

School Religious Groups Get Equal Benefits

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The 9th U.S. Circuit Court of Appeals ruled Monday that student religious groups should be afforded the same First Amendment protections as other campus organizations.

With the 2-1 decision, the court ruled that if a school district chooses to bestow certain benefits on, say, the chess club or the glee club, it must offer those same benefits to the Bible club.

"While certainly not required to grant student clubs access to these benefits, the school has chosen to do so," Judge Kim McLane Wardlaw wrote. "Having done so, it cannot deny access to some student groups because of their desire to exercise their First Amendment rights without a compelling government interest that is narrowly drawn to achieve that end."

The case arose after the Bethel School District in Spanaway, Wash., denied a religious group called World Changers the right to organize as an Associated Student Body club.

Instead, it allowed the students to organize under a special subcategory of school clubs, a move which denied them access to funds and school equipment otherwise afforded to ASB clubs. ASB clubs are also allowed to meet during school hours and have access to the school's public address system.

The school district argued that allowing World Changers to form as an ASB club would unconstitutionally intertwine the district with the club's religious views.

But the court rejected that argument, holding that the policy violated the 1984 Equal Access Act, which was aimed at giving religious speech the same protections as secular speech. That law was upheld in the 1990 Supreme Court case *Board of Education v. Mergens*, 496 U.S. 226.

However, the 9th Circuit went beyond statutory interpretation and held that the policy would violate the First Amendment as well. That, said school district lawyer John Binns Jr., is the most important aspect of *Prince v. Jacoby*, 01 C.D.O.S. 8241.

"What has been happening more and more is that courts have been grabbing hold of the Freedom of Speech clause of the First Amendment ... and have been coming down very consistently against the Establishment Clause," said Binns, a partner at Tacoma, Wash.'s Vandeberg Johnson & Gandara.

Binns said he was disappointed that the court didn't consider more carefully another argument that the district has the right to leave its "imprimatur" on which clubs are given ASB status. If it does, Binns said, the district could not favor a religious group.

Instead, Binns was left wondering whether the district could prevent the formation of any club, including, he suggested, a communist organization.

A lawyer for the plaintiff, Tausha Prince (who has since graduated), could not be reached for comment.

Judge Marsha Berzon dissented.

Berzon wrote that the Supreme Court has always held that "the Establishment Clause forbids student religious activities in the public school building during periods when students are compelled by law to attend school in that building."

Senior Judge Cynthia Hall wrote a concurrence addressing Berzon's dissent.

The decision was the latest in a series of provocative Establishment Clause cases decided both at the Supreme Court and the 9th Circuit.

Two years ago, for example, the 9th Circuit held that religious invocations at a valedictory speech were unconstitutional. And this summer the court ruled that the use of the phrase "under God" in the Pledge of Allegiance breached the wall between church and state, creating a hurricane of controversy.

In a separate case decided Monday, California's 2nd Appellate District upheld a lower court's decision to enjoin the Burbank City Council from reciting a prayer before every meeting expressing gratitude and love "in the name of Jesus Christ."

The city contended the trial court misapplied the test established under *Marsh v. Chambers*, 463 U.S. 783, and improperly focused on the very last sentence of the prayer, basing a determination that the prayer was sectarian on the "Jesus Christ" reference alone.

Thirty-four California cities had filed a brief in support of the city's position. One amicus argued the invocation was permissible under *Marsh* because it was not used to proselytize or disparage other faiths.

"The interest in protecting and safeguarding the fundamental constitutional right to maintain a separation between church and state and to demand neutrality when the interests of religion and government intersect is increasingly more important as our nation becomes more pluralistic," Justice Kathryn Doi Todd wrote.