. At the same time the Congregation took note of the distinction commonly drawn between the homosexual condition or tendency and individual homosexual actions. These were described as deprived of their essential and indispensable finality, as being "intrinsically disordered", and able in no case to be approved of (cf. n. 8, §4).

In the discussion which followed the publication of the Declaration, however, an overly benign interpretation was given to the homosexual condition itself, some going so far as to call it neutral, or even good. Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus



the inclination itself must be seen as an objective disorder.

Therefore special concern and pastoral attention should be directed toward those who have this condition, lest they be led to believe that the living out of this orientation in homosexual activity is a morally acceptable option. It is not.

4. An essential dimension of authentic pastoral care is the identification of causes of confusion regarding the Church's teaching. One is a new exegesis of Sacred Scripture which claims variously that Scripture has nothing to say on the subject of homosexuality, or that it somehow tacitly approves of it, or that all of its moral injunctions are so culture-bound that they are no longer applicable to contemporary life. These views are gravely erroneous and call for particular attention here.

5. It is quite true that the Biblical literature owes to the different epochs in which it was written a good deal of its varied patterns of thought and expression (Dei Verbum 12). The Church today addresses the Gospel to a world which differs in many ways from ancient days. But the world in which the New Testament was written was already quite diverse from the situation in which the Sacred Scriptures of the Hebrew People had been written or compiled, for example.

What should be noticed is that, in the presence of such remarkable diversity, there is nevertheless a clear consistency within the Scriptures themselves on the moral issue of homosexual behaviour. The Church's doctrine regarding this issue is thus based, not on isolated phrases for facile theological argument, but on the solid foundation of a constant Biblical testimony. The community of faith today, in unbroken continuity with the Jewish and Christian communities within which the ancient Scriptures were written, continues to be nourished by those same Scriptures and by the Spirit of Truth whose Word they are. It is likewise essential to recognize that the Scriptures are not properly understood when they are interpreted in a way which contradicts the Church's living Tradition. To be correct, the interpretation of Scripture must be in substantial accord with that Tradition.

The Vatican Council II in Dei Verbum 10, put it this way: "It is clear, therefore, that in the supremely wise arrangement of God, sacred Tradition, sacred Scripture, and the Magisterium of the Church are so connected and associated that one of them cannot stand without the others. Working together, each in its own way under the action of the one Holy Spirit, they all contribute effectively to the salvation of souls". In that spirit we wish to outline briefly the Biblical teaching here.

6. Providing a basic plan for understanding this entire discussion of homosexuality is the theology of creation we find in Genesis. God, in his infinite wisdom and love, brings into existence all of reality as a reflection of his goodness. He fashions mankind, male and female, in his own image and likeness. Human beings, therefore, are nothing less than the work of God himself; and in the complementarity of the sexes, they are called to reflect the inner unity of the Creator. They do this in a striking way in their cooperation with him in the transmission of life by a mutual donation of the self to the other.

In Genesis 3, we find that this truth about persons being an image of God has been obscured by original sin. There inevitably follows a loss of awareness of the covenantal character of the union these persons had with God and with each other. The human body retains its "spousal significance" but this is now clouded by sin. Thus, in Genesis 19:1-11, the

deterioration due to sin continues in the story of the men of Sodom. There can be no doubt of the moral judgement made there against homosexual relations. In Leviticus 18:22 and 20:13, in the course of describing the conditions necessary for belonging to the Chosen People, the author excludes from the People of God those who behave in a homosexual fashion.

Against the background of this exposition of theocratic law, an eschatological perspective is developed by St. Paul when, in I Cor 6:9, he proposes the same doctrine and lists those who behave in a homosexual fashion among those who shall not enter the Kingdom of God.

In Romans 1:18-32, still building on the moral traditions of his forebears, but in the new context of the confrontation between Christianity and the pagan society of his day, Paul uses homosexual behaviour as an example of the blindness which has overcome humankind. Instead of the original harmony between Creator and creatures, the acute distortion of idolatry has led to all kinds of moral excess. Paul is at a loss to find a clearer example of this disharmony than homosexual relations. Finally, 1 Tim. 1, in full continuity with the Biblical position, singles out those who spread wrong doctrine and in v. 10 explicitly names as sinners those who engage in homosexual acts.

7. The Church, obedient to the Lord who founded her and gave to her the sacramental life, celebrates the divine plan of the loving and life-giving union of men and women in the sacrament of marriage. It is only in the marital relationship that the use of the sexual faculty can be morally good. A person engaging in homosexual behaviour therefore acts immorally.

To choose someone of the same sex for one's sexual activity is to annul the rich symbolism and meaning, not to mention the goals, of the Creator's sexual design. Homosexual activity is not a complementary union, able to transmit life; and so it thwarts the call to a life of that form of self-giving which the Gospel says is the essence of Christian living. This does not mean that homosexual persons are not often generous and giving of themselves; but when they engage in homosexual activity they confirm within themselves a disordered sexual inclination which is essentially self-indulgent.

As in every moral disorder, homosexual activity prevents one's own fulfillment and happiness by acting contrary to the creative wisdom of God. The Church, in rejecting erroneous opinions regarding homosexuality, does not limit but rather defends personal freedom and dignity realistically and authentically understood.

8. Thus, the Church's teaching today is in organic continuity with the Scriptural perspective and with her own constant Tradition. Though today's world is in many ways quite new, the Christian community senses the profound and lasting bonds which join us to those generations who have gone before us, "marked with the sign of faith".

Nevertheless, increasing numbers of people today, even within the Church, are bringing enormous pressure to bear on the Church to accept the homosexual condition as though it were not disordered and to condone homosexual activity. Those within the Church who argue in this fashion often have close ties with those with similar views outside it. These latter groups are guided by a vision opposed to the truth about the human person, which is fully disclosed in the mystery of Christ. They reflect, even if not entirely consciously, a materialistic ideology which denies the transcendent nature of the human person as well as the supernatural vocation of every individual.

The Church's ministers must ensure that homosexual persons in their care will not be misled by this point of view, so profoundly opposed to the teaching of the Church. But the risk is great and there are many who seek to create confusion regarding the Church's position, and then to use that confusion to their own advantage.

9. The movement within the Church, which takes the form of pressure groups of various names and sizes, attempts to give the impression that it represents all homosexual persons who are Catholics. As a matter of fact, its membership is by and large restricted to those who either ignore the teaching of the Church or seek somehow to undermine it. It brings together under the aegis of Catholicism homosexual persons who have no intention of abandoning their homosexual behaviour. One tactic used is to protest that any and all criticism of or reservations about homosexual people, their activity and lifestyle, are simply diverse forms of unjust discrimination.

There is an effort in some countries to manipulate the Church by gaining the often well-intentioned support of her pastors with a view to changing civil-statutes and laws. This is done in order to conform to these pressure groups' concept that homosexuality is at least a completely harmless, if not an entirely good, thing. Even when the practice of homosexuality may seriously threaten the lives and well-being of a large number of people, its advocates remain undeterred and refuse to consider the magnitude of the risks involved.

The Church can never be so callous. It is true that her clear position cannot be revised by pressure from civil legislation or the trend of the moment. But she is really concerned about the many who are not represented by the pro-homosexual movement and about those who may have been tempted to believe its deceitful propaganda. She is also aware that the view that homosexual activity is equivalent to, or as acceptable as, the sexual expression of conjugal love has a direct impact on society's understanding of the nature and rights of the family and puts them in jeopardy.

10. It is deplorable that homosexual persons have been and are the object of violent malice in speech or in action. Such treatment deserves condemnation from the Church's pastors wherever it occurs. It reveals a kind of disregard for others which endangers the most fundamental principles of a healthy society. The intrinsic dignity of each person must always be respected in word, in action and in law.

But the proper reaction to crimes committed against homosexual persons should not be to claim that the homosexual condition is not disordered. When such a claim is made and when homosexual activity is consequently condoned, or when civil legislation is introduced to protect behavior to which no one has any conceivable right, neither the Church nor society at large should be surprised when other distorted notions and practices gain ground, and irrational and violent reactions increase.

11. It has been argued that the homosexual orientation in certain cases is not the result of deliberate choice; and so the homosexual person would then have no choice but to behave in a homosexual fashion. Lacking freedom, such a person, even if engaged in homosexual activity, would not be culpable.

Here, the Church's wise moral tradition is necessary since it warns against generalizations in judging individual cases. In fact, circumstances may exist, or may have existed in the past, which would reduce or remove the culpability of the individual in a given instance; or other

circumstances may increase it. What is at all costs to be avoided is the unfounded and demeaning assumption that the sexual behaviour of homosexual persons is always and totally compulsive and therefore inculpable. What is essential is that the fundamental liberty which characterizes the human person and gives him his dignity be recognized as belonging to the homosexual person as well. As in every conversion from evil, the abandonment of homosexual activity will require a profound collaboration of the individual with God's liberating grace.

12. What, then, are homosexual persons to do who seek to follow the Lord? Fundamentally, they are called to enact the will of God in their life by joining whatever sufferings and difficulties they experience in virtue of their condition to the sacrifice of the Lord's Cross. That Cross, for the believer, is a fruitful sacrifice since from that death come life and redemption. While any call to carry the cross or to understand a Christian's suffering in this way will predictably be met with bitter ridicule by some, it should be remembered that this is the way to eternal life for all who follow Christ.

It is, in effect, none other than the teaching of Paul the Apostle to the Galatians when he says that the Spirit produces in the lives of the faithful "love, joy, peace, patience, kindness, goodness, trustfulness, gentleness and self-control" (5:22) and further (v. 24), "You cannot belong to Christ unless you crucify all self-indulgent passions and desires."

It is easily misunderstood, however, if it is merely seen as a pointless effort at self-denial. The Cross is a denial of self, but in service to the will of God himself who makes life come from death and empowers those who trust in him to practise virtue in place of vice.

To celebrate the Paschal Mystery, it is necessary to let that Mystery become imprinted in the fabric of daily life. To refuse to sacrifice one's own will in obedience to the will of the Lord is effectively to prevent salvation. Just as the Cross was central to the expression of God's redemptive love for us in Jesus, so the conformity of the self-denial of homosexual men and women with the sacrifice of the Lord will constitute for them a source of self-giving which will save them from a way of life which constantly threatens to destroy them.

Christians who are homosexual are called, as all of us are, to a chaste life. As they dedicate their lives to understanding the nature of God's personal call to them, they will be able to celebrate the Sacrament of Penance more faithfully and receive the Lord's grace so freely offered there in order to convert their lives more fully to his Way.

13. We recognize, of course, that in great measure the clear and successful communication of the Church's teaching to all the faithful, and to society at large, depends on the correct instruction and fidelity of her pastoral ministers. The Bishops have the particularly grave responsibility to see to it that their assistants in the ministry, above all the priests, are rightly informed and personally disposed to bring the teaching of the Church in its integrity to everyone.

The characteristic concern and good will exhibited by many clergy and religious in their pastoral care for homosexual persons is admirable, and, we hope, will not diminish. Such devoted ministers should have the confidence that they are faithfully following the will of the Lord by encouraging the homosexual person to lead a chaste life and by affirming that person's God-given dignity and worth.

14. With this in mind, this Congregation wishes to ask the Bishops to be especially cautious of any programmes which may seek to pressure the Church to change her teaching, even while claiming not to do so. A careful examination of their public statements and the activities they promote reveals a studied ambiguity by which they attempt to mislead the pastors and the faithful. For example, they may present the teaching of the Magisterium, but only as if it were an optional source for the formation of one's conscience. Its specific authority is not recognized. Some of these groups will use the word "Catholic" to describe either the organization or its intended members, yet they do not defend and promote the teaching of the Magisterium; indeed, they even openly attack it. While their members may claim a desire to conform their lives to the teaching of Jesus, in fact they abandon the teaching of his Church. This contradictory action should not have the support of the Bishops in any way.

15. We encourage the Bishops, then, to provide pastoral care in full accord with the teaching of the Church for homosexual persons of their dioceses. No authentic pastoral programme will include organizations in which homosexual persons associate with each other without clearly stating that homosexual activity is immoral. A truly pastoral approach will appreciate the need for homosexual persons to avoid the near occasions of sin.

We would heartily encourage programmes where these dangers are avoided. But we wish to make it clear that departure from the Church's teaching, or silence about it, in an effort to provide pastoral care is neither caring nor pastoral. Only what is true can ultimately be pastoral. The neglect of the Church's position prevents homosexual men and women from receiving the care they need and deserve.

An authentic pastoral programme will assist homosexual persons at all levels of the spiritual life: through the sacraments, and in particular through the frequent and sincere use of the sacrament of Reconciliation, through prayer, witness, counsel and individual care. In such a way, the entire Christian community can come to recognize its own call to assist its brothers and sisters, without deluding them or isolating them.

16. From this multi-faceted approach there are numerous advantages to be gained, not the least of which is the realization that a homosexual person, as every human being, deeply needs to be nourished at many different levels simultaneously.

The human person, made in the image and likeness of God, can hardly be adequately described by a reductionist reference to his or her sexual orientation. Every one living on the face of the earth has personal problems and difficulties, but challenges to growth, strengths, talents and gifts as well. Today, the Church provides a badly needed context for the care of the human person when she refuses to consider the person as a "heterosexual" or a "homosexual" and insists that every person has a fundamental Identity: the creature of God, and by grace, his child and heir to eternal life.

17. In bringing this entire matter to the Bishops' attention, this Congregation wishes to support their efforts to assure that the teaching of the Lord and his Church on this important question be communicated fully to all the faithful.

In light of the points made above, they should decide for their own dioceses the extent to which an intervention on their part is indicated. In addition, should they consider it helpful, further coordinated action at the level of their National Bishops' Conference may be

envisioned.

In a particular way, we would ask the Bishops to support, with the means at their disposal, the development of appropriate forms of pastoral care for homosexual persons. These would include the assistance of the psychological, sociological and medical sciences, in full accord with the teaching of the Church.

They are encouraged to call on the assistance of all Catholic theologians who, by teaching what the Church teaches, and by deepening their reflections on the true meaning of human sexuality and Christian marriage with the virtues it engenders, will make an important contribution in this particular area of pastoral care.

The Bishops are asked to exercise special care in the selection of pastoral ministers so that by their own high degree of spiritual and personal maturity and by their fidelity to the Magisterium, they may be of real service to homosexual persons, promoting their health and well-being in the fullest sense. Such ministers will reject theological opinions which dissent from the teaching of the Church and which, therefore, cannot be used as guidelines for pastoral care.

We encourage the Bishops to promote appropriate catechetical programmes based on the truth about human sexuality in its relationship to the family as taught by the Church. Such programmes should provide a good context within which to deal with the question of homosexuality.

This catechesis would also assist those families of homosexual persons to deal with this problem which affects them so deeply.

All support should be withdrawn from any organizations which seek to undermine the teaching of the Church, which are ambiguous about it, or which neglect it entirely. Such support, or even the semblance of such support, can be gravely misinterpreted. Special attention should be given to the practice of scheduling religious services and to the use of Church buildings by these groups, including the facilities of Catholic schools and colleges. To some, such permission to use Church property may seem only just and charitable; but in reality it is contradictory to the purpose for which these institutions were founded, it is misleading and often scandalous.

In assessing proposed legislation, the Bishops should keep as their uppermost concern the responsibility to defend and promote family life.

18. The Lord Jesus promised, "You shall know the truth and the truth shall set you free" (*Jn.* 8:32). Scripture bids us speak the truth in love (cf. *Eph.* 4:15). The God who is at once truth and love calls the Church to minister to every man, woman and child with the pastoral solicitude of our compassionate Lord. It is in this spirit that we have addressed this Letter to the Bishops of the Church, with the hope that it will be of some help as they care for those whose suffering can only be intensified by error and lightened by truth.

*(During an audience granted to the undersigned Prefect, His Holiness, Pope John Paul II, approved this Letter, adopted in an ordinary session of the Congregation for the Doctrine of the Faith, and ordered it to be published.)*

*Given at Rome, 1 October 1986.*

**JOSEPH CARDINAL RATZINGER**

*Prefect*

**ALBERTO BOVONE**

*Titular Archbishop of Caesarea in Numidia*

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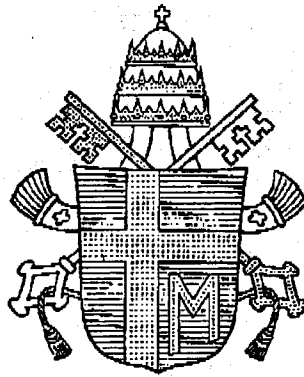
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## FOREWORD

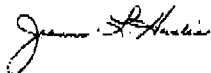
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Jeanne Hanline  
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