

**U. S. Department of Justice****Civil Rights Division**

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*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

December 8, 2003

Mr. George A. Davidson  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, NY 10004-1482

Re: *Barnes-Wallace v. Boy Scouts*

Dear Mr. Davidson:

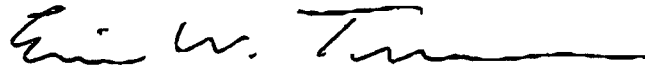
Thank you for your letter asking that the Department of Justice participate in the *Barnes-Wallace v. Boy Scouts* case.

We have reviewed preliminarily the arguments presented by the Boy Scouts as well as the District Court decision. The City of San Diego appears to have a broad policy and practice of entering into mutually beneficial, arms-length contracts with nonprofit groups with the goal of increasing city resources available to the general public. A holding that a city's decision to include the Boy Scouts in a broad-based program such as this violates the Establishment Clause raises substantial concerns. Indeed, singling out the Boy Scouts for exclusion from such a program based on their viewpoint would raise serious First Amendment concerns.

The Civil Rights Division has an interest in participating in cases of this nature. We have the authority to intervene in cases involving the denial of equal protection of the law based on religion pursuant to 42 U.S.C. 2000h-2. We have also participated as amici in the federal circuit and district courts in a number of cases brought against local governments for denial of equal access to government-sponsored fora. We likewise have opened formal investigations of jurisdictions to gather the facts necessary to evaluate our interest in participation.

The principle that the Establishment Clause is not violated by treating religion-related organizations equally in granting access to broad government programs is a principle that we have stressed through our amicus participation. Since this principle is at issue in your case, we ask that you keep us apprised of developments in the case, including any briefing schedules.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric W. Treene", with a long horizontal flourish extending to the right.

Eric W. Treene  
Special Counsel for Religious Discrimination