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The Boy Scouts' Free-Speech Fight

By Sean Scully/Philadelphia

The City of Philadelphia wants the Boy Scouts to be prepared — prepared, that is, to change their views on homosexuality or get out of the city-owned building they have occupied for 80 years. "As a city government we cannot allow discrimination in the delivery of services on public property; that is the issue," said Mayor Michael Nutter. "The Boy Scouts, they have some options here — they can change their policy, they can pay full-market rent, or they cannot be on public property."

The unorthodox property/free speech battle is focused on the classic Beaux Arts building just off the city's famed Ben Franklin Parkway that the local council of the Scouts have occupied for 80 years. Although the Scouts built the building at their own expense, it sits on half an acre of city-owned land and is therefore technically city property. Under an agreement with then-Mayor Harry Mackey, the Scouts paid \$1 per year so long as they operated and maintained the building. But with a Saturday deadline looming for the local council of the Scouts to either alter their policy on homosexuality or say goodbye to their symbolic rent (or the property), the Scouts are making their case in federal court, accusing the city of trampling on their freedom of assembly, guaranteed by the First Amendment.

Neither side actually expects a showdown on Saturday — Nutter said the city doesn't plan to evict the Scouts by force and both sides say they will work the issue out in court now that it is there. The Scouts say they could probably raise the money to pay the public rent, but it would mean sacrificing major programs, including a summer camp that serves at least 800 youths in a city that is in desperate need of activities that keep kids off the violent streets.

"I don't even think it's fair to say this is a city-owned building. Technically that is true, but it's a building that the Boy Scouts built with donations they received from their supporters and now the city wants to take that back," said Jason Gosselin, lead attorney for the Cradle of Liberty Council, the local Scout organization, which filed suit against the city on May 23, a week before the city-imposed deadline to comply with its policy. The city is using its financial leverage to force the Scouts to give up their Constitutional rights,

Gosselin said, and "that is as much as violation of the First Amendment as if the city told them they had to change their policy."

The once cozy relationship between the Scouts and the city collapsed in 2003, when then-Mayor John Street told the Scouts that their long-standing policy of excluding gays (and atheists as well) from their ranks violated the city's 20-year-old anti-discrimination policy. The city gave the Boy Scouts a stark choice — change the policy, pay full market rent of \$200,000 per year, or vacate the building.

"If we were talking about an organization that discriminated against African Americans, Italians, the Irish, Catholics, people of the Jewish faith, or any of a number of other categories, there would be such an outrage that you wouldn't be able to contain it," said Nutter, who has continued Street's policy. "I don't understand...how the organization can countenance discrimination and then expect to carry out that activity on public property."

"Philadelphia, which is the cradle of liberty, is now the graveyard of liberty," Scouts spokesman Bob Bork said. "Philadelphia has put a bounty on free speech and that bounty, in the Scouts case, is \$200,000 a year." Indeed, the Supreme Court did uphold the Scouts' policy in 2000, when it said that, as a private organization, the Scouts had a right to set their own terms of admission.

But that freedom has come at a price for the Scouts, as private groups and municipalities have withdrawn support for the group or severed longstanding relationships. In California, for example, the city of Berkeley ended an agreement in 1998 to provide the Scouts free access to space at the city-owned marina, and San Diego, after gay and agnostic parents sued, agreed in 2004 to end the practice of giving the group special access to city parks. Some parts of the United Way, including the chapter serving Philadelphia, have stopped contributing to the Boy Scouts, citing the group's restrictive admissions policy. Congress weighed in with a 2005 law requiring local governments that receive federal funding to give the Scouts the same access to public facilities that they provide others. Philadelphia city attorneys insist the law only applies to access to meeting space and public events.

While some organizations and governments have been hostile to the Scouts, Bork said, many have been supportive. "We clearly had some issues with organizations that don't respect the Scouts' right as a private organization to set its own membership standards and have withdrawn their support," Bork said. "But frankly that's their right too, and we respect that."

In this case, the Scouts say, Philadelphia is unfairly singling them out under pressure from gay rights activists. They point out that the city has leased facilities to other organizations that officially discriminate against gays in some capacity, including the Catholic Church. Nutter dismissed that argument as a distraction.

"If there are other groups and organizations similarly situated, we will certainly get to the bottom of it and take the appropriate action," Nutter said, "but for the moment, we're talking about the Boy Scouts... the right thing to do for the Boy Scouts is to stop discriminating against homosexuals and atheists."

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