Freedom Forum

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The National Center for Law & Policy
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In This Issue

Tyranny Watch: California Moves to Award Boy Scouts & Other "Bigoted" Groups an [Un]merit[ed] Revenue Badge!

Proponents of the radical GLBT legal agenda once again have the Boy Scouts in their cross-hairs. If

Yoga on Trial: NCLP attorneys will be in court on Monday, May 20, 2013, arguing that Judge John S. Meyer should suspend the inherently and pervasively religious Ashtanga yoga program in

approved by the legislature and signed into law by Governor Brown, SB 323, proposed by Ricardo Lara (D-Bell Gardens), will remove the tax-exempt status of the Boy Scouts and other public charity youth organizations that "discriminate" on the basis of "gender identity" and "sexual orientation." The proposed law not only threatens the non-profit status of Scouts, but also private religious schools and para-church ministries, such as Young Life, Campus Crusade for Christ, Youth for Christ, Intervarsity, and the Fellowship of Christian Athletes.

California's decision to target the Boy Scouts is in spite of the fact that their membership policy was upheld in the *Dale* decision where the U.S. Supreme Court ruled in 2000 that, as a private organization, the Scouts could determine itsmembership standards as part of its First Amendment freedom of association and "expressive message." In *Dale*, the court concluded, "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." Apparently, Ricardo Lara either did not read or understand *Dale* before deciding to attack the Scouts precisely because of their "unenlightened" views, seeking to make them "pay" for their politically incorrect "sin" of refusing to dance around and hug the GLBT tree.

And you know a bill stinks when the *Los Angeles Times* publishes an editorial titled "Don't single out the Boy Scouts," arguing that even though they feel the Scouts' ban on gays is offensive, itdoesn't justify a California bill to remove its tax-exempt status. The April 12 editorial asked, "If legislators can go after the Scouts for engaging in legal (though offensive) behavior, what group will they go after next?" Great question!

the EUSD school district. The case continues to receive international media coverage. Your prayers are greatly appreciated!

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BSA v. Dale (2000)

"If legislators can go after the Scouts for engaging in legal . . . behavior, what group will they go after next?"

Los Angeles Times editorial

"Transparently, SB 323 is PC payback and tramples on many fundamental liberties protected by the First Amendment to U.S. Constitution, including the freedom of speech (which includes religious speech), the freedom of association, the freedom of religion, and the right of parents to direct the care and upbringing of their children," declared NCLP president Dean Broyles. "The power to tax is the power to destroy. This tax will decimate the Scouts and other youth organizations. Targeting groups that are not politically correct sets a very dangerous precedent. The tax exempt status of non-profit organizations must not be subject to whims of whoever happens to be controlling the government at the moment. We cannot afford to be silent. They will come for other non-profits and churches next. We must sound the alarm. I urge freedom-loving Californians to strongly object to this egregious legislation. Please forward this e-mail to your friends and family and ask your state senator to oppose SB 323." (Find your senator here.).

The 9th Circuit Affirms the Freedom to Pray Publicly in "Jesus' Name."

Shelly Rubin, who is Jewish, was offended when Bishop Henry Hearns offered a Christian prayer ending in "Jesus name . . ." at the April 27, 2010 Lancaster, California City Council meeting. In fact, she was so offended that she sued Lancaster for allowing Hearns, a private citizen, to pray a "sectarian" prayer. Lancaster's invocation policy, which neutrally invites religious leaders from the community to come and pray according to their faith tradition without government censorship, was upheld by the U.S. District Court. After losing her case at the District Court level, Rubin appealed her case to the

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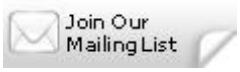


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"The opening of sessions of legislative and other deliberative public bodies with

U.S. Appeals Court for the Ninth Circuit.

At that point, because of The National Center for Law & Policy's experience with public invocation cases, NCLP attorneys were asked by the Alliance Defending Freedom (ADF) to file an amicus (friend of the court) brief in the matter of *Rubin v. Lancaster*. The City's position was bolstered by NCLP's brief filed on November 21, 2011 and the briefs submitted by four other organizations, including The National Legal Foundation (where Dean Broyles clerked in law school), Advocates for Faith & Freedom, the Justice & Freedom Fund and ADF. The 9th Circuit issued its written opinion on March 26, 2013. The result is one of the most pro-religious freedom and pro-individual conscience decisions to ever issue from the 9th Circuit.

The Court acknowledged the importance of legislative prayer by citing the seminal U.S. Supreme Court case, *Marsh v. Chambers*, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country." 463 U.S. 783, 786 (1983)."[S]o long as legislative prayer-whether sectarian or not-does not proselytize, advance, or disparage one religion . . . or affiliate government with a particular faith . . . it withstands scrutiny." *Marsh*, 463 U.S. at 795.

Putting the Lemon test aside, the 9th Circuit held, "we conclude that the question in this case is not simply whether, given the frequency of Christian invocations, the reasonable observer of Lancaster's city council meetings would infer favoritism toward Christianity. Rather, it is whether the City itself has taken steps to affiliate itself with Christianity." The court concluded that the City's religiously neutral invocation policy did not.

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Marsh v. Chambers

"The court's opinion in *Lancaster v. Rubin* stands as a bright and shining reminder of the importance of religious freedom in dark times when we are seeing increasing hostility towards religion in general and Christianity in particular. We were

In fact the 9th Circuit affirmed that it would be a violation of the First Amendment for the government to involve itself in the religious content of legislative prayers, including demanding that the prayers given by private citizens be "non-sectarian." This would be unconstitutional because "it would assign to the government the task of coauthoring prayers, precisely what the Court in *Lee v. Weisman* declared unconstitutional." In fact, the court cited a similar case from the Second Circuit to make its point: "A state-imposed requirement that all legislative prayers be nondenominational . . . begins to sound like the establishment of 'an official or civil religion,'" the Second Circuit has explained, and "[t]he problem with such civic religious statements lies, in part, in the danger that such efforts to secure religious 'neutrality' may produce 'a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious.'"

"The court's opinion in *Lancaster v. Rubin* stands as a bright and shining reminder of the importance of religious freedom in dark times when we are seeing increasing hostility towards religion in general and Christianity in particular," declared NCLP president Dean Broyles. "We were honored to be a part of the esteemed legal team that helped make this happen, and are pleased that the court followed the legal analysis set forth in our brief. We encourage all city councils, county councils, and statewide legislative bodies to adopt the model policy employed by Lancaster. It is a legally sound approach which allows private citizens to pray according to their religious tradition and the dictates of their conscience, unencumbered by government censorship of the content of their prayers, including illegal mandates that the prayers be 'non-sectarian.'"

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Lancaster v. Rubin

What Will Kennedy Do? High Court Appears Reluctant to Sail into Uncharted Marital Waters.

At the U.S. Supreme Court for more than an hour on March 26, 2013, most eyes and ears were focused on Justice Anthony Kennedy. This was the "big day" for marriage as California's Proposition 8 constitutional amendment approved by more than seven million state citizens, which defines marriage as the union of one man and one woman, had finally reached the U.S. Supreme Court. Kennedy is widely believed by Constitutional scholars to be the swing vote on the ideologically divided court.

The ghosts of *Roe v. Wade*, where in 1973 the court in landmark fashion fabricated a "right" to abortion leading to more than 50 million deaths and raging social conflicts over the past more than 40 years, floated in the background of the questions and concerns raised by many of the justices. And while attorney Charles Cooper did a decent job defending traditional marriage, it was Justice Scalia who singlehandedly established the theme for the debate-the best interests of children-when he said, "If you redefine marriage to include same-sex couples . . . you must permit adoption by same-sex couples and there's . . . considerable disagreement . . . among sociologists as to what the consequences of raising a child . . . in a single sex family, whether that is harmful to the child or not."

Attorney Ted Olson, seeking a sweeping ruling in favor of same-sex "marriage," argued that Proposition 8 was unconstitutional because it, according to him, denies gays the fundamental right of marriage and that making any distinction between heterosexual and homosexuals when defining marriage violated the

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Justice Antonin Scalia

Mr. Broyles goes to Washington.

Because of our involvement in Proposition 8 for the past six years, including filing an amicus brief at the U.S. Supreme

equal protection of the law However, Justice Kennedy was not as open to redefining marriage as Olson might have hoped, stating to Charles Cooper, "I think . . . there's substance to the point that sociological information is new. We have five years of information to weigh against 2,000 years of history or more." Later in the argument, when Olson was at the podium, Kennedy reiterated, "[T]he problem with the case is that you're really asking, particularly because of the sociological evidence you cite, for us to go into uncharted waters, and you can play with that metaphor, there's a wonderful destination [or] it is a cliff."

Even the liberals on the High Court struggled with what a principled stopping point would be once marriage redefinition begins. Justice Sotomayor asked Olson, "If you say that marriage is a fundamental right, what state restrictions could ever exist . . . . with respect to the number of people . . . incest laws . . . .?" Olson's answered, but not persuasively, stating that polygamy is bad for other reasons (exploitation, abuse, patriarchy) and that homosexuality involves class or "status" while polygamy involves "conduct."

Beside the redefinition of marriage, the hearing also considered whether the proponents of Proposition 8 had "standing" to defend it when California's governor and Attorney General, who would normally defend state laws, failed to do so because of ideological disagreements with the law. Kennedy appeared to be sympathetic to Cooper's standing arguments, chiding Ted Olson that to leave state law undefended at the whim of the governor and attorney general would "thwart the initiative process."

Many different results are possible, including that the

Court, Dean Broyles was present to hear these historic oral arguments, meet with our client Parents & Friends of Ex-Gays & Gays, and have lunch with ADF attorneys.

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Justice Anthony Kennedy

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justices may take up the sweeping issue of whether marriage should be redefined pursuant to equal protection or as a fundamental right, or leave it to the states to define marriage. Whatever the nine justices decide, we should have a written opinion to review by the end of June. Let us earnestly pray, for the sake of the health and strength of American culture, that they affirm the reality that children need a mom and a dad to most effectively navigate the rough waters of life.

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Justice Sonia Sotomayor

The National Center for Law & Policy is a non-profit 501(c)(3) legal defense organization dedicated to the protection and promotion of religious freedom, parental rights, and other civil liberties. The NCLP engages in constitutional litigation in state and federal courts and is also active in the areas of public policy and education.

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The National Center for Law & Policy
539 West Grand Avenue
Escondido, California 92025
Tel: (760) 747-4529
Fax: (760) 747-4505
E-mail: info@nclplaw.org
Web: www.nclplaw.org