

# United States Senate

April 4, 2019

Dean Heather Gerken  
Yale Law School  
127 Wall Street  
New Haven, CT 06511

Dear Dean Gerken:

As one of the nation's most respected law schools, Yale Law School has an obligation to protect intellectual diversity and to respect the constitutional rights of its students. However, public news reports indicate that Yale Law School has recently adopted a transparently discriminatory policy: namely, that Yale will no longer provide any stipends or loan repayments for students serving in organizations professing traditional Christian views or adhering to traditional sexual ethics.

The First Amendment protects both free speech and the Free Exercise of religion. Yale's new policy does neither. Instead, it appears that the policy arose from unconstitutional animus and a specific discriminatory intent both to blacklist Christian organizations like the Alliance Defending Freedom and to punish Yale students whose values or religious faith lead them to work there.

Federal civil rights laws prohibit discrimination based on religious faith. As a recipient of federal funds, Yale is obligated to comply with these protections. Moreover, this policy flatly contradicts Yale University's Equal Opportunity Statement—a promise to all students—that, “as delineated by federal and Connecticut law, Yale does not discriminate in admissions, educational programs, or employment against any individual on account of that individual's . . . religion.”

Please be advised that the Senate Judiciary Committee's Subcommittee on the Constitution is opening an investigation into Yale Law School's policy, announced via email on or about March 25, 2019, extending its putative nondiscrimination policy to summer public interest fellowships, postgraduate public interest fellowships, and loan forgiveness for public interest careers. As that investigation may include a subpoena *duces tecum* or a referral to the Department of Justice for action against the law school, please further consider this as notice of your obligation to take reasonable steps to retain all hard copies and electronically stored information relevant to this investigation and potential litigation.

Specifically, the following types of documents, information, and electronic media must be retained—even if it would otherwise be your normal practice to discard such items in accordance with your usual document retention policy:

- Any communications, correspondence, or documents created in anticipation of, regarding, or referencing Yale Law School's March 25, 2019 email to students regarding the law school's application of its nondiscrimination policy;

- Any communications, correspondence, or documents regarding the enforcement or implementation of Yale Law School’s nondiscrimination policy as it applies to the Summer Public Interest Fellowship Program, the Career Options Assistance Program, or Post-Graduate Fellowships, including any correspondence with students inquiring about the law school’s implementation of its nondiscrimination policy;
- Any communications, correspondence, or documents regarding student complaints of harassment or mistreatment by other Yale Law School students or Yale Law School organizations;
- Any communications, correspondence, or documents referencing or pertaining to Alliance Defending Freedom (“ADF”) or Blackstone Fellowships, including, but not limited to, any communications or correspondence regarding the Yale Federalist Society event involving an attorney from ADF discussing *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018);
- Any communications, correspondence, or documents pertaining to any communications received from Outlaws, the law school’s LGBTQ group, regarding ADF, admissions policies, nondiscrimination policies, or funding for religious or politically-affiliated public interest organizations;
- Any communications, correspondence, or documents related to any enforcement actions taken by Yale Law School against religiously-affiliated organizations or students based on Yale Law School’s nondiscrimination policy or Yale University’s nondiscrimination policy;
- Any communications, correspondence, or documents regarding the employer self-certification process referenced in Yale Law School’s policy announced via email on or about March 25, 2019;
- Any communications, correspondence, documents, or reports pertaining to allegations or findings that Yale Law School has discriminated against or taken any adverse action against current students, prospective students, alumni, or outside organizations based in whole or in part on their political or religious beliefs or affiliations.

Please retain all of the above material—whether written, printed, or electronically stored—in anticipation of the previously mentioned investigation or potential litigation until this hold notice is cancelled in writing. In the meantime, if Yale Law School decides to alter its position and cease discriminating against religious students and organizations, please let me know.

Sincerely,



Ted Cruz  
Chairman, Constitution Subcommittee  
Senate Judiciary Committee