

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-AA-000925

BOY SCOUTS OF AMERICA AND NATIONAL CAPITAL AREA COUNCIL, BOY
SCOUTS OF AMERICA,

Appellants,

v.

DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS,

Appellee,

and

ROLAND POOL AND MICHAEL GELLER,

Intervenors.

On Appeal from the District of Columbia Commission On Human Rights, Nos. 93-030-
PA and 03-031-PA

MOTION FOR LEAVE TO FILE BRIEF FOR AMICUS CURIAE

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MOTION

Pursuant to Rule 29 of the District of Columbia Court of Appeals Rules of Court, amicus curiae Bay Area Lawyers for Individual Freedom (BALIF) respectfully requests that this Honorable Court grant BALIF leave to file a brief in the matter of the Boy Scouts Of America And National Capital Area Council v. District Of Columbia Commission On Human Rights, Appeal No. 01-AA-000925.

INTEREST OF THE AMICUS CURIAE

BALIF is a minority bar association of over 500 lesbian, gay, bisexual and transgender members of the San Francisco Bay Area legal community. Founded in 1980, BALIF promotes the professional interests of its members and the legal interests of the gay, lesbian, bisexual and transgender community at large. As part of that mission, BALIF actively participates in public policy debates and frequently appears as amicus curiae in cases concerning the rights of lesbians, gay men, bisexuals and transgender persons.

BALIF has long been concerned about the discrimination that many of our nation's citizens face based solely on their sexual orientation. BALIF believes that States may constitutionally protect their citizens against sexual orientation-based discrimination in public accommodations, as the District of Columbia and various States have done. BALIF further believes that organizations like BSA, which have voluntarily sought and obtained extensive governmental sponsorship and endorsement and have enlisted governmental participation in dissemination of the organization's message, have no First Amendment associational right to engage in sexual orientation status-based discrimination in violation of State law. Accordingly,


BALIF respectfully submits that it can provide perspective and argument that will inform this Court's decision in a matter of such broad public importance.

Dated: March 4, 2002

Respectfully submitted,

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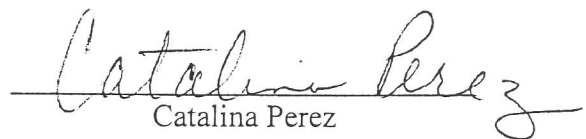
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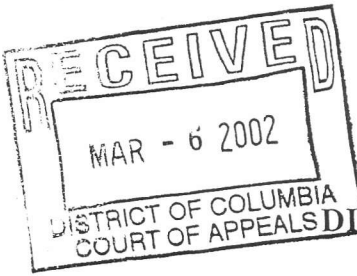
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Catalina Perez



DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-AA-000925

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BOY SCOUTS OF AMERICA,

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No. 01-AA-000925

BOY SCOUTS OF AMERICA AND NATIONAL CAPITAL
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Appellants,

DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS,

Appellee,

and

ROLAND D. POOL AND MICHAEL GELLER,

Interventors.

**Certificate Required by Rule 28(a)(1) of the
Rules of the District of Columbia Court of Appeals**

The undersigned, counsel for the Bay Area Lawyers for Individual Freedom, certify that the following listed parties appeared below:

1. Respondent Boy Scouts of America, now Appellant in support of reversing the decision of the District of Columbia Commission on Human Rights.
2. Respondent National Capital Area Council, Boy Scouts of America, now Appellant in support of reversing the decision of the District of Columbia Commission on Human Rights.
3. Complainant Roland D. Pool, now Intervenor in support of affirming the decision of the District of Columbia Commission on Human Rights.
4. Complainant Michael Geller, now Intervenor in support of affirming the decision of the District of Columbia Commission on Human Rights.

5. District of Columbia on Human Rights, now Appellee in Support of affirming its decision.

No *amicus curiae* appeared below.

These representations are made in order that judges of this court, inter alia, may evaluate possible disqualification or recusal.

DATED: March 5, 2002



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Pursuant to this Court's rule 29, amicus curiae Bay Area Lawyers for Individual Freedom (BALIF) respectfully submits this brief urging this Court to affirm the judgment of the District of Columbia Human Rights Commission. In particular, BALIF requests that the Court find that the District of Columbia's application of its anti-discrimination laws to prohibit status-based sexual orientation discrimination by an organization like the Boys Scouts of America ("BSA"), which has sought and obtained endorsement and leadership by governmental agencies and has enlisted the joint participation of the government in promulgating its viewpoints, does not infringe upon the organization's First Amendment rights of expressive association.

INTEREST OF THE AMICUS CURIAE

BALIF is a minority bar association of over 500 lesbian, gay, bisexual and transgender members of the San Francisco Bay Area legal community. Founded in 1980, BALIF promotes the professional interests of its members and the legal interests of the gay, lesbian, bisexual and transgender community at large. As part of that mission, BALIF actively participates in public policy debates concerning the rights of lesbians, gay men, bisexuals and transgender persons. BALIF frequently appears as amicus curiae in cases where it can provide perspective and argument that will inform a court's decision on a matter of broad public importance, such as this case.

BALIF has long been concerned about the discrimination that many of our nation's citizens face based solely on their sexual orientation. BALIF believes that States may constitutionally protect their citizens against sexual orientation-based discrimination in public accommodations, as the District of Columbia and various States

have done. BALIF further believes that organizations like BSA, which have voluntarily sought and obtained extensive governmental sponsorship and endorsement and have enlisted governmental participation in dissemination of the organization's message, have no First Amendment associational right to engage in sexual orientation status-based discrimination in violation of State law.

SUMMARY OF ARGUMENT

This brief is submitted in response to the argument by the BSA that application of State anti-discrimination laws to prohibit exclusion of gay members based solely on their sexual orientation status infringes upon its expressive association rights under the First Amendment. The BSA's claim, which attempts to force the District of Columbia Commission on Human Rights Commission (the "Commission") to accept factual findings reached in Dale v. Boy Scouts of America, 530 U.S. 640 (2000), on an entirely different record involving different plaintiffs, is fatally flawed because it ignores the express basis for the Dale Court's decision. There the Court found that admission of a gay activist could interfere with the BSA's professed anti-homosexual message based on his conduct in promoting and publicizing gay causes and could thereby infringe upon the organization's First Amendment expressive rights. Here, the record before the Commission shows – and the Commission expressly found – that 1) the anti-homosexual message of the BSA is wholly pre-textual and is belied by the testimony of the BSA's witnesses, including its sole national witness; and 2) the plaintiffs before the HRC were excluded solely on the basis of their status as gay men and not on the basis of any conduct in which they had engaged. Their discriminatory exclusion from the BSA was

therefore a violation of District of Columbia Human Rights Act and is not protected by the BSA's First Amendment expressive rights to control its organizational message.

BALIF believes that the BSA is precluded from maintaining any claim that an individual's mere status as a gay man is a sufficient basis for exclusion from the Boy Scouts and that such exclusion is inconsistent with the organization's public message in light of the extraordinary degree of financial, legislative and symbolic interconnection between the BSA and all levels of both the federal and State governments. The BSA has actively and successfully obtained the endorsement, sponsorship and imprimatur of all levels of government, from the President and Congress of the United States to State-run public schools and local fire and police departments. The organization's profound nexus with the government, its voluntary enlistment of federal and State participation in disseminating its message of positive moral values to our nation's youth, and the resulting public perception of government endorsement of the organization's viewpoints undercuts the BSA's expressive association claim for three reasons.

First, where an organization actively enlists the sponsorship, leadership and joint participation of the government to express its viewpoints, as the BSA has done for decades, and thereby chooses to benefit from its close identification with the government, it cannot invoke its expressive association rights to engage in discrimination based on mere status in a manner that its government partner would itself be prohibited from engaging in. Moreover, where a State has affirmatively prohibited discrimination based on sexual orientation status, the BSA's decision to enlist the agencies of that State as leaders of the organization – such as the schools, police organizations and firefighters that act as sponsors of Boy Scout troops – is wholly inconsistent with any claim that the

organization's core purposes require exclusion of members based on their status as gay men.

Second, as an evidentiary matter, the long history of joint participation by BSA and the government in promulgating BSA's message of positive moral values to youngsters – a message that traditionally has been silent with respect to questions of sexual orientation but that has advocated tolerance of all persons – undercuts the BSA's claim that its core expressive purpose is inconsistent with membership by gay men exclusively on the basis of their status. In fact, to find otherwise would suggest that the governmental agencies that have sponsored the BSA have in fact known about and endorsed the organization's purported "philosophy" against participation by gay members – a notion that finds absolutely no support in the record and that could raise serious issues under both state and federal law. On the contrary, were the BSA genuinely concerned about advocating a position condemning the status of homosexuality as its core expressive purpose and requiring the exclusion of gay members based merely on status, it could not logically enlist as its troop leaders the agencies and officials of a State that advocates a policy prohibiting discrimination based on sexual orientation status.

Finally, the "parade of horrors" that the BSA posits would result from affirmance of the decision below is wholly without basis. The unique relationship between the BSA and the government, based in large part on their joint promulgation of a message advocating positive values to young people, distinguishes the organization from other private noncommercial associations which do not solicit or receive similar endorsement, leadership and symbolic support of the government. There is therefore no danger that affirmance will lead down a "slippery slope" of excessive government

intrusion into all private organization's membership policies. On the contrary, the BSA has actively encouraged government participation in its expressive activities, is therefore not wholly private, and cannot be heard to complain when its governmental partner seeks to enforce its own laws against discrimination based exclusively on status.

The BSA's voluntary, substantial and widely-touted connections with the government cannot be reconciled with its claimed right to discriminate based on the status of gay applicants. Under these circumstances, and in light of the State's compelling interest in preventing unfair and irrational discrimination against its citizens based on sexual orientation status, application of D.C.'s anti-discrimination law to the BSA does not infringe upon its expressive association rights.

ARGUMENT

A. The Profound Nexus Between the BSA and the Government and the BSA's Choice to Enlist the Government in Advocating Its Message Is Inconsistent with BSA's Expressive Association Claim

The BSA argues that, under the First Amendment, private noncommercial associations retain the right to exclude any individual or group they choose from membership and especially from leadership positions, regardless of whether the exclusion is discriminatory and in violation of State law. They claim that this was the holding of the Supreme Court in Dale. It was not. The Dale Court instead found that the BSA was constitutionally entitled to exclude from membership a gay activist whose alleged public *conduct* in advocating gay causes was inconsistent with the BSA's expressive rights under the First Amendment. Neither the Dale decision, nor the decisions on which it relied, found that an organization's First Amendment rights of expressions swept so

broadly as to protect discrimination based on mere status such as the fact that an applicant is gay.

In addition, the right of wholly private organizations to refuse membership to those whose participation necessarily conflicts with the group's philosophical stance is not at issue here. The BSA's expressive association claim to defend its status-based discrimination disregards the reason the State's anti-discrimination law applies to its membership policies in the first place. The BSA has long maintained and has substantially benefited from voluntary, profound and widely-publicized connections with all levels of government, and has partnered with those governmental units in communicating its message advocating moral virtues to the nation's young. This well-established BSA/government partnership works to endow BSA's discriminatory membership practices with the "clear and unmistakable imprimatur of the State." Shelley v. Kraemer, 334 U.S. 1, 20, 68 S.Ct. 836, 845 (1948). In fact, unlike a purely private association, the core expressive purpose of the organization -- to teach young boys wholesome character virtues -- has been intentionally represented by the BSA, and is reasonably perceived by the public, as a message shared, encouraged and advocated by the government.

Under such circumstances, an organization which holds itself out as a joint participant with the government, especially for purposes of conveying its message to the public, may be limited in its otherwise constitutionally-protected conduct. See, e.g., San Francisco Arts & Athletics v. United States Olympic Committee, 483 U.S. 522, 548, 107 S.Ct. 2971, 2987 (1987) ("SFAA") (O'Connor, J., concurring and dissenting in part) (applying equal protection scrutiny to United States Olympic Committee's refusal to

grant permission to use the word “Olympics” to gay athletic group where the Committee and the government are “joint participants in the challenged activity”). In fact, the focus in the portion of the SFAA dissent in which Justice O’Connor concurred, detailing the close relationship between the federal government and the Olympic Committee, a non-governmental organization, is instructive here. As described below, both the BSA and the Olympic Committee have substantially entwined themselves with the government to the extent that they both have a governmental relationship that “confers a variety of mutual benefits.” Id., U.S. at 556-57, S.Ct. at 2991-92 (Brennan, J., dissenting); see also id., U.S. at 548, S.Ct. at 2987 (O’Connor, J., dissenting in part “largely for the reasons explained by Justice Brennan in Part I-B of his dissenting opinion”). Moreover, “in the eye of the public, both national and international, the connection between the [government and the organization] is profound.” Id., U.S. at 557, S.Ct. at 2992 (Brennan, J., dissenting). Finally, there is a “close financial and legislative link” between the “challenged conduct,” here the BSA’s claims with respect to its articulated “code” or “philosophy,” and the government. Id., U.S. at 558, S.Ct. at 2992.

1. The Relationship between the BSA and the Government Provides a Wide Range of Mutual Benefits.

As the four dissenters in SFAA recognized, where an organization and the government enter into a “symbiotic relationship” to their mutual benefit, there may arise a “sufficiently close nexus” that “action of the [private] entity . . . may fairly be treated as that of the State itself.” Id. (quotations omitted); see also Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856 (1961) (applying equal protection analysis to prohibit discrimination by private restaurant where its relationship with public parking facility contained in the same building “confer[red] on each an incidental variety of

mutual benefits”). That is precisely the nature of the relationship between the BSA and the government.

The BSA is a federally chartered organization. At the federal level, Congress has conferred a broad range of legal, financial and symbolic benefits on BSA. These include the exclusive right to use emblems, badges, and descriptive marks and words, see 36 U.S.C. § 30905, the right to use without charge United States government equipment, property and services, see 10 U.S.C. § 2544, and the free use of designated lands within the National Forest System, see 16 U.S.C. § 539f. Moreover, the BSA widely publicizes in order to communicate to the public that its core philosophy and message are shared by the government, that one of the causes contributing to its success has been the wholehearted way in which each President of the United States since William Howard Taft in 1910 has taken an active part in the work of the Boy Scouts. Indeed, every President over the past century has lent to BSA the extraordinary prestige and esteem of the office of the Chief Executive by serving as the organization’s “Honorary President” during his term in office.

This profound government nexus is equally broad at the state and local levels. Most States confer substantial tax and in-kind benefits on the BSA. Most significant is the role that State-run public schools and such local agencies as fire and police departments play as so-called “charter organizations” or sponsors of BSA activities. These local government agencies and their officials are responsible for leadership, the meeting place, and support for troop activities, an undertaking that involves both the use of public funds and resources and the invocation of the moral stature of the government to promote the philosophy and moral code of the BSA.

Moreover, the government has long acknowledged the advantages it enjoys from its endorsement of, and links to, the BSA and from its participation in promoting the message of encouraging positive values among young people. As Congress observed in 1916, the Boy Scout movement “tends to conserve the moral, intellectual, and physical life of the coming generation, and in its immediate results does much to reduce the problem of juvenile delinquency in the cities.” House Report No. 130, Sixty-Fourth Congress, First Session (1916). Congress has further noted that “Boy Scouts have demonstrated the value of the education and training they received as an auxiliary force in the maintenance of public order and the administration of first-aid and practical assistance in times of great public emergencies.” *Id.* In response to a 1934 appeal from President Franklin D. Roosevelt to help “the needy,” Scouts contributed “by collecting nearly 2 million articles of clothing, household furnishings, and other articles for family needs.” Boy Scout Fact Sheet: The Presidents of the United States and the Boy Scouts of America. President John F. Kennedy observed that, “the principles learned and practiced as Boy Scouts add to the strength of America and her ideals.” *Id.* President Richard M. Nixon commended BSA for teaching “good citizenship” and developing the potential of young citizens “for public service and [to] become effective leaders in their communities and in our nation.” *Id.* President Gerald Ford expressed his “confiden[ce] that [BSA’s] ability to bring ideals, values, and leadership training to millions of our young people will help to bring about a new era — a time in which not only our Republic will progress in peace and freedom, but a time in which the entire world shall be secure, and all its people free.” *Id.* President Ronald Reagan observed that “the Scouts strengthen the cornerstone of individual freedom in our nation.” *Id.* With respect to the

government agencies that sponsor Boy Scout Troops, BSA asserts that “[s]couting helps them achieve their objectives.” Organizations that Use Scouting, BSA Pamphlet.

2. The Relationship between the BSA and the Government Has Created A Profound Connection Between the Two in the Public Eye.

The portion of Justice Brennan’s opinion in SFAA in which Justice O’Connor concurred also relied on the observation that “in the eye of the public . . . the connection between the decisions of the United States Government and those of the United States Olympic Committee is profound.” SFAA, 483 U.S. at 557 & n.14, 107 S.Ct. at 2992 & n.14 (“In Burton the Court also found significant evidence that would link the two actors in the public’s eye.”) (Brennan, J, dissenting). This conclusion was based in part on the fact that “[t]he President of the United States has served as the Honorary President of the USOC,” and “[t]he national flag flies both literally and figuratively over the central product of the USOC, the United States Olympic Team.” Id.; see also Burton, 365 U.S. at 720; 81 S.Ct. at 859 (finding close link in public eye based in part on the fact that “the Authority located at appropriate places [on the facility] official signs indicating the public character of the building, and flew from mastheads on the roof both the state and national flags”).

For the better part of the past century, the BSA has cultivated, with recognized success, an equally strong association in the public’s mind between the government and its own activities and message of encouraging the physical, moral and mental development of young boys. By accepting not only the resources of the government but also its leadership – symbolic at the presidential level and actual at the local “charter organization” level – the BSA has joined with the government in promoting that

perception. Like the Olympic Committee, the BSA has enlisted the United States President as its Honorary President, and the flag of the United States adorns every Scout uniform and flies over scout activities. Confronted with scout meetings sponsored by local schools, led by local police and fire departments and supervised by local officials, held on government property with government monies and materials, and symbolically presided over and encouraged by the United States President, no member of the public could conclude other than that the BSA's message enjoys the full support of the government.

3. The BSA and the Government Have Close Financial and Legislative Links

Also, as the four dissenters noted in SFAA with regard to the USOC, the BSA's promotion of its message maintains close financial and legislative links to the government. Like the USOC, the BSA enjoys special federal legislative protection of its name and associated symbols such as badges and insignia, beyond the scope of ordinary patent law. Compare 36 U.S.C. §30905 ("The [BSA] corporation has the exclusive right to use emblems, badges, descriptive or designating marks, and words or phrases the corporation adopts.") with 36 U.S.C. § 380 (restricting use of the words and symbols associated with the Olympics). Congress has justified these special legislative benefits as a protection against "those who are seeking to profit" from the popularity of the BSA. Moreover, each governmental entity that undertakes to sponsor a Boy Scout troop is required by BSA Bylaws to provide "adequate facilities, supervision and leadership." The support provided by governmental "charter organizations" is intended to and does

have the effect of deeply involving governmental officials in affirmatively teaching BSA's moral code and philosophy.

4. States Have A Compelling Interest In Preventing Joint Governmental Partners From Engaging In Invidious Discrimination And Conscripting State And Local Entities Into Disseminating A Discriminatory Message Antithetical To State Policy And Practice.

In light of this joint partnership between the government and the BSA in promulgating the organization's philosophy and code, and the resulting governmental imprimatur stamped on the organization and its message, the BSA cannot invoke its First Amendment rights to avoid anti-discrimination provisions based on mere status in a way that would run afoul of the Equal Protection provisions of the Fifth and Fourteenth Amendments. Like the discriminatory law struck down by this Court in Romer v. Evans, 517 U.S. 620, 116 S.Ct. 1620 (1996), BSA's claimed membership policy pursuant to which Intervenors were excluded – a rule which specifically forbids membership to gay men based exclusively on their being homosexual– “is a status-based [provision] divorced from any factual context from which [one] could discern a relationship to legitimate state interests.” Romer, 517 U.S. at 635, 116 S.Ct. at 1629. As the Supreme Court held in Romer, a status-based restriction on homosexual participation in an organization as profoundly connected to the government as is the BSA cannot rest on the rationale of “respect for other citizens’ freedom of association, . . . in particular the liberties of [others] who have personal or religious objections to homosexuality.” Id. Yet, despite having enlisted governmental participation in its expressive activities, BSA attempts to rationalize its discriminatory membership practices by relying precisely on the impermissible purposes – associational freedom to exclude gay members and a moral

or philosophical objection to homosexuality – explicitly condemned in Romer. Like the statute invalidated there, the BSA’s purported membership policy “identifies persons by a single trait and then denies them [access] across the board.” Id., 517 U.S. at 633, 116 S.Ct. at 1628. Accordingly, the BSA’s discriminatory membership policy bears no rational relation to any legitimate end and therefore can support no legitimate expressive purpose protected by the First Amendment.

Moreover, the BSA’s enlistment of States as sponsors and leaders of its activities, despite various sponsoring States’ anti-discrimination policies is entirely inconsistent with any expressive association claim based on exclusion from leadership positions of those that do not share the organization’s purported stance on homosexuality. It makes no sense to seek and accept supervision, leadership and support from a State that affirmatively condemns sexual orientation discrimination, on the one hand, while simultaneously challenging the prohibition on the ground that it interferes with the organization’s associational right to select leaders that share its views favoring the discrimination. While churches and synagogues may be afforded the discretion to discriminate in selecting their leadership, none of those wholly private associations voluntarily invites leadership, sponsorship and supervision by State agencies which both administer and are subject to anti-discrimination laws – as the BSA has done here.

In short, as in SFAA, “[i]t would certainly be irony amounting to injustice,” 483 U.S. at 558, 107 S.Ct. at 2992 (quotation omitted), to permit a group like BSA, incorporated for the purpose of establishing through the boys of today the very highest type of American citizenship, which enlists governmental entities into leadership positions, to teach prejudice and discrimination by example.

B. The BSA's Partnership with the Government In Advocating Its Philosophy Belies Its Claim That Discriminating Against Gay Persons Is A Central Tenet Of Its Philosophy.

As an evidentiary matter, the BSA's claim that its core message, moral code or philosophy cannot be reconciled with gay membership is undercut by its extraordinarily close relationship with the government and the gay-neutral message advocating positive moral values that it has espoused for decades in order to cement that government sponsorship. As the Commission found, the record does not support the BSA's claim that a shared goal of Boy Scout members is to associate in order to preserve the view that homosexuality is immoral. This conclusion is bolstered by evidence of the organization's extensive relationship with the government. None of the Congressional or State legislation, presidential endorsements or state and local sponsorship directed at supporting the BSA even remotely refers to any anti-gay purpose or message. In light of the organization and government's long and shared history of promulgating a message of wholesome ethics and values for young people, a message that has always been silent on sexual orientation, the BSA's claim now that its message inherently conflicts with gay membership is wholly pretextual.

In fact, it is doubtful that the association could ever have solicited or obtained the governmental sponsorship it enjoys had it openly advanced its purported discriminatory status-based message. Open exclusion of gay members solely by virtue of their sexual orientation would raise serious questions about the ability of the States with anti-discrimination laws to continue to sponsor, lead and otherwise participate in BSA activities. In any event, the BSA cannot be heard to claim that it condemns

homosexuality and excludes gay members as part of its core expressive purpose when, at the same time, it actively enlists as its leaders the agencies and officials of States that have espoused the contrary policy and have banned discrimination based on sexual orientation. As result, the Commission's finding that intervenors' membership does not violate the BSA's right of expressive association because their inclusion would not affect in any significant way the BSA's existing members' ability to carry out their various purposes, should be upheld.

C. The BSA Has Overlooked Its Close Nexus with the Government In Exaggerating the Consequences of the Decision of the Court Below

Finally, the BSA's dire warnings that affirmance will trample on the associational rights of wholly private associations and will fundamentally change the face of America are without merit. Contrary to the BSA's admonitions, the decision below does not reach nearly so far. The BSA's long-standing and entrenched links with the government make clear that the organization is not wholly private. The decision below simply permits the District of Columbia to serve its compelling interest in prohibiting irrational discrimination against its citizens by organizations which have voluntarily chosen to enmesh themselves— their finances, sponsorship, supervision, leadership, and most critically, their expressive purpose – with the government and have actively sought the imprimatur of the government for their articulated message. Such a result does not unconstitutionally infringe on the First Amendment rights of the BSA.

On the contrary, the Constitution is far more offended by the government's joint partnering with a private association in expressive conduct that advocates discrimination against and exclusion of a class of citizens based solely on their status as gay men, in

contravention of the laws of various States. The expressive association rights of an organization to discriminate are reasonably limited where the organization has voluntarily joined forces to promote its message with a government that condemns – and is constitutionally prohibited from endorsing – the discrimination, and where the discrimination, like the policy the BSA attempts to defend here, is related to no rational state interest.

CONCLUSION

For the reasons stated herein, BALIF respectfully request that this Court affirm the decision of the Commission and hold that the expressive association rights of the BSA are not infringed by application of the District of Columbia Human Right's Act to


prevent the BSA from excluding members such as Intervenors based solely on their status as gay men.

Dated: March 5, 2002

Respectfully submitted,

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

On March 5, 2002, I served the foregoing document described as BRIEF FOR AMICUS BRIEF on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

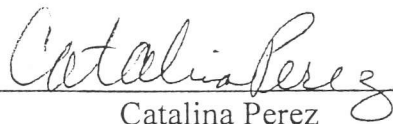
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Mr. Neil Alexander
Human Rights Commission
441 4th Street, N.W.
Suite 290 N
Washington, D.C. 20001

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 5, 2002, at Los Angeles, California.


Catalina Perez