

versities, colleges, freeways, aqueducts, or the Golden Gate Bridge — itself a symbol of California's grandeur? Where would we be without the water provided by the Hoover Dam? Seventy years hence, California and other western states are still enjoying the benefits from the massive Hoover Dam project.

In the area of transportation alone, according to a study commissioned by the California Infrastructure Coalition, "California's \$2 trillion transportation infrastructure system is the prime ingredient in the fuel that fires the state's economic engine. Investment in transportation brings jobs to California and encourages vital business investment, which creates permanent economic benefit to the state."

The large projects will take time. While some can be finished in a matter of years, such as the resurfacing of existing freeways, others might take decades. As California continues to grow, adding 16 million more people by 2025, many problems with which we are all too familiar will grow worse if the state's infrastructure is not modernized. When the projects near completion the population will enjoy less traffic, cheaper and more plentiful water and power, better hospital and school facilities, and improved fire, police, and government services. The bottom line is that Californians will be more productive, prosperous, and safe

with a revitalized infrastructure.

I want to allay the concerns of the skeptics who say we're headed for another government boondoggle. Boston's notorious Big Dig, an engineering and architectural achievement now mostly completed and alleviating traffic congestion, is also a model of what not to do because local, state, and federal taxpayers were left holding a bill that blew up from the original \$2.5 billion to more than \$14 billion because of cost overruns. Improper oversight gave some companies the incentive to cut corners and make fraudulent charges. We can ensure that this does not happen here.

Historically, the condition of a civilization's infrastructure has been an indication of its health. Presently, our "House of California," if you will, is in shambles. We can no longer stick our heads in the sand and hope the problem will go away on its own. We know what that approach has done for us. We are only as good as our infrastructure allows us to be. The problem must become our number one priority. Generations of Californians before us (with the notable leadership of Governor Pat Brown) built a complex network of freeways, ports, and airports to help the state's burgeoning economy. Today, we must rededicate ourselves to their commitment and continue their legacy.

CPR



The Law

California high court hears Berkeley Scout-bashing case

A city once known to champion 'free speech' now leads the assault on the First Amendment.

HAROLD JOHNSON

BY THE time you read this, the California Supreme Court will (on January 10, if current scheduling is followed) have heard oral argument in the case *Evans v. Berkeley* (104 Cal.App.4th 1 [2002]), so a major new chapter could soon be written on the left's continuing anti-Boy Scout jihad. It seems therefore an opportune time to re-visit the key issues I discussed in my "The Law"

column early last year (CPR, March/April 2005).

One key issue is simple fairness. What if, for instance, a city charged members of the Green Party to use a city facility, but let Democrats and Republicans in free? That isn't far different from the double stan-

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dard at the Berkeley Marina. The city has imposed a use fee on the Berkeley Sea Scouts, but not on any other nonprofits. The Sea Scouts are singled out because of what city officials consider their "incorrect" views and associations, specifically their affiliation with the Boy Scouts of America. The controversy centers on a Berkeley program that lets nonprofit organizations use the marina free of charge. A yacht club takes advantage of the offer, as do some community groups. But the city excludes the Sea Scouts.

ASIDE FROM the legal questions that this raises, there's a cost in human terms. The Sea Scouts' skipper, a Bay Area high school teacher, has to pay the monthly berthing fee of more than \$500 out of his pocket. This means he can't pay for outings for some of the less-well-off kids, and programs have been substantially cut back.

Unfortunately, the California First District Court of Appeal approved this biased policy in its *Evans v. Berkeley* ruling. The hope now is that fairness will ultimately prevail in the state Supreme Court on the Sea Scouts' appeal of that decision.

For decades, the Sea Scouts used the marina without cost as a reward for the good work they do with young people. The Berkeley Sea Scouts are part of a larger Sea Scout tradition that dates back to the first half of the 20th century. Nationwide, the Sea Scouts have taught leadership and responsibility to hundreds of thousands of teen-agers over the years. Along with sailing skills, participants learn carpentry and plumbing by working on ships.

Character development is also part of the experience. In World War II, Admiral Chester Nimitz said the 100,000 Sea Scouts who had enlisted after Pearl Harbor were crucial to the Navy's victories in the Pacific. The 20 or so teen-agers in the Berkeley Sea Scout program are a multiracial group, several of them from rough neighborhoods around the Bay Area. Because of the funding problems created by the fee, some of the scouts have had to drop out.

In 1998, however, the Berkeley City Council decided that all the Sea Scouts' pluses were outweighed by their offense of being affiliated with the Boy Scouts. The council instituted the new berth fee as, in essence, a fine. Berkeley objects to Boy Scout membership policies that require belief in a deity and bar adult male homosexuals from volunteer leadership positions. Berkeley's Sea Scouts, however, have never excluded any kid from their group. They even signed a statement pledging to abide by all city anti-discrimination rules and regs.

If Berkeley can charge the Sea Scouts for acting on their constitutional rights, the city could penalize all manner of private organizations that failed ideological tests.

That wasn't good enough for city officials. "It's not a question of the Sea Scouts as an individual people or as a group," Councilman Kriss Worthington told an interviewer. "It's the Sea Scouts' affiliation with the discriminatory Boy Scouts of America. If the Sea Scouts were separate and not a part of a discriminatory group, then they would be sitting pretty."

The question before the state Supreme Court: Does the Constitution allow Berkeley to penalize the Sea Scouts' for exercising their First Amendment right to associate with the Boy Scouts of America? Requiring the Sea Scouts to pay a fee that isn't imposed on other nonprofit groups clearly has that effect — it amounts to retaliating against activity and expression that is protected by the First Amendment.

It's also a case of ideological discrimination by government — impermissible under the First Amendment. As the Supreme Court said in *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1984), if government decides to offer a subsidy of some kind, it cannot "pick and choose recipients on the basis of their viewpoint."

If Berkeley can get away with charging the Sea Scouts for their acting on their constitutional rights, the city would be free to penalize all manner of private organizations that failed ideological tests. Churches, synagogues, and other religious groups could also find themselves facing official discrimination. The Sea Scouts aren't saying they have a right to financial assistance from government. They're saying Berkeley has a constitutional obligation not to play favorites according to politicians' ideology, and not to condition access to public programs on a recipient's agreement to mind-meld with bureaucrat group think.

IT MAY seem long ago, but Berkeley was once the birthplace of something called the free speech movement. If the California Supreme Court halts Berkeley's Scout-bashing, it will help free the city of the stigma it now bears as an enemy of all the freedoms the First Amendment protects. CFR

A Party with the Courage of No Convictions?

Where the New
Post-Special
Schwarzenegger
would take the
GOP ... and the
course the Party
ought to chart.

by John Kurzweil

If a Tory does not believe that private property is one of the main bulwarks of individual freedom, then he had better become a socialist and have done with it. Indeed one of the reasons for our electoral failure is that people believe too many Conservatives have become socialists already. Britain's progress towards socialism has been an alternation of two steps forward with half a step back.

If every Labour Government is prepared to reverse every Tory measure, while Conservative Governments accept nearly all socialist measures as being "the will of the people," the end result is only too plain. And why should anyone support a party that seems to have the courage of no convictions?"

— Margaret Thatcher, "My Kind of Tory Party,"
Daily Telegraph, January 30, 1975

MRS. THATCHER wrote these lines at the end of a 12-month period during which her Party suffered two devastating losses in national elections. A few days after her article appeared, she was elected Conservative Party leader. Four years later she became British Prime Minister, matching the Reagan Revolution with one of her own across the Atlantic.

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One year after Mrs. Thatcher wrote her *Daily Telegraph* article, Republican Gerald Ford lost the presidency to Jimmy Carter. Looking back (in a 1992 article), William E. Brock, who served as Republican National Committee Chairman from 1977 until 1981, recalled the condition of his Party following that defeat, making a point notably reminiscent of Mrs. Thatcher's: "Republicans in 1976 ... found themselves stung by defeat and *largely bereft of those tools essential to any successful party, a strong grounding in principles and ideas, and a broad and diverse base of support.*" (*emphasis added*)

Brock went on to re-build the national GOP (with a mighty assist from Ronald Reagan, Jack Kemp, and many others) into what even liberal Democrat Daniel Patrick Moynihan had to admit a mere few years later had become "the Party of ideas" — not to mention the Party that controlled the White House, setting the nation's political direction, for the next 12 years. (Brock wrote in 1992 because his Party had just lost another presidential election — to Bill Clinton — following another loss of direction, as Brock saw it, under President George H. W. Bush.)

Here in California, it is time to state Thatch-