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**March 22, 2003**

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### **City of Oakland Defends Constitutionality of Anti-Discrimination Policy**

Oakland, CA – Oakland City Attorney John Russo announced today that United States District Court Judge Vaughn Walker has dismissed 9 out of 10 causes of action in a lawsuit filed by the Good News Employee Association (GNEA) against City officials.

Filed in July 2003, the GNEA lawsuit attacked the City's policy that provides strong protection against harassment and discrimination based on race, gender, sexual orientation, national origin, religion and other protected categories. The lawsuit contends that the City's policy is unconstitutionally overbroad and vague, and that the defendants "promote homosexuality and its views on religion, and openly denounce Christian views which have been doctrine for thousands of years" and have "shown an unlawful preference for human secularism and homosexual world views."

The case stems from the fact that GNEA posted a flyer on an employee bulletin board which was removed by the City in accordance with its anti-discrimination, non-harassment policy. Entitled "Preserve Our Workplace with Integrity," the flyer read, "Good News Employee Association is a forum for people of Faith to express their views on the contemporary issues of the day. With respect for the Natural Family, Marriage and Family Values." The flyer, which was posted near a lesbian employee's workspace, was apparently in response to an e-mail sent to City employees which announced the time and place of a meeting of a new gay and lesbian employees' association.

After receiving a complaint about the flyer, the City removed it and distributed a copy of its anti-discrimination policy with a cover letter that explained that recently "staff has inappropriately posted printed materials that are in violation of (the policy). Specifically flyers were placed in public view which contained statements of a homophobic nature and were determined to promote sexual orientation-based harassment."

The GNEA lawsuit alleges that the City's policies and actions resulted in numerous constitutional violations: First Amendment (free speech, right to peaceable assembly, right to privacy and free exercise of religious beliefs, and Establishment Clause—fostering excessive government entanglement with religion); Fifth Amendment (Takings Clause); Fourteenth Amendment (Due Process Clause, Equal Protection Clause); Ultra Vires Claim (beyond the power authorized by law), and Article I, Section 1 of the California Constitution.

Last week United States District Court Judge Vaughn Walker dismissed 9 of the 10 causes of action. In addition he granted the City's request for attorneys' fees in the amount of \$1,353 as a sanction for plaintiffs' lawyers' failure to appear at a February 5 hearing.

The court recognized that the City has "significant interests in restricting discriminatory speech about homosexuals. . . .(and has) a duty under state law to prevent workplace discrimination on the basis of sexual orientation." The court further found that the plaintiffs (GNEA) failed to demonstrate that the City's anti-discrimination policy is "unconstitutionally vague," or that the City prevented group members' association, intruded on their privacy rights or interfered with the expression of their religious beliefs. In fact, the order confirmed that the City's "policy expressly protects employees from religious discrimination."

The court also threw out plaintiffs' due process, equal protection, Establishment Clause and takings claims and found that "the anti-discrimination policy is designed to further 'equal employment opportunity' and to ensure that all employees are free from harassment and discrimination."

Finally, the court granted the City's motion to dismiss the City of Oakland with prejudice, barring future action against the City, leaving one remaining claim to be litigated: whether then-City Manager Robert Bobb and then-Deputy Director of the Community and Economic Development Agency, Joyce Hicks, violated the free speech rights of GNEA members by removing the flyer from the employee bulletin board.

"The City of Oakland will tolerate no form of workplace harassment, whether it is based on sexual orientation, religion, gender, race, age or national origin, and we will fight vigorously to defend the policies and practices which protect employees from any form of discrimination," said City Attorney John Russo. "We are extremely gratified that the United States District Court recognized our right to maintain a productive work environment."

This case was litigated for the City of Oakland by Morrison & Foerster partner Angela Padilla. "Our clients acted reasonably to prevent discrimination in the workplace," she said. "We look forward to proving that the Plaintiffs' only remaining claim lacks merit, too."