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Powell v. Portland School District

Chronology

October 15, 1996

During school hours, a Boy Scout troop leader is allowed to speak to Harvey Scott Elementary school students, encouraging them to join the Boy Scouts. Troop leader and school employees put wrist bracelet on Remington Powell and instruct him to wear it home and ask his parents to read it. The bracelet says "Come Join Cub Scout Pack 16! Round-Up for New Cub Scouts for Boys in Grades 1-5...Scott Elementary School." The bracelet, similar to the type used in hospitals, is only removable by cutting off with scissors.

October, 1996

Knowing that the Boy Scouts bar membership to atheists, and that Remington, an atheist, will not be able to join the Cub Scouts, Remington's mother, Nancy Powell speaks to Harvey Scott principal and his supervisor. She asks them not to let the Boy Scouts recruit in the school during school hours because the Boy Scouts bars admission to all children who are atheists. She is ignored.

April 8, 1997

Portland Public School District spokesperson Lew Frederick speaks to an open meeting at the Atheist Community Center of Oregon. At that time, he stated that the school employee who helped the Boy Scout troop leader put on wrist bracelets was not to do that and the Boy Scouts had been told not to do that again.

April 10, 1997

Nancy Powell attends the Portland School Board meeting. She provides each school board member a notebook, documenting Boy Scout policy barring atheists, the events that have occurred at Harvey Scott and a copy of the Portland District rules barring activities at school that bar admission based on religion (PPSD Rule 3.30.020(9)). She asks for the opportunity to speak before the Board.

June 25, 1997

Nancy Powell writes the school board asking for a response and requesting again that they not allow the Boy Scouts to recruit during school hours because of their discriminatory religious policy.

August 5, 1997

Having heard no response from the School District, Nancy Powell files a complaint with Norma Paulus, Superintendent of Public Instruction under ORS 327.109 which prohibits public schools from sponsoring, financially supporting or being actively involved with religious activity. As part of her complaint, Nancy Powell files extensive documentation of the Boy Scout's policy discriminating against atheists.

August 20, 1997

Portland District Superintendent Jack Bierwirth, also serving as the Senior Vice President of Outreach for the Boy Scouts, states before a television reporter that there are plenty of Scout leaders who have told Nancy Powell that her son would be perfectly welcome in their troops no matter what his belief. No Scout leader ever contacted Nancy Powell. Larry Otto, Scout Executive for the Cascade Pacific Council of the Boy



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Scouts later testifies that Jack Bierwirth was not authorized to speak for the Boy Scouts and that any Scout leader who invited Remington Powell to join would be violating Boy Scout policy.

September 2, 1997

Portland District Superintendent Jack Bierwirth informs Nancy Powell that legal counsel reviewed her April submissions to the school board and determined that Boy Scout recruitment activities do not violate the law.

September 30, 1997

Again during school hours, a Boy Scout troop leader is allowed to speak to Harvey Scott students, encouraging them to join the Boy Scouts. Students are once again offered wrist bracelets and the troop leader puts them on the children's wrists. The principal stands by and watches. Remington is present but does not take a wristband because he now knows the Boy Scouts will not let him join.

March 20, 1998

State Superintendent Norma Paulus issues a "Finding of Preliminary Investigation" (authored by Greg McMurdo) determining that there is no basis for Nancy Powell's complaint and dismisses it. The Superintendent makes no finding as to whether or not the Boy Scouts denies membership to atheists.

May 14, 1998

The American Civil Liberties Union of Oregon, through volunteer counsel, agrees to represent Nancy Powell and Remington Powell and files a complaint in Multnomah County Circuit Court against the Portland Public School District for Declaratory and Injunctive relief. This begins the **Powell I** case- separation of church and state. Plaintiffs ask the court to find that the School District's action of allowing the Boy Scouts to recruit in public schools during school hours amounts to unconstitutional support of a religious organization and also violates the religious freedom rights of Remington and Nancy Powell (Oregon Constitution, Article 1, sections 2, 3 and 5).

The complaint also requests a permanent injunction ordering the School District to cease its recruitment activities with the Boy Scouts during school hours. Plaintiffs seek no monetary damages.

Plaintiffs also appeal the "Finding of Preliminary Investigation" of the Superintendent of Public Instruction (Stan Bunn current Superintendent of Public Instruction has been substituted for Norma Paulus, the former Superintendent) and ask the court to find that the School District's activities also violate the Oregon law prohibiting public schools from promoting religious activity (ORS 327.109).

November 25, 1999

Larry Otto, Executive of the Cascade Pacific Council, Boy Scouts of America testifies under oath in a pre-trial deposition. He testifies that:

- The Boy Scouts bars membership to atheists and agnostics;
- Any boy who "refuse[s] to acknowledge a duty to God . . . cannot be a member";
- The Boy Scouts "will only partner with those people that recognize a duty to God;"



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- The Boy Scouts “discriminate against atheists and people who do not believe in God.”
- The position of the Boy Scouts is that “Remington Powell, first-grade student, as an atheist, cannot grow up to be the best type of citizen;”
- Any “Scout leaders who would accept Remington Powell, knowing he was an atheist, knowing that his parents were atheists, they would be violating the rules of the Scouts.”

December 1998 - February 1999

Immediately after Larry Otto’s deposition, Portland School District approaches plaintiffs to discuss settlement. Over the next three months, the School District postpones discussions while they await material from the Boy Scouts.

Local attorneys for the Boy Scouts of America enter into an oral agreement with the School District because they have a “joint interest” to “preserve access for Boy Scout volunteers to deliver the message about scouting opportunities to Portland School District students.”

The Boy Scouts of America agree to pay the School District’s bills for defending this case and are currently paying the School District’s legal bills (*Oregonian*, July 4, 1999; *Willamette Week*, August 18, 1999).

At the end of February after no substantive settlement discussions, the School District informs plaintiffs that there will be no further settlement discussions.

March 8-9, 1999

Lew Frederick, School District spokesperson, Joseph Williams, Principal at Harvey Scott, and Marc Abrams, School Board member testify under oath in pre-trial depositions. Despite three years of documentation by Nancy Powell that the Boy Scouts bars membership to atheist and agnostic students (as well as the deposition of Larry Otto who testified unequivocally to the ban on atheists) none of the school district witnesses admits to any current knowledge about the bar on atheists in the Boy Scouts.

Lew Frederick, spokesperson for the School District who was charged with representing School District policy on the Boy Scouts before community organizations, including at the Atheist Community Center almost a year before, testified that he is “not really aware of the Boy Scout policy regarding membership of atheists to Boy Scouts.”

Joseph Williams, Harvey Scott Principal to whom Nancy Powell first complained in October 1996, testified that to this day he did not “know whether the Boy Scouts allows atheists to become members.”

Marc Abrams, school board member, to whom Nancy Powell presented documentation in April, 1997, and who as a School Board member participated in the decision to defend the School District practice, testified that the Boy Scout policy of banning membership to atheists “has been represented to me. I do not know



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that I have that information except secondhand and hearsay.”

April to June 1999

All parties move for summary judgment with the court, submitting memorandum, exhibits, and deposition excerpts.

May 1999

The Boy Scouts of America files an *amicus Curiae* (friend of the court) brief on behalf of the School District asserting that its access to public school facilities should not be diminished because of its view on duty to God, arguing that “Religious speech is entitled to all the protection of the Free Speech Clause.”

June 8, 1999

The case is argued before Multnomah County Circuit Court Judge Joseph Cenicerros in cross-summary judgment motions. Judge Cenicerros determines that he will decide the case without a bench trial and takes the matter under advisement.

September 2, 1999

Judge Cenicerros issues a 5 page letter opinion granting both defendants their motions for summary judgment and denying plaintiffs’ motion for summary judgment. The court finds “most disturbing” that the Boy Scouts denies membership to boys who do not acknowledge the existence of God. The court does not examine the Oregon Constitutional provisions separately from the federal provisions, instead, adopting a federal constitutional analysis to the Oregon Constitution and limiting analysis to only Article 1, section 5 (making no reference to Article 1, sections 2 and 3). Under a federal standard, the court determines that the Boy Scouts is not a religious organization and as a result, the School District does not violate the separation of church and state provisions under Article 1, sections 2, 3 and 5 of the Oregon Constitution.

October 21, 1999

Plaintiffs file their Notice of Appeal to the Oregon Court of Appeals

February 1999-

May 2000

The parties participate in the Court of Appeals Settlement Program without success.

April 17, 2000

Harvey Scott Elementary School distributes the Principal’s Newsletter to all children, which includes an invitation for “all boys [in] grades 1-4” to attend a Cub Scout Open House at the Baptist Church. According to the announcement “The church is working closely with the local Scouting [sic] to establish a neighborhood Cub Scouting program.”

April 26, 2000

Nancy and Remington Powell file a complaint of discrimination under ORS 659.150 (prohibiting schools from discriminating on the basis of religion) with the school principal as required by School District rules. Nancy and Remington assert that this latest recruiting effort is part of a four year pattern and practice of



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discrimination by the School District beginning when Remington was first recruited by the school to join the Boy Scouts in 1996.

May 2000- July 2000

The District and the Powells proceed through a three-level school district complaint process with the 659.150 discrimination claim. This is the beginning of what will become the **Powell II** case, based on religious discrimination. After the principal rejects the claim, the Powells complain to the Director of Student Achievement and finally, Superintendent Ben Canada. The Powells submit expert testimony from both a child psychiatrist and psychologist. The experts testify that elementary children believe that when school personnel and teachers distribute Boy Scout material, that the Boy Scouts is a school endorsed and sponsored activity. They further testify to the risk of serious negative effects of this recruitment because of the school's sponsorship and endorsement of an organization that bars children based on their religious belief or non-belief.

July 28, 2000

After a school board meeting, with a two-vote dissent, Portland Public School District Board votes to accept Superintendent Ben Canada's dismissal of Nancy and Remington's **Powell II** discrimination complaint.

August 2000

Nancy and Remington file an Appeal and Request for Hearing to the Superintendent of Public Instruction alleging that the District's discriminatory activities violate ORS 659.150.

December 22, 2000

Plaintiffs file their opening Brief before the Court of Appeals in **Powell I**.

February 13, 2001

Stan Bunn, Superintendent of Public Instruction issues his Opinion. He decides that because there is no evidence of discrimination, he need not hold a hearing and dismisses Nancy and Remington's claim in

Powell II.

April 5, 2001

Nancy and Remington file a Petition for Review of the Superintendent's Order in Multnomah County Circuit Court against Portland Public Schools and the Superintendent of Public Instruction seeking reversal of the Superintendent's decision in **Powell II** and to enjoin the school from allowing the Boy Scouts to recruit children during school hours.

May 1, 2001

The Superintendent issues a Notice of Withdrawal of Order for Purpose of Reconsideration of his Opinion for the purposes of reconsidering the scope of facts and legal analysis he applied in **Powell II**.



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July 2, 2001

The Superintendent issues an Amended Order in **Powell II** having ignored some of the facts raised by Nancy and Remington Powell but still finds no evidence of discrimination.

August 11, 2001

Nancy and Remington file an Amended Petition for Review.

September 2001

Defendants file Motions for Summary Judgment in **Powell II**.

November 9, 2001

The Court of Appeals hears argument on the **Powell I** case, alleging violation of Article 1, sections 2, 3 and 5 of the Oregon Constitution. The matter is taken under advisement and a decision is pending.

December 3, 2001

Judge Ellen Rosenblum denies defendants their Motions for Summary Judgment in the **Powell II** case and allows plaintiffs to a hearing to supplement the administrative record.

December 12, 2001

Judge Rosenblum holds a hearing in the **Powell II** case during which time Remington Powell testifies to his experience of discrimination by the school when it allowed the Boy Scouts to recruit him for membership. After closing arguments, the Judge holds that the Superintendent of Public Instruction "abused his discretion in reaching the conclusion that there was insubstantial evidence of discrimination (on the basis of religion) in the record to warrant a contested case hearing." She remanded the case back to the Superintendent for further administrative proceedings, including attempted conciliation and, if not successful, a contested case hearing.

February 5, 2002

February 26, 2002

The Powells file notice of cross-appeal in the **Powell II** case.

July 2002

Judge Rosenblum issues award of all attorney's fees to the plaintiff in **Powell II**.

September 10, 2002

Opening briefs from the Portland Superintendent and Public School District are submitted in the Court of Appeals for the **Powell II** case.

December 11, 2002

A three-judge Court of Appeals panel upheld the lower court's decision in **Powell I** finding that Portland Public School District did not violate Article I, sections 2, 3 and 5 of the Oregon constitution when it allowed the Boy Scouts to recruit elementary school children during school hours



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March 2, 2005

The Oregon Court of Appeals in **Powell II** issued a ruling that supports Nancy Powell's long-held assertion that the Portland School District engaged in unlawful discrimination against her son, Remington, by allowing the Boy Scouts of America to recruit elementary school children during the school day, when the district knew or should have known that the Scouts discriminate.