



CLIENT NEWS BRIEF

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STUDENT CODES OF CONDUCT CAN CHILL FREE SPEECH

A recent decision handed down by the Ninth Circuit Court of Appeals underscores the importance of ensuring that policies regulating speech adopted by universities, colleges, public school districts and other public agencies do not violate First Amendment protections, and that such speech policies are enforced in a measured and even-handed approach.

In *Lopez v. Candaele* (9th Cir. 2010) ___ F.3d ___, 2010 WL 3607033, the Ninth Circuit held that a student lacked standing to challenge a community college's sexual harassment policy because he failed to show any actual injury or threat of credible injury. In its opinion, however, the court warned against the adoption of policies which carry significant risks of suppressing or "chilling" free speech rights.

According to the facts of the case, Jonathan Lopez was a student at Los Angeles City College ("College"), a public college within the Los Angeles Community College District ("District"). In Lopez's speech class, the professor asked each student to give a speech on a topic of their choice. Lopez, a devout Christian, gave a speech discussing his faith and his opposition to homosexuality and same-sex marriage. The professor interrupted Lopez's speech, calling him a "fascist bastard." The professor also prohibited Lopez from finishing his speech and refused to give Lopez a grade for the assignment. In response, Lopez filed a written complaint with the College's Dean of Academic Affairs. Upon observing Lopez delivering the written complaint, the professor threatened Lopez with expulsion. A few days later, the professor warned Lopez regarding a different speech assignment that he was subject to the District's student code of conduct, which included a prohibition on sexual harassment. "Sexual harassment" was defined in the code as including "verbal, visual or physical conduct of a sexual nature" that had the purpose or effect of creating a "hostile or offensive work or educational environment."

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Although Lopez eventually received an "A" in his speech class and the College disciplined the professor, Lopez filed suit against the professor, the College and the District. In his lawsuit, Lopez argued that the College's speech code under the sexual harassment policy was overbroad and vague and was used by the professor to silence Lopez in violation of his free speech rights. Lopez also claimed that the sexual harassment policy posed an ongoing threat by chilling or suppressing Lopez's future speech.

The Ninth Circuit disagreed with Lopez. The court found that the professor did not threaten to enforce the sexual harassment policy against Lopez or even suggest that Lopez was violating the policy. As a result, Lopez failed to show a specific, credible threat of injury under the policy. The court also found that Lopez failed to adequately show how his speech, or any future speeches he might have given, would have violated the challenged policy. As a result, Lopez's claim of an ongoing, future threat lacked credibility.

Even though Lopez lost on appeal, the Ninth Circuit took the time to strongly caution against school policies which regulate speech on college campuses. "Such policies, well intentioned though they may be, carry significant risks of suppressing speech." This is true, the Court noted, even when someone expresses himself or herself in a way that others might find unpleasant or offensive.

The application of the First Amendment to campus speech codes applies not just to universities and colleges, but also to school districts and other public agencies. Public and private officials are tasked with carefully balancing constitutional rights while also seeking to ensure the safety and orderly conduct of their respective organizations. Should you have any questions regarding this decision and what it may mean for your organization, or free speech laws in general, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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