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January 31, 2008

Mr. Pedro Orso-Delgado  
District Director  
Caltrans, District 11  
4050 Taylor Street  
San Diego, CA 92110

Re: San Diego Minutemen Adopt-A-Highway participation

Dear Mr. Orso-Delgado:

I am writing to comment on recent developments regarding the San Diego Minutemen (SDMM). I understand Caltrans has notified SDMM that the group will no longer be allowed to clean a stretch of Interstate 5 near the San Clemente border checkpoint. Caltrans previously assigned that location to SDMM under the Adopt-a-Highway program. Caltrans has removed the location from the program entirely and removed the SDMM sign.

Caltrans has offered to allow SDMM to adopt a section of Highway 52, near Mission Trails Regional Park, an offer that SDMM has so far declined. Caltrans claims that it offered to move SDMM's adopted stretch of highway and closed the Interstate 5 location because of concerns about traffic safety.

Caltrans is also determining whether SDMM meets state requirements for participating in the Adopt-a-Highway program. According to Caltrans, "Entities that advocate violence, violation of the law, or discrimination based upon race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation may not participate in the Adopt-A-Highway Program."

The government may not deny access to the Adopt-a-Highway program based on viewpoint, advocacy, or beliefs. Above all, the First Amendment prohibits viewpoint-based discrimination. Caltrans may not disqualify SDMM based on SDMM's viewpoints, however repugnant those viewpoints may be to many. Even if Caltrans finds that SDMM advocate violence, violation of the law, or discrimination, it may not prevent SDMM from adopting a highway. Any Caltrans regulation to the contrary may be

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unconstitutional. Advocacy of conduct, even illegal conduct, is not the same thing as engaging in that conduct. The First Amendment protects the right to advocate illegal conduct except where such advocacy is intended to produce and in fact likely produce imminent illegal action.

We understand SDMM have retained a lawyer and may file a lawsuit to challenge the transfer of SDMM's adopted stretch of highway. SDMM may also challenge their disqualification from the program if it happens. We are monitoring the issue, and if litigation is filed, we will consider whether an amicus brief is appropriate, as we do in other cases where plaintiffs are represented by counsel.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely yours,

David Blair-Loy  
Legal Director