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US Supreme Court Declines To Hear 9th Circuit Decision Aimed At Public Higher Education

The United States Supreme Court recently declined to hear the appeal of a Christian sorority and a Christian fraternity in the case *Alpha Delta Chi-Delta Chapter v. Charles Reed* (March 19, 2012) ___ S.Ct. ___ (2012 WL 895984), letting stand the Ninth Circuit's decision in *Reed* last year that public universities may require student groups to adopt a nondiscrimination policy that prohibits discrimination on enumerated grounds such as race, sex, religion, sexual orientation, and disability before granting them official recognition. For now, it appears settled that nondiscrimination policies that track California antidiscrimination laws by barring discrimination on enumerated bases are constitutional.

The Ninth Circuit's decision in *Reed* extended the United States Supreme Court's 2010 decision, *Christian Legal Society v. Martinez* (2010) 130 S.Ct. 2971, which held that public institutions may require student groups to comply with an "all-comers" policy before granting them status as recognized student groups. All-comers policies prohibit discrimination on any ground by requiring student groups to accept any student as a member, regardless of the student's status or beliefs.

In *Reed*, a Christian sorority and a Christian fraternity objected to the requirement of San Diego State University (SDSU) that student groups comply with the university's nondiscrimination policy in order to receive funding, access to facilities, and other benefits available only to officially recognized student organizations. SDSU's nondiscrimination policy tracks state law barring discrimination on grounds such as race, sex, religion, sexual orientation, and disability. The Christian groups had various religious requirements for officers and members, and SDSU administrators repeatedly denied their applications for official recognition. The Christian groups sued SDSU, challenging the constitutionality of the nondiscrimination policy, and arguing in part that *Martinez* did not apply because unlike the all-comers policy at issue in *Martinez*, SDSU's policy permitted secular groups to discriminate on non-enumerated bases (for example, because SDSU's policy does not forbid political belief discrimination, a Republican organization could exclude Democrats) while prohibiting discrimination based on religious beliefs.

The Ninth Circuit sided with SDSU, upholding the constitutionality of SDSU's nondiscrimination policy because it was intended to ensure equal access and remove barriers imposed against historically-excluded groups, and it did not suppress or single out any particular group based on the group's message or perspective. Student groups with religious membership requirements are not compelled to change their membership policies; rather, they remain free to exclude members on any basis if they forgo the benefits of official recognition.

Prior Client News Briefs reviewed the *Martinez* and *Reed* decisions in more detail. (For *Martinez,* see Client News Brief No. 24, July 2010; for *Reed*, see Client News Brief No.36, 2011) Additionally, note that while this decision involved an institute of higher education, other courts have reached similar conclusions in the K-12 setting. (For example, see *Truth v. v. Kent School District* (9th Cir. 2008) 542 F.3d 634, reviewed in Client News Brief No. 41, October 2007.)

If you have any questions regarding your university's nondiscrimination policy, or for other higher education or student law issues, please feel free to contact one of our eight offices located statewide. You can also visit our website or follow Lozano Smith on Facebook.

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