

The NUDE & NATURAL **N**ewsletter

Go barefoot all over!



Nov 2011
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The Naturist Society LLC / Naturist Action Committee / Naturist Education Foundation

NAC Updates

Despite an order from Kauai County to cease rock quarrying operations above Larsen's Beach, this equipment was spotted in October in a pit on property owned by Waioli Corporation and operated by lessee Bruce Laymon's Paradise Ranch. This is obviously not "grubbing" or clearing a pasture of rocks piled up by previous farming operations.

Hawaii

LEPEULI, Hawaii – On the property above Larsen's Beach on the island of Kauai, scofflaw rancher / landscaper Bruce Laymon has attempted to fence off the historic trail leading to the traditionally clothing-optional beach, and he has been reported to the police for physically accosting a beach goer. [See *Newsletter*, June 2011 and July 2011.]

In August 2011, Waioli Corporation, which owns the land, and Laymon, who leases it from Waioli, were instructed by Kauai County officials to halt rock quarrying and crushing operations on the property. Waioli had been supply-ing tons of rock from above Larsen's Beach to Jennings Pacific LLC, which has contracts totaling \$5.4 million to rehabilitate dams at two reservoirs on the island and provide erosion control for the State of Hawaii.

County Engineer Larry Dill points out that Waioli's agricultural exemption allows the clearing of land by the

removal of stumps and roots, which is called "grubbing," and it allows grading and stockpiling of rocks encountered at the surface. Nevertheless, Waioli does not have a permit for quarrying rocks or crushing them.

Naturist Action Committee Area Representative Richard Spacer has been keeping track of Waioli, Laymon, and the permits they have – or frequently, *don't* have. Lawyer Donald H. Wilson, who represents both the lessor and the lessee, recently wrote a letter to a local newspaper, in which he contends "[t]he only rock that has been removed from Lepe'uli is surface rock, much of which was piled throughout the property by past agricultural uses." Wilson, whose name erroneously appears as "Walker" in some news accounts, also used his letter to attack NAC's Area Rep, saying that Spacer was "self-appointed." That's fantasy. Richard Spacer was appointed to be a NAC Area Representative by a unanimous vote of the NAC board of directors.

See more **NAC Updates** on page 2.

NAC Updates (continued from page 1)

California

SAN DIEGO, California – In its continuing defense of naturists who have been cited for mere nudity in California state parks, the Naturist Action Committee has improved its impressive record to **15 for 15**. Most of the citations have been issued at San Onofre State Beach, but as officials of the California Department of Parks and Recreation (DPR) continue reneging on their previous assurances that citations for nudity would be confined to San Onofre, NAC has broadened its legal responses on behalf of naturists to include other units of the State Park system.

Texas

[This is the first of a handful of NAC Updates dealing with sexually oriented businesses / adult entertainments and the laws affecting them. Though these issues don't purport to address naturists or their activities, the truth is that the laws are often framed so broadly that naturists are justified in feeling threatened.]

AUSTIN, Texas – The Texas Supreme Court has reversed the rulings of a trial court and an appellate court that had declared the state's surcharge on nude dancing to be unconstitutional. Writing for the Texas high Court, Justice Nathan Hecht cited the position of the U.S. Supreme Court in *Erie v Pap's*, a case from Pennsylvania that created precedent in its ruling on the applicability of the First Amendment to the U.S. Constitution to expressive nude dancing.

The Texas legislature enacted the Sexually Oriented Business Fee Act in 2007, and it was signed into law by Governor Rick Perry. The new law levied a five dollar surcharge on each customer of a sexually oriented establishment that offered nude dancing and alcoholic drinks, but the fee collection scheme was suspended while its legality was challenged.

A note from the editor

This issue of *The Newsletter* missed its intended distribution date, in part because a couple of items we were tracking for publication failed to develop as anticipated. The situations are being handled properly, and both matters are still developing. You'll read about them in a subsequent issue. Editorially, however, we were caught out of phase with the news. We apologize for any inconvenience that may have caused our readers. Expect the December edition of *The Newsletter* later this month.

Although the Act's definition of "sexually oriented business" (sec. 243.002 of the Texas Local Government Code) clearly does not include naturist resorts, clubs, and camps, the State Supreme Court endorsed the notion that nudity can have "negative secondary effects," whether or not it's combined with alcohol.

Missouri

JEFFERSON CITY, Missouri – One of a handful of states that followed Texas in establishing a "pole tax" for sexually oriented businesses, Missouri found its law challenged, too. As the state Supreme Court had done in Texas, Missouri's Supreme Court recently endorsed the mandated surcharge. From the point of view of naturists, however,

Missouri's law differs significantly from that of Texas. Its definition of "sexually oriented business" is broader and may be seen, in some instances, as including naturist venues.

That's no accident. The Missouri law resulted from a combination of Senate Bills 586 and 617 in the 2010 legislative session. The architect and wordsmith



Anti-nudity lawyer Scott Bergthold.

for the bill was attorney Scott Bergthold, who now resides in Chattanooga, Tennessee. Formerly the executive director of the National Family Legal Foundation (NFLF), which became Community Defense Counsel (CDC) in 1999, Bergthold cut his teeth professionally under the guidance of Edwin Meese III (yes, *that* Ed Meese) and Alan Sears, former federal prosecutor and self-proclaimed "defender of liberty."

Meese and Sears operate Alliance Defense Fund (ADF), a prolific religious-based source of anti-nudity material and training. ADF was a major source of funding for NFLF and CDC. Scottsdale, Arizona was home to NFLF and CDC, and it remains the headquarters for ADF. In 2001, Bergthold abruptly left Scottsdale under circumstances that were never entirely explained, and ADF claimed the "resources" of Community Defense Counsel.

In 1998, Bergthold was interviewed for a local news show in upstate New York. He was asked about the wording of the sexually oriented business restrictions he had written. Was the effect on naturists just an unintended coincidence? Bergthold responded that it was not.

Scott Bergthold was also the "hired gun" author of Ohio Senate Bill 16 in 2007. That bill was passed, but not before NAC was successful in having the threats to naturists amended out of the text of the legislative measure.

NAC Updates (continued from page 2)

Tennessee

MEMPHIS, Tennessee – Shelby County has announced it will begin enforcing its hotly contested ordinance prohibiting alcoholic drinks and nudity together in the same establishment. Some people are characterizing this as a ban on alcohol where there's nudity. Others are calling it a ban on nudity where there's alcohol, preferring to believe that clubs would never give up the lucrative business of selling alcoholic drinks.

Regardless, the situation is reminiscent of the same battle from the late 1990s that led directly to Tennessee Senate Bill 1610 and Tennessee House Bill 3203, both from the 1998 legislative session. Of that bill pair, HB 3203 was the one that advanced. The Naturist Action Committee allied with the American Association for Nude Recreation, the Midwest Sunbathing Association and the Eastern Sunbathing Association, as those AANR regions were known then, to oppose HB 3203. Together, the organizations retained a legislative lobbyist and defeated the bill. It was a tough fight.

You may view an account of the naturist victory in 1998 by visiting Success Stories on the NAC web site.

www.naturistaction.org/Success_Stories/success_stories.html

Because history does repeat itself, NAC is keeping a close eye on the situation in Memphis.

FCC v. Fox Television Stations, et al.

WASHINGTON, DC – The U.S. Supreme Court is preparing to consider the matter of so-called “fleeting expletives” that have been broadcast on TV at hours when children may be a part of the audience. The Federal Communications Commission has levied fines for spoken obscenities, and the constitutionality of those penalties has been challenged by Fox, NBC, ABC and CBS.

It is customary in such cases for the Court to receive *amicus curiae* (friend of the court) briefs from parties that are not named in the legal action, but have interests that may be affected by the outcome. In *FCC v. Fox, et al.*, *amicus* briefs have already been filed by the National Religious Broadcasters (NRB) and the American Center for Law and Justice (ACLJ).

Recognizing that SCOTUS will be focusing on offensive spoken language in the case before it, NRB's brief addresses freedom of speech, as it pertains to the broadcast delivery of verbal religious messages.

On the other hand, the brief of ACLJ was an attack on nudity and indecent exposure, not only images of nudity included in the context of an electronic broadcast, but nudity that may be encountered live, as well.

Jay Sekulow, principal counsel for ACLJ and author of its brief, acknowledges that the document is off-topic, but he attempts to justify his introduction of a different matter. Sekulow wrote, “The Supreme Court will be focusing on obscene language, not nudity, in this case. The purpose of our brief is to remind the Court that there is another whole area of indecency – indecent exposure – that the Court needs to keep in mind.”

Sekulow continued, “It would be a terrible thing if the Court, while thinking about an occasional expletive dropping from the lips of a celebrity, inadvertently rendered a decision that undermined the important existing protections of children against public indecency, whether on the streets or on TV.”

ACLJ was founded in 1990 by evangelical preacher and social activist Pat Robertson. The self-assigned slogan of the organization is “We are fighting for your freedoms.”

Some believe that through the off-topic ACLJ brief, SCOTUS is essentially – and not so subtly – being lobbied for a future fight



The Naturist Society: membership fee increase

OSHKOSH, Wisconsin – The Naturist Society (TNS) has announced a membership fee increase. Citing escalating costs for printing and postage, among other factors, TNS has invoked a quite modest hike of five dollars per year. A standard yearly household membership will go from \$55 to \$60, effective January 1, 2012.

In addition to publishing its acclaimed quarterly *Nude & Natural* magazine, TNS sponsors multiple Naturist Gatherings each year.

Each TNS membership applies to all those in a household. Special rates are available for students, seniors and disabled veterans. Membership is initiated or renewed through a TNS-affiliated group or club allow the local club to retain a portion of the total.

All new memberships and renewals received by the end of 2011 will be honored at the lower rate.

Upcoming naturist festivals, gatherings and events

www.naturistsociety.com Click on EVENTS

MIDWINTER FESTIVAL

Sunsport - Loxahatchee Groves, FL
February 16 - 21, 2012
Phone: (800) 551-7217
www.sunsportgardens.com

EASTERN GATHERING

Camp Westmont - Poyntelle, PA
June 11 - 17, 2012
Reservations: Call TNS (800) 886-7230
www.campwestmont.com

NUDE RECREATION WEEK™

July 9 - 15, 2012

NATURIST YOUTH CAMP

Sunsport - Loxahatchee Groves, FL
July 7 - 15, 2012
Phone: (800) 551-7217
www.sunsportgardens.com

NORTHEAST FESTIVAL

Empire Haven - Moravia, New York
July 31 - August 5, 2012
Phone: (315) 497-0135
http://empirehaven.homestead.com/

CANADIAN NATURIST FESTIVAL

La Pommerie, St-Antoine-Abbé QC
August 1 - 5, 2012
Phone: (888) 926-4723
www.pommerie.com

AVALONfest

Avalon Resort - Paw Paw, West Virginia
August 10 - 12, 2012
Phone: (304) 947-5600
www.avalon-resort.com

WESTERN GATHERING

TO BE ANNOUNCED

Online Resources for Naturists

• Production necessities required that a few pages be dropped from the most recent issue of *Nude & Natural* magazine (N31.1). As a result, the Naturist Network section was omitted this one time. However, it's available on the web site of The Naturist Society.

www.naturistsociety.com/tns/resources/images/30.4%20network.pdf

• Find state laws addressing nudity for all 50 U.S. states on the web site of the Naturist Action Committee. Not intended to replace legal advice, but tremendously helpful for quick reference.

www.naturistaction.org/StatesProvincesTerritories/states.html

• Read complete texts of proposed new state laws that may affect naturists. Check archived legislation back to 1997.

www.naturistaction.org/Legislative_Bill_Texts/legislative_bill_texts.html

• Browse selected back issues of *The Newsletter* in the archives on the NAC web site.

www.naturistaction.org/newsletter/

• Make a difference by donating generously to the Naturist Action Committee. NAC relies on voluntary contributions from naturists like YOU!

<http://www.naturistaction.org/donate/>



NAC WEB SITE

Contact the NAC Board

Robert Morton - Texas
Chair/Executive Director
execdir@naturistaction.org

Rich Pasco - Florida / Calif
rich@pasco.org

Allen Baylis - California
Treasurer
rabb@baylislaw.com

Morley Schloss - Florida
morleynaturist@hotmail.com

Mark Storey - Washington
Secretary
storey98@aol.com

Dick Springer - Maine
dandespringer@gmail.com

Don Zirbel - Oregon
orcoba@live.com

Judy Williams - BC
judyw@wreckbeach.org

Charles Harris - California
charles@westwindkayaking.com

www.naturistaction.org www.naturisteducation.org

The Newsletter Editor: Bob Morton

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