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City of Oakland Prevails on Constitutionality of Anti-Discrimination Policy

Oakland, CA – Oakland City Attorney John Russo announced today that United States District Court Chief Judge Vaughn Walker dismissed the final cause of action in a lawsuit filed by the Good News Employee Association (GNEA) against City officials. Judge Vaughn found that “plaintiff’s First Amendment rights were not abridged...”

Filed in July 2003, the GNEA lawsuit attacked the City’s policy that provides protection against harassment and discrimination based on race, gender, sexual orientation, national origin, and religion. The lawsuit contended that the City’s policy was unconstitutionally overbroad and vague, 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 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.

In March 2004, Judge 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 final claim was 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. That claim was dismissed today.

“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 pro-bono for the City of Oakland by Morrison & Foerster partner Angela Padilla. “We are gratified that the court upheld the constitutionality of the City’s anti-discrimination policy on its face and as it’s applied,” she said.

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