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The War on the Boy Scouts

The ACLU never sleeps.

by Peter Ferrara

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IN JUNE 2000, the U.S. Supreme Court narrowly held that the Boy Scouts of America is free to exclude open homosexuals from the ranks of Scout leaders, even where a state anti-discrimination statute would otherwise prohibit the organization from doing so. Ever since, the American Civil Liberties Union has been resisting the decision. Wherever it can, the ACLU is suing, or threatening to sue, to demand that state and local governments and United Ways cut off all relations with the Scouts, on the grounds that governments and quasi-public entities must not associate with such a "discriminatory" group.

In late July, a federal district court in San Diego sided with the ACLU when it held a longstanding lease of parkland to the Scouts to be an unconstitutional establishment of religion. But the case is far from closed; it may be overturned on appeal, and even if it stands, the court's reasoning suggests that the remedy might be no more draconian than a requirement that the city allow other groups to bid for the Scouts' lease. Nevertheless, the case deserves a closer look. The bias expressed by the judge is noteworthy, as is the plaintiffs' zeal--in the absence of injury to any party--to harass the Scouts and if possible drive them from the public sphere.

The lease at issue in *Barnes-Wallace v. Boy Scouts of America* goes back decades. The city first leased an 18-acre parcel of Balboa Park to the San Diego Scouts in 1957 for a nominal annual fee. The Scouts have invested several million dollars in this property since then to build and maintain a first-class campground site. In 1987, the city similarly leased a half-acre parcel to the San Diego Scouts in Mission Bay Park. The Scouts have invested millions in that site as well to build an aquatic center.

The city's practice has been to negotiate privately with the Scouts to renew the leases. But both sites are open to the public for a nominal fee on a first-come, first-served, reservation basis and are heavily used by non-Scout youth groups. The Scouts have now invested more in these properties than their sale value on the open market, according to the ACLU's own expert witnesses.

Moreover, the city has shown the Scouts no favoritism in the leases. San Diego maintains similar privately negotiated leases of public land with over 100 other nonprofit organizations, including religious ones, such as the Lawrence Jewish Community Center, the Point Loma Community Presbyterian Church, the San Diego Calvary Korean Church, the Salvation Army, and the YMCA. In all these cases, the city's policy is to grant use of public property to an organization if it is willing to invest considerable amounts of its own money to provide a service to the public. In addition, the city grants public aid outright to nonprofit groups to provide public services. The grantees include religious groups, and even gay groups. Recipients have included Catholic Charities, Episcopal Community Services, the Salvation Army, and the Gay Men's Chorus of San Diego.

Against this backdrop, the ACLU sued the city on behalf of a lesbian couple and an agnostic couple both with Scout-age sons, even though neither the sons nor the parents had been excluded from either facility or had tried to become Scouts or Scout leaders. The ACLU sought summary judgment. Judge Napoleon Jones granted it, holding that the Balboa Park lease amounts to unconstitutional aid to religion, and his reasoning applies to the other lease as well.

But this is ludicrous. The Scouts receive no aid from the leases. Rather, the leases are a vehicle by which the Scouts provide millions in charitable aid to the city and the general public. The primary purpose and effect of the leases is not to advance religion, but to advance youth camping and water sports.

In his ruling, Judge Jones was not shy about stating his views. The Boy Scouts, he said, "displays intolerance towards individuals who identify themselves as homosexual, agnostic, or atheist by denying membership to or revoking the membership of gay and nonbelieving individuals." The Scouts' "strongly held, private, discriminatory beliefs," the judge continued, "are at odds with values requiring tolerance and inclusion in the public realm."

Tolerance and inclusion, that is, for liberal views, not for the traditional views embodied by the Boy Scouts. The San Diego case reflects an ominous metamorphosis in the gay rights movement. Gay rights used to be about the freedom of adults to do what they want with their sex lives behind closed doors, free of government interference or regulation. The public broadly has come to accept that view of government's role.

But what the ACLU seeks now is something quite different. It is pursuing the vilification and marginalization of those who hold to traditional morality.

In this new gay rights/ACLU world-view, approval of homosexual activity is mainstream, while the Boy Scouts, Catholics, and Bible-believing Protestants (not to mention Orthodox Jews, Mormons, Muslims, and so on) are all the fringe, unacceptable in polite society. The ultimate goal, one fears, is to prevent the expression and teaching of traditional values.

How much healthier if those who espouse the ACLU/gay rights view were to exercise their civil liberties and start their own scout group to express their opinions on homosexuality, atheism, premarital sex, social justice, or whatever they wish. People then could vote with their feet as to which outlook they support and which they think is right for their children.

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