

No. 08-56320

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL,**  
**et al.,**  
*Plaintiffs-Appellants,*

v.

**ROMAN STEARNS, et al.,**  
*Defendants-Appellees.*

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Appeal from the United States District Court  
for the Central District of California,  
No. cv-05-6242-SJO (Hon. James Otero)

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**MOTION OF THE  
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS  
TO SUBMIT BRIEF AS *AMICUS CURIAE***

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Pursuant to Fed. R. App. P. 29(b), the American Association of University Professors (“the AAUP”) respectfully moves for leave to file an *amicus curiae* brief in this case. In support of this motion, the AAUP states as follows:

1. The AAUP is a non-profit organization of approximately 47,000 faculty, librarians, graduate students, and academic professionals. Its purpose is to advance academic freedom and shared university governance, to define fundamental professional values and standards for higher education, and to ensure higher education's contribution to the common good.

2. The AAUP's participation will assist this Court and is relevant to the disposition of this case. This case directly implicates the academic freedom of public universities as that freedom is exercised through the professional academic judgment of their faculty members. The academic freedom of universities is premised on the work carried out by their faculties, as the Supreme Court has recognized. Protection of that freedom is therefore especially important where, as in this case, faculty members have had meaningful involvement in a university's academic decisions regarding admissions standards.

3. In the Supreme Court as well as the federal circuits (including this Court), the AAUP frequently submits *amicus* briefs in cases that raise important legal issues in higher education and implicate AAUP policies and the interests of faculty members. *See, e.g., Grutter v. Bollinger*, 539 U.S.

306 (2003); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214 (1985); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); *Hong v. Grant*, appeal docketed, No. 07-56705 (9th Cir. 2007); *Smith v. Univ. of Washington Law School*, 233 F.3d 1188 (9th Cir. 2000); *Crue v. Aiken*, 370 F.3d 668 (7th Cir. 2004). Several of these cases are directly relevant to this case and are discussed in the accompanying proposed brief.

4. Further, the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure is recognized as the nation's fundamental and most widely accepted description of the basic attributes of academic freedom and tenure, and has been cited by the Supreme Court. *See, e.g., Tilton v. Richardson*, 403 U.S. 672, 681-82 (1971); *Bd. of Regents v. Roth*, 408 U.S. 564, 579 n. 17 (1972). The 1940 Statement, and the gloss of meaning placed on it by the Association over the past sixty years, is generally accepted as normative in American higher education. *See* RICHARD HOFSTADTER & WALTER METZGER, *THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES* Ch. X (1955); *Developments in the Law – Academic Freedom*, 81 HARV. L. REV. 1045, 1105-1112 (1968).

5. Defendants-Appellees Roman Stearns, et al., have consented to the filing of the AAUP's *amicus* brief. Plaintiffs-Appellants Association of

Christian Schools International, et al., have not consented to the filing of this brief or any of the other proposed *amicus* briefs in support of defendants-appellees, despite the fact that defendants-appellees have consented to all of the proposed *amicus* briefs filed in support of plaintiffs-appellants in this Court.

WHEREFORE, based on the foregoing, *amicus curiae* the AAUP respectfully moves for leave to file an *amicus* brief in this matter.

Dated: April 21, 2009

Respectfully submitted,

s/ Stephen Sanders

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## CERTIFICATE OF SERVICE

### When Not All Case Participants are Registered for the Appellate CM/ECF System

U.S. Court of Appeals Docket Number: 08-56320

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 21, 2009.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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