



# Office of the Tufts Community Union Judiciary

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## Judicial Order № 1 (2012-2013)

The TCU Judiciary hereby orders the following:

1. All the members of the TCU Senate are prohibited from voting on the resolution entitled “A Resolution to Affirm the Inviolability of the Tufts Nondiscrimination Policy” or any other resolution that effects the same or a fundamentally similar end. This prohibition will not apply to any resolution, regardless of title, that effects a fundamentally different end. This prohibition shall also not be interpreted to, in any way, prohibit discussion, consideration, or debate of “A Resolution to Affirm the Inviolability of the Tufts Nondiscrimination Policy” or any other resolution that effects the same or a fundamentally similar end.

This order is issued as per the following reasoning:

1. As per the recent Tufts University Committee on Student Life decision (see: “Decision of the Tufts University Committee on Student Life on Recognition of Student Religious Groups”; <http://uss.tufts.edu/studentaffairs/handbook/SRGrecognition.asp>), it is henceforth permissible for student religious groups to establish criteria for leadership that constitute a justifiable departure from the TCU Non-Discrimination Policy, as codified in the TCU Constitution, Article I, Section D, Subsection 2.
2. Since the TCU Constitution, Article I, Section D, Subsection 2 states that “All members of the TCU shall be entitled to ... participate in any TCU-recognized organization without discrimination on the basis of race, color, religion, sex, gender identity and expression, national or ethnic origin, age, sexual orientation, disability, or an individual’s previous affiliations in criteria for membership, assignment of voting privileges, or rank, except as otherwise provided by federal or state law or university policy,” and university policy (of which the “Decision of the Tufts University Committee on Student Life on Recognition of Student Religious Groups” constitutes a part) now provides otherwise, the TCU Constitution automatically incorporates the “Decision of the

Tufts University Committee on Student Life on Recognition of Student Religious Groups”.

3. The TCU Constitution, Article VIII, Section B, Subsection 1 states that “If at any time the wording of this Constitution is in conflict with the wording of University Policy, the Policy of the University shall be automatically substituted by the CSL in place of the existing passage or passages.” As stated above, the “Decision of the Tufts University Committee on Student Life on Recognition of Student Religious Groups” is a part of university policy, and thus the “Decision of the Tufts University Committee on Student Life on Recognition of Student Religious Groups” is implicitly part of the TCU Constitution. This is the case even if the TCU Constitution, Article I, Section D, Subsection 2 did not already state “... except as otherwise provided by federal or state law or university policy.”
4. The TCU Constitution, Article II, Section A, Subsection 6 states that “The members of the Tufts Community Union Senate shall ... uphold and defend the word and spirit of this Constitution, and adhere to the bylaws of the TCU Senate.” To allow the TCU Senate to vote to pass or otherwise enact a resolution that penalizes or discourages, or provides support for the penalization or discouragement of, actions which are fully in compliance with the TCU Constitution would be to fail to uphold and defend the word and spirit of the TCU Constitution. To do so would be to permit the abrogation of the TCU Constitution through acts that penalize or discourage, or provide support for the penalization or discouragement of, constitutional actions and decisions.
5. It is thus considered to be a constitutional responsibility of members of the TCU Senate not to vote on the resolution entitled “A Resolution to Affirm the Inviolability of the Tufts Nondiscrimination Policy” or any other resolution that effects the same or a fundamentally similar end It is thus considered to be a constitutional responsibility of members of the TCU Senate, and the TCU Judiciary therefore issues this order to force all the members of the TCU Senate to adhere to their constitutional responsibility in this regard.

The TCU Judiciary hereby further orders the following:

1. Any member of the TCU Senate who votes on the resolution entitled “A Resolution to Affirm the Inviolability of the Tufts Nondiscrimination Policy” or any other resolution that effects the same or a fundamentally similar end shall be considered to have violated the TCU Constitution under the TCU Constitution, Article VII, Section A, Subsection 1. Any member of the TCU Senate may vote to pass or otherwise enact any resolution, regardless of title, that effects a fundamentally different end.

This second order is issued as per the following reasoning:

1. Members of the TCU Senate are, as per the TCU Constitution, Section A, Subsection 6, required to uphold and defend the word and spirit of the TCU Constitution. To uphold and defend the word and spirit of the TCU Constitution is thus, by definition, a constitutional responsibility of members of the TCU Senate. Violating a constitutional responsibility is, and must be, a violation of the TCU Constitution.
2. For a member of the TCU Senate to vote to pass or otherwise enact the resolution entitled “A Resolution to Affirm the Inviolability of the Tufts Nondiscrimination Policy” or any other resolution that effects the same or a fundamentally similar end would be to violate the TCU Judiciary’s *Judicial Order № 1 (2012-2013)*. The TCU Constitution, Article III, Section A, Subsection 3 states that “The TCUIJ may issue judicial orders to **force** members of the TCU Senate, Elections Commission and Recognized Student Organizations to adhere to their Constitutional responsibilities” [emphasis added]. The use of the word “force” implies that compliance with judicial orders is not optional. Thus, violating one is also a violation of the TCU Constitution.