APPENDIX B

IN THE STUDENT BAR ASSOCIATION
JUDICIARY OF THE UNIVERSITY OF IDAHO
COLLEGE OF LAW

CHRISTIAN LEGAL SOCIETY STUDENT CHAPTER OF THE UNIVERSITY OF IDAHO,
Petitioner,

v.

STUDENT BAR ASSOCIATION COUNCIL OF THE UNIVERSITY OF IDAHO COLLEGE OF LAW
Respondent.

CASE NO. 01-01

FINAL DECISION AND ORDER

PER CURIAM for the unanimous SBA Judiciary,

BACKGROUND

The University of Idaho College of Law Student Bar Association Council ("SBA") is the legislative body of the law students at the University of Idaho College of Law ("College of Law") under the Student Bar Association Constitution ("SBA Constitution"). Each year, the SBA receives money from the fees that law students are required to pay to attend the College of Law. The SBA allocates this money each spring to

organizations affiliated with the College of Law pursuant to the [Page 2] SBA Constitution. To receive funds, an organization must, among other things, be recognized by the SBA, and must timely submit an application to the SBA. The SBA may deny funding to an organization that discriminates according to religion or other prohibited bases.

In early April, 2001, the Christian Legal Society Student Chapter of the University of Idaho (CLS), a recognized and previously funded organization, submitted an application to receive funds from the SBA. The National Christian Legal Society is an organization of lawyers which requires its members to sign a statement of faith. CLS also requires its local officers, voting members and members who are eligible to run for office to sign the statement of faith. All activities of CLS, including meetings, are open to anyone at the law school, regardless of that person's religion.

On April 17, 2001, the SBA held its annual budget meeting to consider funding applications submitted by recognized organizations. The SBA discussed the fact that CLS requires its officers and voting members to sign a statement of faith, and on this basis, the SBA decided that CLS discriminates according to religion in violation of the SBA Constitution. The SBA then voted to deny funding to the CLS and reserved the amount requested by the CLS in the event that CLS both complies with the SBA Constitution and files a supplemental budget request. CLS filed a notice of appeal of the SBA's decision, after which an open hearing was held on the matter.

JURISDICTION

The SBA Judiciary is created and governed by the SBA Constitution. See Article 1, Section 4. Article 4, Section 3(A) states that the SBA Judiciary shall make rulings in accordance with the SBA Constitution. Such rulings shall be binding on the SBA membership and the SBA Council. See Section 3(B). The SBA Judiciary's jurisdiction is limited under Section 3(B): "the SBA Judiciary shall only have the power to strike down an action taken or omitted by the other [Page 3] SBA officers if it finds the acts or omissions to be contrary to [the SBA] Constitution." SBA Council members are officers. See Article 5, Section 2. CLS has challenged the SBA Council's action denying funding to the CLS, based upon the SBA Council's determination that CLS discriminates on the basis of religion. CLS argues that the SBA's action in contrary to the SBA Constitution. We therefore have jurisdiction to consider this matter.

DISCUSSION

In the case before us, we must decide whether the CLS "discriminates" on the basis of religion. In determining whether the CLS discriminates on the basis of religion, the SBA Council refers us to Article 6, Section 2: *"Any organization that discriminates according to race, religion, sex, color, disability, sexual orientation or national or ethnic origin shall not be recognized as an entity worthy of funds, endorsement or participation through the SBA."*

What does discrimination mean? The word "discriminate" is not defined in the SBA Constitution. Therefore, we must look beyond the document itself. Both parties suggested in oral arguments that we use

a "common sense" definition, and also suggested in their briefs that we look to outside sources, including societal understandings and other bodies of law. In defining "discriminate," common sense approaches include consulting a regular dictionary definition, a legal dictionary definition, and definitions illuminated by outside law. All of those approaches yield a similar result. We will consider each of them.

One common dictionary defines "discriminate" as making "a difference in treatment or favor on a class or categorical basis in disregard of individual merit." Webster's Third New International Dictionary, 1976. The SBA points to a nearly identical definition in Justice Thomas' dissent in Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 614 (1999). Under this definition, CLS makes a [Page 4] difference in treatment or favor on a categorical basis; CLS allows only those who adopt their statement of faith to be voting members and officers in their religious organization. But does the CLS make a difference in treatment "in disregard of individual merit?" Merit is defined as "worth or excellence in quality or performance." Webster's Third New International Dictionary, 1976. As we understand it, individual merit is a person's qualifications or ability to perform a certain function. Certainly one could argue, as has CLS, that a person who does not have the same core religious beliefs as their religious organization, or who will not sign a statement adopting those core beliefs, likely is not the best qualified person to lead CLS in the accomplishment of its purposes. Arguably, under this definition, CLS does not discriminate.

As we are interpreting a "quasi-legal" document, another "common sense" option is to use a "legal" definition. Black's Law Dictionary (Seventh Edition)

contains several definitions. The first defines discrimination as "the effect of a law or established practice that confers privileges on a certain class or denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap." As an example, Black's then refers to Title VII of the Civil Rights Act which prohibits "employment discrimination based on any one of those characteristics." See 42 U.S.C. § 2000e. The SBA points to a similar definition in Justice Thomas's dissent in Olmstead, supra.

However, the Black's definition above, and the definition pointed to in Olmstead is only part of the equation. The second part of Black's definition is "differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." Federal case law uses a definition nearly identical. One federal court, in deciding what actions constitute discrimination under Title VII noted, " "[d]iscrimination" is a term well understood in the law. It is in general a failure to treat all persons equally where no reasonable [Page 5] distinction can be found between those favored and those not favored." Baker v. California Land Title Co., 349 F.Supp 235 (1972), aff'd 507 F.2d 235 (1974), cert. denied 422 U.S. 1046 (1975) (*quoting* Franchise Motor Freight Association v. Seavey, 196 Cal. 77, 81).

While we recognize that we are not interpreting Title VII, both parties point to that body of law to shed light on what would or would not be discrimination under the SBA Constitution. Additionally, with the similarities between Title VII and the SBA anti-discrimination clause, it requires no great stretch of the imagination to believe the

drafters of the SBA Constitution were mindful of Title VII, and likely even based the SBA anti-discrimination clause on the principles contained in Title VII. Furthermore, the SBA describes Title VII as "the quintessential discrimination law." For these reasons, we find the above definitions of discrimination useful and appropriate in interpreting the SBA anti-discrimination clause.

One reading of the SBA Constitution's anti-discrimination clause suggests that to receive funding, differential treatment may never be based on the enumerated grounds, including race and religion. Such reading, however, ignores the "no reasonable distinction" language used by Black's Law Dictionary, and used by federal courts when deciding what conduct constitutes discrimination, as noted above. We therefore find it necessary to consider whether differential treatment is based upon a reasonable distinction.

CLS engages in differential treatment of its members when it requires that those who wish to vote for officers or hold office sign a statement of faith. Therefore, we ask whether there is a reasonable distinction upon which the CLS may treat its members differently. In other words, is there any reasonable distinction between those who sign or do not sign CLS's statement of faith which would justify CLS's granting or withholding the benefits of voting for officers or becoming [Page 6] officers of the CLS?

The CLS was formed in large part for both religious, as well as for speech or expressive purposes. CLS bylaws state that one part of its mission is to maintain a Christian law fellowship through, among other things, prayer and Bible study.

The bylaws state that its purposes are to be accomplished through expressive activities, including "proclaiming the gospel in word and in deed . . ." Additionally, persons desiring to be leaders or voting members must adhere to and express CLS's core religious beliefs by signing CLS's statement of faith.

A person who will not adhere to or sign the CLS's statement of faith may not be the most effective person to advance the group's mission and purposes. If they had such beliefs or agreed fully with the purposes and beliefs of the CLS, why would they not sign? The statement of faith requirement is one way the CLS can attempt to maintain its identity and defining features; giving the leadership of the group to someone who is unwilling to sign or adopt the statement creates the possibility that the group will cease to be what it was created to be. The statement can help to ensure that its officers and voting members will be those most devoted to CLS's core beliefs and to advancing such beliefs. It is not foolproof, for one may sign the statement without sincerity; however, it is one reasonable way to ensure CLS officers will be those most likely to advance the core beliefs, the mission, and the purposes of the organization.

Even requiring voting members to sign the statement is a reasonable way to ensure that CLS officers are those most likely to advance CLS's cause. It is reasonable to believe that members who sign the statement will be more likely to elect officers most devoted to the beliefs outlined in the statement.

Under the facts of this case, we find that CLS's distinction between those who sign the [Page 7] statement of faith and those who do not sign the

statement is reasonable.

When deciding whether such distinctions are reasonable, outside law is helpful. Title VII sheds light on the reasonableness of distinctions based on religious beliefs. Even though Title VII prohibits discrimination on the basis of religion in the employment context, the statute carves out an exemption for a religious organization that makes employment decisions based on a potential or current employee's religious beliefs. See 42 U.S.C. § 2000e-1(a). In other words, the statute allows a not-for-profit religious organization to differentiate in the employment context based on religion. Such exemption appears to be an implicit statement by federal lawmakers that the religious beliefs of potential or current employees are reasonable distinctions upon which to base employment decision, at least when made by religious organizations in the employment context. State law is similar. See Idaho Code § 67-5910(1).

Of course, not all distinctions by religious organizations are reasonable, even if they are a part of the organization's religious beliefs. A religious organization is not exempt from racial discrimination in the educational setting when it seeks to qualify for a government benefit. See Bob Jones Univ. v. United States, 461 U.S. 574 (1983). Additionally, no Title VII exemption is granted to religious organizations that differentiate based on race. See 42 U.S.C. § 2000e-1(a). In the case before us, however, race is not a factor.

Based on the above analysis, we find that the CLS action requiring persons to sign the statement is a reasonable distinction upon which to grant or deny

the ability to vote for officers or become officers. Additionally, because such distinction is reasonable, we find that CLS does not discriminate on the basis of religion in violation of the SBA Constitution. [Page 8]

Additional policy considerations bolster this holding. The SBA, through its budgeting requirements, advances a policy of club openness to SBA members. By recognizing many different clubs with differing ideologies, the SBA also promotes a wide variety of viewpoints. In this case, the activities of the CLS are open to all SBA members, while the control of the club's viewpoints rests in those willing to sign the CLS statement of faith. This division between control and participation serves both SBA policies.

In a broader sense, the policies which drive federal and state law also support this finding. The definition of discrimination which we adopt today is tempered by such policy concerns. In our law and in our society, we recognize a strong policy of allowing differing viewpoints, including religious viewpoints room for expression, even when groups advocating those viewpoints seek government benefits. See Rosenberger v. University of Virginia, 515 U.S. 819 (1995). We also recognize a policy of promoting freedom of association. See NAACP v. Alabama, 357 U.S. 449 (1958); see also Roberts v. United States Jaycees, 468 U.S. 609 (1984).

By contrast and by way of example, our society, legal or lay, does not have a policy of encouraging racial discrimination. Entities seeking government benefits, as a general matter, are subject to government policies regarding racial discrimination

or other strong policies. See Bob Jones Univ., 461 U.S. 574; see also Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). If a club wished to restrict its membership on the basis of race, as a relevant characteristic of a race-based organization, such a policy would probably work an entirely different result under this same definition.

We find it unnecessary to reach the issue of whether the SBA Judiciary should or must consider this case consistently with federal and state constitutional law at this time. Nonetheless, we [Page 9] are mindful of the policies behind U. S. Constitutional law, and their obvious influence upon the drafters of the SBA Constitution.

CONCLUSION

The SBA Constitution does not define the term "discriminate." In order to find a sensible definition, we have undertaken the task of interpreting the meaning of the term. The meaning of the word is reasonably resolved using definitions grounded in lay and legal sources. Policies rooted in the SBA funding process, federal and state law, and our society on the whole further support this finding. We therefore hold that CLS does not discriminate on the basis of religion in violation of the SBA Constitution when it requires its voting members and officers to sign the CLS statement of faith.

In light of the above discussion, we strike the SBA Council's action determining that the CLS discriminates on the basis of religion in violation of the SBA Constitution.

IT IS SO ORDERED.

DATED this 23rd day of May, 2001.

[Page 10]

_____
David B. Hargraves
3L SBA Judiciary Justice

_____
Jennifer Douglass
3L SBA Judiciary Justice

_____
Ian Johnson
2L SBA Judiciary Justice

_____
Stephen Muhonen
2L SBA Judiciary Justice

_____
Richard Stover
1L SBA Judiciary Justice

disclaimer: Due to the effect of limited time allowances in the SBA Constitution, the SBA Judiciary humbly acknowledges that the citations in this opinion would fail to pass the rigorous standards of our favorite publication, the Bluebook.