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Justices OK Berkeley's move against Boy Scouts group

By DAVID KRAVETS
AP Legal Affairs Writer

SAN FRANCISCO — The California Supreme Court ruled Thursday that Berkeley did not violate the rights of youth sailors connected to the Boy Scouts of America when it demanded marina fees because the group violates a city anti-discrimination policy.

The city revoked free berthing privileges for the Berkeley Sea Scouts because the Boy Scouts bar atheist and gay members, which violates the city's 1997 policy to provide free berthing to nonprofits that don't discriminate.

The free speech case challenged the legality of removing or withholding public subsidies from groups whose deals run counter to the government.

The justices ruled Berkeley, celebrated in the 1960s as the home of the Free Speech Movement, could demand that a group receiving subsidies renounce a policy of "invidious discrimination."

"We agree with Berkeley and the court of appeal that a government entity may constitutionally require a recipient of funding or subsidy to provide written, unambiguous assurances of compliance with a generally applicable nondiscrimi-

nation policy," Justice Kathryn Mickel-Wendger wrote for the court. City officials told the Sea Scouts that the group could retain its berthing subsidy, valued at about \$500 monthly per boat, if it broke ties with the Boy Scouts or disavowed the policy against gays and atheists.

The Sea Scouts, which teaches sailing, carpentry and plumbing, refused to do so and maintained that such an edict was unconstitutional because it compelled speech it did not agree with.

The Sea Scouts, which received free berthing for seven decades, also contended the group was unfairly singled out because Cal Sailing Club and Berkeley Yacht Club still receive privileges at the city-owned Berkeley Marina.

The Sea Scouts alleged its free speech and freedom of association rights had been violated in light of a 2000 decision by the U.S. Supreme Court that said the scouts' membership policies were legal.

Lower courts ruled against the Sea Scouts, which has about 40 members and had as many as 100 before the subsidy was removed. A San Francisco appeals court said Berkeley could use subsidies to further a public agenda.

The Sea Scouts berth one boat at the Berkeley Marina, where the group now pays a \$500 monthly fee. The group removed two others because it could not afford the fee.

The city argued that U.S. Supreme Court in 1984 said the Department of Education could withhold funding to schools that discriminate on the basis of gender, and ruled the year before that Bob Jones University could be stripped of its "charitable" tax status because of its admission policy barring black students.

The Berkeley Sea Scouts argued that the California Supreme Court in 1967 overturned a Los Angeles County ordinance that required prospective municipal employees to take an oath repudiating groups that advocated overthrowing the state and federal governments.

The group also argued that the U.S. Supreme Court in 1972 ruled that a local chapter of the Students for Democratic Society could not be barred from using a Connecticut college's campus facilities because it was affiliated with what the university deemed a national group "likely to cause violent acts of disruption."

The case is *Evans v. Berkeley*, S112621.

Appeals court interprets pee-nal code

By JOSH RICHMAN
The Oakland Tribune

So much for the "when you've gotta go, you've gotta go" defense. The state Court of Appeal ruled Wednesday in a Berkeley case that public urination is a state crime. There's no specific law against it, but it qualifies as a public nuisance.

An Oakland police officer saw David McDonald urinate in a parking lot along San Pablo Avenue in Berkeley late one night in January 2003. The officer intended to cite McDonald for this, placed him under arrest while confirming his identity and found

McDonald at his preliminary hearing moved to suppress that evidence, arguing there's no specific state law against public urination so the officer lacked reasonable suspicion to detain, cite and search him. A judge disagreed, finding urine could be "waste matter" in the state's littering law.

McDonald later tried to have the drug-possession charge against him dismissed on similar claims. This time, prosecutors said the officer detained him on suspicion both of littering and committing a public nuisance. McDonald's motion again was

denied; he was convicted and sentenced to probation with drug treatment.

The appeals court said Wednesday public urination isn't littering because urine is carried within a person, not "on or about" a person as "waste matter" must be under state law's definition.

And urine isn't "nauseous, sickening, irritating or offensive to any of the senses" as defined by another state law section that also makes it a crime to "manufacture or prepare, or to possess" such substances — just making urine can't be a crime, the court found.

THE IDITAROD Swingley first into checkpoint at race's halfway point

By JEANNETTE J. LEE
Associated Press

TAKOTNA, Alaska — Montana musher Doug Swingley kept his lead Thursday in the Iditarod Trail Sled Dog Race by arriving first in Cripple, the halfway point of the more than 1,100-mile race from Anchorage to Nome.

As of early Thursday morning, the four-time Iditarod winner was the only musher into Cripple. Five teams were chasing him, having left the abandoned gold mining town of Cripple for the 60-mile journey to Cripple, an unpopulated test checkpoint on the Inukjuag River.

Race officials reported that a 4-year-old dog in the team of Nenana musher Noah Bernmeister died Thursday morning. The dog, called Yellowknife, had been dropped from Bernmeister's team at the Rohn checkpoint and flown to Anchorage for treatment. He was hospitalized when he died. A necropsy was being done to determine why the dog died, officials said.

Race Marshal Mark Nordman said Bernmeister carried the dog in his sled into the Rohn checkpoint on Tuesday. Pneumonia is suspected of causing the dog's death, he said.

The Iditarod commemorates a dog sled relay in 1925 that carried serum 674 miles from Nenana to Nome to stop a diphtheria outbreak. The ceremonial start was held Saturday in Anchorage, and the official start was Sunday in Willow, about 60 miles north of Anchorage.

Competitors in the race pass through 24 checkpoints en route to the old gold mining town of Nome on the state's western coast. Top finishers usually arrive in Nome in nine to 10 days.

DeeDee Jonrowe of Willow, who twice has finished second, was in second place, followed closely by Jim Smyth of Big Lake. John Baker of Kotzebue, who has finished in the top 10 every year since 2001, was in fourth.

Paul Gribbaird of Kaslo, who was leading Tuesday until his sled slammed into a tree and he temporarily lost his dog team, moved into fifth place.

Swingley, who likes to get out in front and stay out in front, said he's looking for a fifth win this year. The race's only five-time champion is Rick Swenson of Two Rivers who last won in 1991.

Meenerville, some other top contenders remained at the hospitable 50-person village of Takotna, where they feasted on steak and lobster.

Takotna residents greeted arriving mushers in the 79-team field and shoveled dog waste and straw as dog sleds came and went in near zero-degree temperatures.

"It's our checkpoint and it's grown and grown," said organizer Jan Newton, who lives in Takotna for 27 years. "We just try to make everybody feel at home."

Several mushers on Wednesday napped between pews in a log chapel or in a darkened library, as their dogs lay curled in straw nests on the gently sloped hill. Others chatted and dined on pie and burgers in the community center, whose walls were covered with posters and photos from Iditarod past.

"It's by far the most hospitable up to here for sure," said a heavy-eyed Baker, 45, as he sipped a cup of free coffee. Top finishers of the world's longest sled dog race will likely arrive early next week in Nome. The fastest time was set in 2002 by four-time winner Martin Buser of Big Lake, who pulled into Nome in eight days, 22 hours and 46 minutes.

Four mushers have scratched from the race, according to the Iditarod Trail Committee.

The winner will receive \$60,000 and a new truck. Altogether, the top 30 finishers will split \$795,000. Other finishers will split \$40,000.

ACLU targets drug dogs at Marin City school

Says with no drug problem, dogs may show racial bias

By DON SPEICH
Marin Independent Journal

The American Civil Liberties Union has called on the Sausalito Marin City School District to stop using drug-sniffing dogs at a Marin City middle school because the district "lacks a legitimate basis" for the practice.

In a March 2 letter to the district, the ACLU does not say what it will do if the district fails to comply with its request. Stella Richardson, media director for the civil rights organization in San Francisco, would only say, "We are still waiting for a response and we continue to monitor the situation carefully."

School board president George Stratigos said Wednesday the district has no plans to halt the use of dogs at the 38-student Martin Luther King Jr. Academy, even though he and other board members concede there is no evidence of a drug problem at the school.

In the letter to interim district superintendent Mary Buntler, ACLU Legal Director Alan L. Schuster wrote: "Considering the fact that MLK Academy's small student body is primarily African

American, the district's decision to apply the dog sniff policy to all students, in the absence of a drug problem, raises serious questions about whether the policy is, in part, racially motivated."

The district connected with Intersect Detection Canines of Houston earlier this year to perform monthly inspections at the school. During the inspection, which will continue to the end of the school year at a cost of \$2,500, students go outside, leaving behind backpacks and other personal items, and the dogs are taken into classrooms to sniff for drugs.

The first inspection occurred on Jan. 23. A Monday. Parents said that the previous Friday, they received a letter from the district notifying them of the inspections for the first time.

Parents and students protested at a February board meeting about both the drug-sniffing program and the late notice, saying there was no time to prepare their children, some of whom are frightened of dogs.

Trustees stood firm behind their decision made in November, reiterating, however, that no drug problem was suspected.

"The act of requiring the entire MLK Academy student body to part with their belongings and leave them in classrooms for dogs to sniff constitutes a 'search' under the Fourth Amendment, and must therefore be justified by individualized suspicion," said the ACLU letter.

It noted legal precedents and cited a federal case that upholds the ACLU's position that the searches are illegal.

"Under California and United States Supreme Court precedent, searches or seizures of student possessions 'must be based on a reasonable suspicion that the student or students to be searched have engaged, or are engaging, in a proscribed activity.'"

In Marin, drug-sniffing dogs are used in the Novato Unified School District and Marin Catholic High School. Both programs are conducted by Houston's Intersect.

Sharon Turner, a Marin City activist, charged at a community meeting Wednesday that the rationale behind the drug searches is to find a suspect.

"If they could find even one incident of drugs, they could say the district's (test) scores are because of drug problems," said Turner.

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