

January 8, 2004

**BOY SCOUTS' STATEMENT IN RESPONSE TO CITY SETTLEMENT**

Desert Pacific Council was disappointed to learn today that the City of San Diego announced a settlement with the ACLU today in a case involving two City leases to Boy Scouts in San Diego. The City will be paying the ACLU \$950,000 and will be abandoning its defense of the leases. The Boy Scouts are not a part of the settlement.

Boy Scouts are disappointed that the City is settling with Plaintiffs so quickly, rather than defending the leases—and the Constitution—in Court as the Boy Scouts are doing. Boy Scouts are also staggered by the amount of the settlement, which provides funding to the ACLU lawyers to continue their attack on the Boy Scouts. That amount would have gone a long way toward reimbursing the Boy Scouts for the tremendous investment they have made in the two properties over the years. Instead, the City leaves the Boy Scouts to fight the ACLU by themselves.

Boy Scouts lease the parkland under Camp Balboa and the San Diego Youth Aquatic Center on the same terms as dozens of other community groups, including Girl Scouts, Camp Fire Boys and Girls, the YMCA, the Jewish Community Center, the Black Police Officers Association, and a couple of Presbyterian Churches. Girl Scouts, for example, lease the same amount of property on the same terms pursuant to the same leasing process that was approved by the City Council at the same time. Nevertheless, the federal district court singled out Boy Scouts because of their viewpoints and invalidated the Camp Balboa lease.

The Department of Justice, Civil Rights Division recently has expressed concern about how Boy Scouts in San Diego are being treated, as you can see in the attached letter. As Special Counsel for Religions Discrimination Eric Treene writes, “singling out the Boy Scouts for exclusion from [the City’s leasing] program based on their viewpoint would raise serious First Amendment concerns.” The Civil Rights Division has an interest in protecting constitutional rights in just these sorts of cases and may seek to intervene here.

The Supreme Court and the Ninth Circuit Court of Appeals have made it clear that an organization may not be excluded from a government program because of its values. Plaintiffs’ lawsuit asks the City to treat Boy Scouts differently more than 100 other nonprofit lessees. As the Director of the City’s Real Estate Assets told the district court, “singling out the Boy Scouts for disparate treatment because of their membership requirements would serve no valid public purpose, especially when the Camp Balboa property is open for use by all members of the public.”

Because the district court’s ruling also jeopardizes many of the other leases the City has entered into with community organizations, the Mayor and the City Council should show that they are willing to stand by their leases and protect the constitutional rights of citizens of San Diego. Instead, they are abandoning Boy Scouts and the constitutional principles involved.

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