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September 24, 2010

Council Member Tony Young
City of San Diego
202 C Street
San Diego, CA 92101

Re: Sponsorship of San Diego Praise Fest

Dear Council Member Young:

I understand you co-sponsored the 2010 San Diego Praise Fest, which was “designed to provide the San Diego community with an opportunity to come together in praise and worship through various forms of gospel music and healthy cultural celebration.”¹

The ACLU strongly supports the right of individuals and private organizations to sponsor or participate in religious praise and worship. However, I am concerned that sponsorship of the Praise Fest in your official capacity as a city council member, using your official logo and linking to your official City website, as well as promoting the event in an official flyer from your office with the City’s logo, implicated California law prohibiting governmental aid to religion.

The California Constitution prohibits state and local government from directly supporting or endorsing religion in any way, independently of federal law. Specifically, Article XVI, section 5 (“No Aid Clause”) of the California Constitution provides in relevant part, “Neither the Legislature, nor any county ... or other municipal corporation, shall ever ... grant anything to or in aid of any religious sect, church, creed, or sectarian purpose” This strict provision is enforced independently of federal law. *Locke v. Davey*, 540 U.S. 712 (2004).

The No Aid Clause prohibits “granting ‘anything’ to or in aid of sectarian purposes,” and thus it “forbids more than the appropriation or payment of public funds to support sectarian institutions. It bans any official involvement, whatever its form, which has the direct, immediate, and substantial effect of promoting religious purposes.” *California Educational Facilities Authority v. Priest*, 12 Cal.3d 593, 606 n.12 (1974).

¹ <http://sandiegopraisefest.com/info.html> (visited Sept. 22, 2010)

The No Aid Clause is not limited to financial or material support. "The prohibited aid under this section includes aid 'in the intangible form of prestige and power.'" *Feminist Women's Health Center, Inc. v. Philibosian*, 157 Cal.App.3d 1076, 1093 (1984). Accordingly, the No Aid Clause "is so broad that state or local governments need not provide a financial benefit or tangible aid in order to violate the provision; they violate it by doing no more than lending their 'prestige and power' to a 'sectarian purpose.'" *Paulson v. City of San Diego*, 294 F.3d 1124, 1130 (9th Cir. 2002).

Apart from the fact that the Praise Fest is about "praise and worship," its website features a Latin cross, which "is the preeminent symbol of many Christian religions and represents with relative clarity and simplicity the Christian message of the crucifixion and resurrection of Jesus Christ, a doctrine at the heart of Christianity." *Ellis v. City of La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993). The Praise Fest thus qualifies as a "sectarian purpose" under the No Aid Clause.

I recognize, indeed defend, your right as an individual to attend, participate in, and/or speak at Christian events such as the Praise Fest. However, the California Constitution imposes certain limits on council members when they lend the City's imprimatur to an event. It is questionable whether your sponsorship of the San Diego Praise Fest as an official representative of the City complied with the No Aid Clause. In addition, the sponsorship raises concerns under the No Preference Clause, Cal. Const. Art. I, §4 ("Free exercise and enjoyment of religion without discrimination or preference are guaranteed"), given that the Praise Fest was apparently a Christian event and your sponsorship appeared on the same webpage as a prominent Latin cross. *Cf. Fox v. City of Los Angeles*, 22 Cal.3d 792, 796-98 (1978) (city may not display Latin cross on City Hall).

For these reasons, I ask you to refrain from sponsoring similar future events in your official capacity as a representative of the City. If you wish to sponsor such events, you may wish to consider doing so without using City logos or resources, solely in your capacity as an individual. Please contact me if you have any questions or concerns.

Sincerely,



David Blair-Loy
Legal Director

cc: Jan Goldsmith
City Attorney