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January 12, 1989

Law and Legislation Committee
Sacramento, California

SUBJECT: Amendments to City Council's Divestiture Policy

Honorable Members in Session:

Attached is a copy of a comprehensive legal opinion, and an accompanying ordinance, relating to amendments to the City Council's Divestiture Policy as requested by Councilmember Serna.

These amendments add to the list of prohibited transactions covered by the Council's policy, by including the following categories: rental, lease or utilization, as defined, of City facilities; concessions; and subcontractors, sublessees, or licensees of the foregoing persons or firms. If any such person or firm has the specified connections with South Africa or Namibia, then the prohibitions take effect to prevent them from utilizing City facilities for financial gain.

In our legal opinion, we have concluded that these new restrictions would probably survive legal challenge because of the policies and interests which have been expressed by the Council as justification for the amendments.

Respectfully submitted,

JAMES P. JACKSON, City Attorney

By: _____
WILLIAM P. CARNAZZO,
Deputy City Attorney

January 19, 1989
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE AMENDING ORDINANCE NO. 86-126 AND 87-030, RELATING TO USE OF CITY FACILITIES BY, AND DEPOSIT OR INVESTMENT OF CITY FUNDS IN OR WITH BUSINESSES, FIRMS OR FINANCIAL INSTITUTIONS WHICH ARE ORGANIZED UNDER THE LAWS OF SOUTH AFRICA OR NAMIBIA, HAVE BUSINESS OPERATIONS IN SOUTH AFRICA OR NAMIBIA, OR HAVE BUSINESS ARRANGEMENTS WITH SOUTH AFRICA OR NAMIBIA RESTRICTING THE PURCHASE OF COMMODITIES PRODUCED IN SOUTH AFRICA OR NAMIBIA, AND PROVIDING FOR SELECTIVE PURCHASE OF PRODUCTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION ONE.

Section One of Ordinance No. 86-126, as amended by Ordinance No. 87-030, is amended to add subsections (o) and (p), to read as follows:

(o) "Facility Owned or Operated by the City" shall mean and include any building or real property which is owned, leased or rented by the City of Sacramento or any of its agencies or departments, and which, in whole or in part, is used by or is offered for use by individuals or groups, for consideration or otherwise.

(p) "Concessionaire" shall mean and include a business firm which is the owner, operator or holder of the right or privilege, by agreement with the City, to operate a business within, or provide services within, a facility owned or operated by the City.

SECTION TWO.

Sections 6, 7, 8, 9, 10 and 11 of Ordinance No. 86-126, as amended by Ordinance No. 87-030, are renumbered to sections 7, 8, 9, 10, 11 and 12, respectively.

SECTION THREE.

A new section 6 is added to Ordinance No. 86-126, as amended by Ordinance No. 87-030, to read as follows:

SECTION 6. Facilities Owned or Operated by the City; Concessionaires.

(a) Prohibited Transactions

(1) No facility owned or operated by the City shall be rented, leased, or utilized for business purposes by:

(i) any business firm organized under the laws of South Africa or Namibia; or

(ii) any business firm which has business arrangements with or has business operations in South Africa or Namibia.

(2) The City shall not enter into any agreement with any concessionaire, if the concessionaire is:

(i) a business firm organized under the laws of South Africa or Namibia; or

(ii) a business firm which has business arrangements with or business operations in South Africa or Namibia.

(3) No business firm which is a concessionaire in or which has rented, leased or which utilizes a facility owned or operated by the City shall subcontract with, sublet to, license or otherwise allow another business firm to utilize the facility owned or operated by the City, if such other business firm would be disqualified under subsection (a)(1) or (a)(2) above.

(b) Contract Stipulation Required

Each agreement with a business firm for the rental, lease or utilization of a facility owned or operated by the City, and each concessionaire agreement pertaining to a facility owned or operated by the City, shall contain: (i) a provision which shall be a material condition of the agreement, stipulating that the business firm is not one covered by the prohibitions specified in subparagraph (a) above; and (ii) a provision which shall be a material condition of the agreement, stipulating that the business firm shall not, and has not agreed to subcontract with, sublet to, license, or otherwise allow another business firm to utilize the facility owned or operated by the City if such

other business firm would be disqualified under subsection (a)(1) or (a)(2) above.

(c) Waiver

The prohibitions of subsection (a) shall not apply if the City Manager, in his or her discretion, finds that:

(1) no other business firm is available which is capable of satisfactorily performing the desired function, or

(2) the City will incur a significant financial loss as a consequence of the prohibitions contained in this ordinance.

In such event, the City Manager shall endeavor to select that business firm which best meets the following two criteria:

(1) maintains policies that conform to the greatest extent with the intent of this ordinance, and

(2) is most capable of providing a level of service equal to that which the City could have received if the prohibitions of this section had not been enacted.

The City Manager shall periodically report to the City Council each and every exercise of waiver implemented pursuant to this subsection. The City Manager shall within 120 days from the date of adoption of this ordinance develop rules and regulations which specifically address both the criteria and reporting procedures. Such rules and regulations shall be approved by the City Council.

(d) Compliance

Subsections (a) and (c) of this section shall become operative one hundred twenty (120) days after the date of adoption of this ordinance.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

_____
MAYOR

ATTEST:

_____
CITY CLERK

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July 20, 1988

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City Council
Sacramento, California 95814

Honorable Members in Session:

SUBJECT: Amendment to South Africa/Namibia Divestiture Policy

ISSUE

May the City prohibit rental or lease of its facilities, or establishment of a concession in those facilities, for commercial purposes, by businesses that have economic ties with South Africa and/or Namibia, without violating the First Amendment, the Fourteenth Amendment, the California Constitution, or the Unruh Act?

ANSWER

While there is no clear-cut answer, it is probable that the policies and interests which have been expressed by the City Council provide sufficient justification for the proposed ordinance to insulate it from attack based upon the California and United States Constitutions, and the Unruh Act.

FACTUAL BACKGROUND

The City Council's South Africa-Namibia policy is embodied in two ordinances: No. 86-126 and No. 87-030. These two ordinances enacted restrictions on City investments, deposits, purchases of commodities and procurement of professional services. They did not reach the question of commercial lease and rental of, and concessions within, property and facilities owned or operated by the City, and which are open to the public.

A draft ordinance has been introduced by Councilmember Serna which would expand the operative restrictions of the Council's policy by imposing restrictions on lease and rental of, as well as concessions

within, such facilities and property. This ordinance was heard in public session by the Law and Legislation Committee on May 26, 1988. At that meeting, the City Attorney was directed to research and issue an opinion on certain issues raised by Councilmember Pope.

At the time of enactment of the original Council policy, Ordinance No. 86-126, the City Attorney issued a comprehensive opinion dealing with numerous questions, most of which related to the investment-deposit portions of the ordinance. Restrictions on utilization of public property and facilities present issues beyond the scope of the first opinion. Specifically, such restrictions implicate the freedoms of speech and association embodied in the First Amendment to the United States Constitution and in the California Constitution. Also implicated is the Unruh Civil Rights Act, found at Sections 51 et seq. of the California Civil Code. The purpose of this opinion is to deal with such issues in the context of the proposed amendments to the Council's South Africa-Namibia policy.

ANALYSIS

I. INTRODUCTION

The analysis of the legal issues must focus on the precise provisions of the ordinance: the definitions and those of the operative provisions which serve to identify exactly those persons and entities which are subject to the current restrictions, as well as the new ones contained in the proposed amendment. Also of critical importance is the fact that the City Council's policy is neutral, in effect blind, to the philosophical or socio-economic "beliefs" of affected businesses. Rather, the focus of that policy is on the economic ties of such businesses to South Africa and Namibia, whose philosophical beliefs and socio-economic policies are indeed at the heart of the policy.

A. The Ordinance Definitions

The pertinent definitions in the original ordinance will, of course, apply to the proposed amendment. Those describing the businesses to which the restrictions may apply are found at Section 1, subsections (l), (m) and (n), and read as follows:

> "Business firm" means any sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary, or affiliate which exists for profit-making purposes or to otherwise secure financial advantage.

> "Business operations" means the maintenance of substantial equipment, facilities, personnel, or any other apparatus of business or commerce, including the ownership or possession of real or personal property physically located in South Africa or Namibia.
>
> "Business arrangements" means projects, ventures, undertakings, contractual relations, or other efforts requiring ongoing or periodic performance by either or both parties.

The definition of "business firm" serves to eliminate from the restrictions of the ordinance any entity which does not "exist for profit-making purposes", rendering it clear that nonprofit, political, charitable or similar organizations are not covered. The universe of potential business firms is narrowed further to the subset of such firms which have business operations in, or business arrangements with, South Africa or Namibia. That subset is also narrowed to those firms which appear on the list published by the City Treasurer. (Ordinance 87-030, section 2(b).)

B. The Provisions of the Proposed Amendment

The proposed amendment utilizes the above definitions, together with the Treasurer's list. The new operative restrictions are three, as to business firms (as defined) which are on the list:

(i) They cannot lease, rent or utilize City facilities for any commercial purpose;

(ii) They cannot become concessionaires, as defined; and

(iii) They cannot become subtenants, sublessees or concessionaires for other business firms which lease, rent or utilize City facilities.

Contract stipulations verifying the status of a business firm are required by the proposed amendment. Also provided for is a waiver provision to be exercised by the City Manager pursuant to specified standards.

II. FIRST AMENDMENT ANALYSIS

A. United States Constitution

The First Amendment provides that Congress "shall make no law ... abridging the freedom of speech, or of the press, or the right of

people peaceably to assemble, and to petition the government for a redress of grievances." The Fourteenth Amendment makes that prohibition applicable to the City of Sacramento. Thornhill v. Alabama 310 U.S. 88, 95 (1940). The federal questions presented, therefore, are whether the proposed amendment abridges the freedoms of speech or assembly of business entities adversely affected by the ordinance; and, if so, whether the intrusion on those freedoms is, on balance, justified by the City's interests in enacting the ordinance.

(1) **Freedom of Speech**

Prior to analysis of whether there has been an infringement on a person's freedom of speech, it must first be determined whether there is any "speech" involved when a business firm wishes to engage in commercial activity in a City facility.

For purposes of constitutional analysis, "speech" is the communication of a message, either verbally or through symbolic or assertive conduct. Some types of speech are not protected by the First Amendment; these are obscenity, libelous statements, statements creating a clear and present danger to society, and false and fraudulent statements. Certain other types of speech fall squarely within the "core" of First Amendment protection. Roth v. United States, 354 U.S. 476 (1957). These relate to expression of political, religious, social, and other ideas. However, even the most protected forms of speech are not absolutely protected. Reasonable time, place and manner restrictions may be imposed on all forms of First Amendment expression. See subsection (1)(b), infra. International Society for Krishna Consciousness v. Wolke, 453 F.Supp. 869 (E.D. Wis. 1978).

(a) **Commercial Speech Doctrine**

The speech element which would theoretically be involved in a business organization's use of City facilities for a business purpose must be characterized in order to determine what level of constitutional protection is afforded by the First Amendment. Insofar as an organization is proposing to utilize a City facility to promote sales or other economic transactions, the type of speech involved would be characterized as commercial speech. Commercial speech has been defined by the U.S. Supreme Court as "expression related solely to the economic interests of the speaker and its audience." Central Hudson Gas v. Public Service Commission of New York, 447 U.S.

557 (1980).[1] Commercial speech is protected by the First Amendment, but may be subjected to governmental regulation if the governmental interest behind the regulation is substantial, if the regulation directly advances that interest, and if the regulation is no broader than that necessary to promote the interest. (Id. at 564.)

The City has demonstrated, by its findings supporting the divestiture ordinance, that it has a compelling interest: ending economic ties with South Africa/Namibia and with businesses who have certain substantial economic ties to those countries. This interest more than satisfies the less strict "substantial" standard. That the interest is compelling, and is in fact based on a public policy of statewide importance, is demonstrated by Government Code Sections 16640 et seq., enacted by the Legislature in 1986. That legislation prohibits investment of state funds in business firms or financial institutions that deal with South Africa, as well as direct business arrangements with South Africa.

The interests of the City are also in harmony with the expressed concerns of the federal government. The federal government has spoken twice regarding United States policy towards South Africa's system of apartheid. In 1985, President Ronald Reagan issued an executive order declaring the policies and actions of the South African government "an unusual and extraordinary threat to the foreign policy and economy of the United States." [Executive Order No. 12532, 3 CFR 387 (1985).] With that order, President Reagan prohibited certain types of exports to South Africa and certain types of financial transactions to South Africa or entities owned or controlled by the government of South Africa.

The executive order was expressly limited as an expression of the foreign policy of the United States and could not be enforced at law against the United States. Therefore, Congress passed

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[1]Riley v. National Federation of the Blind of North Carolina, Inc. 88 Daily Journal D.A.R. 8507, Supreme Court of the United States (June 28, 1988) (holding that mixed commercial/non-commercial speech receives strict scrutiny). The Supreme Court stated that parcelling out components of "inextricably intertwined" speech in order to apply a rational basis test to the commercial aspects while testing other phrases for compelling governmental interests would be both "artificial and impractical." Id. at 8511. Sacramento's ordinance can pass constitutional muster using the strict scrutiny analysis. Therefore, classification of the speech as commercial or mixed commercial/non-commercial will not affect the validity of the ordinance.

the Anti-Apartheid Act of 1986. Pub.L. No. 99-440 (codified as Title 22 USC 5011 et seq.). The stated purpose of the Anti-Aparteid Act is to "set forth a comprehensive framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa ...." (Section 4) To accomplish this purpose, the federal government has instituted various measures to "undermine" apartheid. Examples of the types of actions contemplated by the Act are prohibition on importation of various raw materials from South Africa, exportation of certain classes of technical material to South Africa, and prohibition on tourism and promotion of South African tourism in the United States. (Title III, Sections 301-323.) To completely close the door to South African business transactions, the Act even authorizes United States nationals who must cease or curtail business activities in South Africa to sue other business entities who take commercial advantage of that cessation. (Section 403.) The Act clearly authorizes a broad-based and multi-leveled attack aimed at changing the policies of the South African government.

The City is not precluded from passing its own ordinances opposing apartheid, because the Anti-Apartheid Act does not preempt state or local action. The standard for determining preemption by a superior governing body is set forth in Pacific Gas & Electric v. Energy Resources Comm., 461 U.S. 190 (1983). In that case, the United State Congress had preempted the field of nuclear power plant regulations. The California Energy Resources Commission instituted additional regulations, apparently duplicating the provisions of the federal act. The United States Supreme Court determined that "[a]bsent explicit preemptive language, Congress's intent to supercede state law altogether may be found from a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it" because the federal interest is so dominant as to preclude enforcement of state laws where the state laws duplicate the purpose of the federal law. PG&E at 203-204.

In this case, Title VI of the Anti-Apartheid Act specifies enforcement and administrative procedures. Section 606 expressly prohibits the federal government from penalizing a state or local government for applying local ordinances to contracts for ninety (90) days after passage of the Act. No other explicit language is used, thus local ordinances are not expressly preempted. Although the Act is "comprehensive", Congress did not intend it to be exclusive. The limitation of the Act is that it provides a "framework" as opposed to a pervasive scheme. (See Section 4.) Moreover, businesses can comply with local, state and federal anti-apartheid legislation without violating any provision of any act. Therefore, the federal Anti-apartheid Act of 1986 does not preempt state or local ordinances intended to further common policy goals, and Sacramento can enforce

local ordinances to oppose the "abhorrent and morally repugnant" policy of apartheid. [Section 110(a)(1).]

The City's goal is to end all governmental support of the economic underpinnings of the apartheid system. By prohibiting use of City facilities for business purposes which would promote the economic viability of the government of South Africa, the City is directly advancing its interest in ending support for apartheid. The amendment strikes only at utilization of City facilities for business purposes, and is thereby narrowly drawn to achieve the City's goal.

(b) Time, Place and Manner Restriction

Even if noncommercial speech is reached by the ordinance, it may still constitute a valid time, place and manner restriction on speech. Time, place and manner restrictions are valid if they are content-neutral, if they serve a significant governmental interest, and leave open alternate channels of communication. United States v. O'Brien, 391 U.S. 367 (1968).

A prohibition on use of City facilities for business purposes by the targeted businesses is content neutral; the ordinance is not sensitive to any particular message. The ordinance leaves open alternate channels of communication in that other facilities are available within the City to accommodate such uses. Lastly, the ordinance operates as a valid time, place and manner restriction because it is narrowly tailored to serve the City's interest in stopping economic support for apartheid, which, as discussed above, is clearly "significant".

(c) Public Forum Doctrine

The public forum doctrine relates to free speech and free association issues which are raised when government seeks to regulate or prohibit First Amendment activities in areas which are open to the public. There are three kinds of fora: the traditional public forum, such as streets, sidewalks and parks; the government-designated public forum, defined as "public property which the State has opened for use by the public as a place for expressive activity"; and nonpublic forum, or public property with a specific intended purpose such as jails and schools. Perry Ed. Assn. v. Perry Local Ed. Assn., 460 U.S. 37 (1983).

City facilities which are rented out for use by the public are probably of the second type of public forum. Where a public facility is generally open to the public, the state may not prohibit use of the facility based on disapproval of the content of

the user's message. This rule has been applied to prohibit a state university from refusing to allow student religious groups use of campus facilities open to student groups [Widmar v. Vincent, 454 U.S. 263 (1981)], even where the university argued the Establishment Clause was implicated. It has also been applied, by a California appellate court, to a visitor's center at a nuclear weapons research facility. [U.S. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory (1984) 154 Cal.App.3d 1157.]

However, even in a traditional public forum, the government is allowed to regulate First Amendment activity. The regulation may be content-based if it is narrowly drawn to serve a compelling interest, or it may be a content-neutral time, place, and manner restriction, narrowly tailored to serve a significant governmental interest and leaving open alternative means of expression. Two examples of how the government can regulate First Amendment activity in a public forum are provided by International Society for Krishna Consciousness v. Wolke, 453 F.Supp. 869 (E.D. Wis. 1978) and U.S. Southwest Africa/Namibia Trade and Cultural Council v. U.S.A., 708 F.2d 760 (D.C. Cir. 1983).

The first case was a constitutional challenge to a county ordinance requiring written permission from the county airport director before any printed matter could be distributed at the airport. Plaintiffs, the "Hare Krishna" organization, wanted to use the airport to proselytize. They argued that the ordinance constituted a prior restraint on speech and an invalid restriction on access to a public forum. The court agreed with plaintiffs, finding that the portion of airports used by the public as thoroughfares are public fora; only reasonable time, place and manner restrictions could operate on First Amendment activities there. The ordinance was facially invalid because it did not contain narrow, objective and definite standards to guide the airport director in his decisions to allow or prohibit expressive activity.

The second case, U.S. Southwest Africa/Namibia Trade and Cultural Council v. U.S.A., also involved regulation of expressive activity in airports. The FAA had provided for advertising display cases at Washington National and Dulles International Airports. FAA policy restricted access to these displays only to commercial and public service advertising. Political and issue-oriented ads were completely prohibited. The FAA's reasons for this policy were three-fold: (1) a greater amount of revenue would be raised by promoting long-term, high-quality commercial displays; (2) a ban on political messages would avoid the appearance of government sponsorship of those messages; and (3) administrative problems in allocating limited space between opposing political viewpoints would be avoided.

This policy was applied to prohibit the plaintiffs' political advertisement entitled "SWAPO'S RAPE OF NAMIBIA" and characterized SWAPO as a Soviet-bloc terrorist group.

The court held that the FAA's policy was not a valid time, place and manner restriction of First Amendment activity in a public forum. First, the airport thoroughfares, in which the display cases were located, are undeniably public fora, and the display cases represented the only fixed media for expression in those areas. Second, the FAA's restriction was not content-neutral because it banned political messages, a type of speech which is most protected by the First Amendment. Third, the government's revenue and administrative interests could not support the restriction, because there was no showing that significant revenue would be lost by allowing political advertising, and the avoidance of appearance of government sponsorship of a political viewpoint was not a weighty enough interest to support suppression of political messages. [Compare Lehman v. City of Shaker Heights, 418 U.S. 298 (1974). The United States Supreme Court approved limits to advertising on city-owned rapid transit vehicles for the same reasons disapproved in U.S. Southwest Africa.]

The two cases discussed above represent improper attempts to regulate expression in public fora. None of the constitutional defects present in those cases are present in the City's ordinance.

The City's restriction on utilization of its Convention Center and other facilities is content-neutral; it in no way infringes on free speech rights by restricting a certain message. While it may treat a business which associates with South Africa differently, it does not have the effect of directly prohibiting such an association. Furthermore, and most importantly, the nature of the activity being restricted is not expressive but commercial. Commercial speech falls outside the core of the First Amendment. Even occurring in a public forum, it is subject to reasonable time, place and manner restrictions, because the ordinance serves a significant governmental interest, and alternate channels of communication are left open to the targeted business organizations.

(d) Ordinances Which Indirectly Affect First Amendment Activity

There is authority for the notion that, while the state cannot unreasonably interfere with constitutionally protected activity, it has no affirmative duty to subsidize or support that activity. Hence, even if a court were to find the subject businesses

have a First Amendment right which protects their commercial association the City is not, under this analysis, acting in an unconstitutional manner by refusing to support or subsidize their businesses by leasing them City facilities.

Cases which have turned on this important distinction between unconstitutional interference and mere failure to support constitutional activities are Maher v. Roe, 432 U.S. 464 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977), Harris v. McRae 448 U.S. 297 (1980), and Eaton v. Lyng, 669 F.Supp. 266 (N.D. Iowa 1987). Maher v. Roe and Harris v. McRae involved challenges to Medicaid's refusal to fund certain abortions. The Supreme Court held in both cases that, although the right to an abortion is protected by the Constitution, since the Medicaid laws did not directly deny a woman's right to an abortion, they did not unconstitutionally infringe upon that right. As the Maher court noted, there is a "basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader." 432 U.S. at 475-476.

Eaton v. Lyng concerned the strikers amendment to the Food Stamp Act, which precludes issuance of food stamps to families of workers on strike who would not have qualified for the program before the strike. This law was challenged on the basis that it interfered with strikers' First Amendment rights to associate with their union and their families, since it forced strikers either to leave their families so that the families could qualify for food stamps, or to leave the union by crossing picket lines. The court applied the analysis of Maher and Harris, finding that, although the strikers undeniably have a First Amendment right to associate with their union and their families, the food stamp policy did not directly impinge on those rights. The direct cause of any harm to the strikers' associational rights was the decision to strike. Although the strikers' associational rights are protected, the government has no duty to fund their exercise. Indeed, Congress made a choice to discriminate against strikers, and there is nothing in the law of the First Amendment to prevent them from so discriminating as a matter of policy. Id., at 272.

It seems clear from these cases that, even where an individual has a valid First Amendment or other constitutional right, the government is under no duty to fund or subsidize that right. Hence, the City may constitutionally refuse to extend the use of its facilities to businesses which deal with South Africa, as a part of its anti-apartheid policy.

(e) Standards for Granting or Denying a License or Permit for First Amendment Activity

Ordinances which seek to regulate First Amendment activity by prior issuance of a permit or license must contain definite standards governing the decision. Where the decision to issue or deny a permit is left to the unbridled discretion of the governmental authority, the ordinance will be open to constitutional attack. Saia v. New York, 334 U.S. 558 (1948). The standards which govern the decision must be set forth in the ordinance. They must constitute explicit limits on the decision-maker's discretion. Poulos v. New Hampshire, 345 U.S. 395 (1953).

The ordinance amendment incorporates the current "waiver" provision which gives the City Manager discretion to grant a waiver from the prohibitions of the ordinance if he or she finds that: "(1) no other business firm is available which is capable of satisfactorily performing the desired function, or (2) the City will incur a significant financial loss as a consequence of the prohibitions contained in this ordinance." In either of these two situations, the City Manager is authorized to select a firm which comes under the prohibitions of the ordinance, but which "maintains policies that conform to the greatest extent with the intent" of the ordinance, and is capable of providing the level of services required. Within 120 days of adoption of the ordinance, the City Manager is to develop "rules and regulations" which will govern waiver.

The standards which are at present written into the ordinance seem definite and objective enough to qualify as sufficient standards to govern the City Manager. The Manager is not allowed to exercise unfettered discretion, but must first determine that one of the two pre-conditions for waiver exist, and then must choose a firm with the most conforming policies. These are sufficiently ascertainable and objective standards.[2]

(2) Freedom of Association

The First Amendment guarantee of freedom of association protects an individual's right to associate with others "for the advancement of beliefs and ideas." NAACP v. Alabama, 357 U.S. 449 (1958). As the United States Supreme Court has stated:

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[2]The rules and regulations for waiver, which are called for by the ordinance, have not been developed. These should be developed and included in the ordinance. As an alternative, this provision could be deleted.

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.... Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. NAACP, supra, p. 1498.

The question of exactly what types of association are protected by the First Amendment was explored by the Court in Roberts v. United States Jaycees, 468 U.S. 609 (1984). The national charter of the Junior Chamber of Commerce (Jaycees) prohibited admission of women into the regular membership. When the St. Paul and Minneapolis chapters began admitting women in spite of the policy, the president of the national organization threatened revocation of their charters. The local chapters filed complaints with the Minnesota Department of Human Rights, claiming that the national policy violated Minnesota's Human Rights Act. Minnesota's Human Rights Act, in part, renders it unlawful:

> To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex.

A "place of public accommodation" is defined in the Act as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public."

The U.S. Supreme Court opinion, and notably Justice O'Connor's concurrence, is illuminating on the issue of how the freedom of association guarantee relates to commercial association. The majority opinion stressed that there have been two types of decisions regarding freedom of association, turning on a distinction between intimate association, i.e., that which is characteristic of family and small group activities, and expressive association, that which is undertaken for the advancement of beliefs and ideas. The Court then proceeded to analyze the Jaycees according to both types of association, finding, first, that the size of the organization and its lack of selectivity did not qualify it for freedom of intimate association.

Second, the Court determined that there was an expressive component to the organization, because it espouses beliefs and ideas of a political, social, and economic nature.

Because of this First Amendment component to the organization's activities, the Court applied strict scrutiny to Minnesota's Human Rights Act and its application to the Jaycees. Under strict scrutiny analysis, the government must show a compelling interest, unrelated to the content of the speech, which is narrowly tailored to achieve the desired interest. The majority opinion is based primarily on its finding that the Act furthers a compelling state interest in eliminating discrimination. That interest, in fact, is "of the highest order", because the purpose is to "vindicate the 'deprivation of personal dignity that surely accompanies denials of equal access to public establishments'" [quoting from Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964)]. The broad definition of "public accommodation" in the Act "reflects a recognition of the changing nature of the American economy and of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups including women." Id., at 476.

While the majority opinion thus upheld the application of the Act to the Jaycees on the basis that the state has a compelling interest in ending discrimination, Justice O'Connor's concurrence is based on the difference between expressive association and commercial association. The purpose of the association determines its nature:

> Lawyering to advance social goals may be speech (NAACP v. Button) but ordinary commercial law practice is not (Hishon). A group boycott or refusal to deal for political purposes may be speech (NAACP v. Claiborne Hardware), though a similar boycott for purposes of maintaining a cartel is not. Id., at 483.

(See, also, Hanover T. Fed. of Teach. L. 1954 v. Hanover Com. Sch. Corp. 457 F.2d 46, 461 (7th Cir. 1972), "Thus, the economic activities of a group of persons...who associate together to achieve a common purpose are not protected by the First Amendment. Such activities may be either prohibited or protected as a matter of legislative policy.")

The predominant purpose of the association should be identified, to determine its characterization as expressive or commercial. If an organization is chiefly in existence for commercial reasons, then it may constitutionally be subjected to regulations which rationally relate to a legitimate state purpose. This is a much lower level of scrutiny than the "compelling interest" test applied by the majority.

Roberts is a very useful case in analyzing whether the City is unconstitutionally impinging on a business's right to associate with South Africa by refusing to allow such a business to utilize City facilities for business purposes. On the one hand, the majority opinion in the Roberts case supports the proposition that, even if it is argued that a business in question is engaged in protected "expressive association", the City has a compelling governmental interest in "vindicating the deprivation of personal dignity" that is occurring in South Africa. On the other hand, Justice O'Connor's concurrence supports the distinction which should apply in this case, i.e., that the businesses in question are engaged only in commercial association with South Africa.

In the recent case of Posadas de Puerto Rico Assocs. v. Tourism Company of Puerto Rico, 478 U.S. __, 92 L.Ed.2d 266 (1986), the United States Supreme Court neutered First Amendment protection for commercial speech. The Commonwealth of Puerto Rico passed a statute banning gambling casino advertising to Puerto Rican residents, while permitting such advertising to tourists. Chief Justice Rehnquist first determined that the speech involved was commercial. It did "no more than propose a commercial transaction." Posadas at 279, quoting Virginia Pharmacy Board v. Virginia Citizen's Consumer Council, Inc., 425 U.S. 748 (1976). Protection of pure commercial speech is tested by the principles of Central Hudson Gas & Electric v. Public Service Commission, 447 U.S. 557 (1980). In Central Hudson, the court established a four-part analysis for determining whether commercial speech was protected by the First Amendment. For commercial speech to come within that provision, (1) it must concern a lawful activity and not be misleading, (2) the governmental interest must be substantial, (3) the provision must advance the state interest, and (4) the state must employ the least restrictive means available. Central Hudson at 566.

In this case, we must presume that the commercial speech concerns a lawful activity and is not misleading. Next, as we have demonstrated, the City's interest is compelling. If the first two parts yield affirmative answers, steps 3 and 4 are analyzed. In analyzing whether the ordinance advances the City's interest, the Supreme Court applies a rational basis test (i.e., whether the legislative could have rationally believed that it advanced the cause). Posadas at 281. Finally, in analyzing the least restrictive means possible, the Posadas court determined that the question was up to the Legislature to determine whether alternative policies would be as effective in reducing the demand as the restriction on speech. Posadas at 282. Puerto Rico's statute was determined to be valid. The Court held that "the greater power to ban casino gambling necessarily include[d] the lesser power to ban advertising of casino gambling." Posadas at 283.

The City may thus regulate these businesses in any rational manner relating to a legitimate state interest. Under this lower standard, the City's police power to regulate to promote public health, welfare, safety and morals, makes a concern for human rights clearly a legitimate governmental interest.

(3) Equal Protection

Because the ordinance singles out a group of business firms for disparate treatment with regard to City facilities, it must be analyzed under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and that of the California Constitution, Art. I, Section 7. Since the California equal protection clause has been held to afford the same degree of protection as the federal clause [Cohan v. Alvard (1984) 162 Cal.App.3d 176], the analysis will be the same under both state and federal law.

When the government creates a classification of people or entities who are singled out for differing treatment under the law, the law will be scrutinized in accordance with the nature of the classification created. A classification based on race or national origin is a "suspect classification" and will be subject to strict scrutiny; i.e., in such an analysis, a court would demand a compelling governmental purpose and the absense of a less restrictive alternative means to that end. Palmore v. Sidoti, 466 U.S. 429 (1984). Classifications based on factors such as gender are subjected to intermediate scrutiny; they must be supported by an important governmental interest. Craig v. Boren, 429 U.S. 190 (1976).

The classification involved in the ordinance amendment is not based on any criteria which would qualify it for strict or even intermediate scrutiny. The group of businesses which are singled out by the ordinance have ony one relevant criterion in common: their own economic decision to have the business relationship with South Africa/ Namibia specified in the ordinance. This criterion forms the basis for the classification. Therefore, the classification is valid under equal protection analysis if it is rationally related to a legitimate governmental interest. This is the lowest level of constitutional scrutiny, since there is a rational relationship between denying use of City facilities to businesses dealing with South Africa and the City's anti-apartheid policy. In addition, the anti-apartheid policy represents far more than a simple legitimate governmental interest. Indeed, as pointed out above, the interest is a compelling one.

Equal protection analysis does not end with scrutiny of the class of affected person. If the ordinance infringes on a fundamental right, it will be subjected to scrict scrutiny. Fundamental rights are those guaranteed by the Constitution, either explicitly or

implicity, including First Amendment rights. The Ninth Circuit Court of Appeals recently held that protection of expressive conduct is contingent upon the existence of a public forum. Monterey County Democratic Cent. Committee v. U.S. Postal Service, 812 F.2d 1194 (9th Cir. 1987). Expressive conduct does not receive absolute protection. Content neutral speech, even within a public forum, can be limited by a time, place and manner restriction narrowly drawn to serve a compelling governmental interest. Monterey at 1196. Since the ordinance represents a proper time, place and manner restriction on the activities in the City's facilities, no fundamental right is violated and an equal protection claim based on infringement of a fundamental right, i.e., free speech in a public form, would not be successful.

B. California Constitution: Freedom of Speech

Article I, Section 2 of the California Constitution provides:

> Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

This free speech right has been found by California courts to be "more definitive and inclusive than the First Amendment." [Wilson v. Superior Court (1975) 13 Cal.3d 652, 658.] Cases in which the California Constitution has justified broader protection for speech than the First Amendment include Robins v. Pruneyard Shopping Center (1979) 23 Cal.3d 899, aff'd sub nom Pruneyard Shopping Center v. Raline, 447 U.S. 74 (1980) (solicitation of signatures on petitions in privately owned shopping center is constitutionally protected activity); Prisoner's Union v. Department of Corrections (1982) Cal.App.3d 930 (distribution of informational literature in parking lot of prison is protected activity); and U.S. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory (1984) 154 Cal.App.3d 1157 (nuclear weapons research facility must allow use of its visitor's center by group with anti-nuclear views).

In each of these cases, the courts have applied California's version of the public forum doctrine. The public forum doctrine is applied when regulations impinge on First Amendment activity in places which are traditionally open for public use, such as parks and sidewalks. For First Amendment activity taking place in public facilities dedicated to a particular use, such as prisons and schools, the government has more leeway in restricting speech. Under California law, this doctrine has been expanded by the "incompatible use" test, wherein the determinative question is not whether the public place or public facility is being used in the intended fashion, but whether the expressive activity is incompatible with the intended function. Thus,

for example, informational leafletting must be permitted in a prison parking lot, absent substantial evidence that the activity interferes with prison functions. Prisoner's Union v. Department of Corrections, supra.

Another area in which California law appears to be more liberal than federal law is in the definition of commercial speech. As noted above, the U.S. Supreme Court in Central Hudson Gas and Electric Corp. v. Public Serv. Commission defined commercial speech as "expression related solely to the economic interests of the speaker and its audience." This is a broader definition, encompassing more topics for expression, than the definition used by the California Supreme Court in Spiritual Psychic Science Church v. City of Azusa (1985) 39 Cal.3d 501. In that case, the definition used is "speech which does no more than propose a commercial transaction", a definition taken from Va. Pharmacy Bd. v. Va. Consumer Council, 425 U.S. 748 (1976), where the Court stated:

> The principle emerging from these cases is that commercial speech is that which has but one purpose -- to advance an economic transaction. By contrast, noncommercial speech encompasses activities extending beyond that purpose. For example, an advertisement that cherries can be purchased for a dollar a box at store X may be commercial speech, but an advertisement informing the public that the cherries for sale at store X were picked by union workers is more: it communicates a message beyond that related to the bare economic interests of the parties. Id. at 511.

The concern which arises from this definition of commercial speech becomes apparent when it is applied to a business activity such as a trade fair. While trade fairs are for the purpose of promoting the economic interests of the participants, there could arguably be communication of information going beyond the sales price of commodities or services. The "extra" communication could be characterized as noncommercial speech. Even given the possible presence of non-commercial expression under the restricted California definition of commercial speech, however, California law still allows for valid time, place and manner restrictions on non-commercial speech. [See, e.g., A-CHH Associates v. Citizens for Representative Government (1987) 193 Cal.App.3d 1193.] The City's ordinance would therefore withstand analysis under the criteria established for evaluation of time, place and manner restrictions under the Federal Constitution, as outlined above in Section II.A.(b).

III. APPLICATION OF THE UNRUH ACT

California's Unruh Civil Rights Act, at Civil Code Section 51, et seq., provides in part as follows:

> All persons within the jurisdiction of this State are free and and equal, and no matter what their race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

The Unruh Act has been interpreted by the California Supreme Court to apply in all cases of arbitrary discrimination by a business establishment. In re Cox (1970), 3 C.3d 205. In re Cox involved the eviction of a customer from a shopping center under a municipal ordinance allowing arrest and conviction of any person staying on private premises after being told by the owner to leave. The ordinance itself prohibited its application to any act in violation of the Unruh Act.

The Court found that the Unruh Act applied to Cox's conviction although the discriminatory eviction was not based on the grounds enumerated in the Act:

> That the act specifies particular kinds of discrimination--color, race, religion, ancestry, and national origin-serves as illustrative, rather than restrictive, indicia of the type of conduct condemned. In re Cox, supra, at 212.

That the act applies to all arbitrary discrimination against all citizens was established in California Supreme Court decisions which predated the Unruh Act, Orloff v. Los Angeles Turf Club (1951) 36 Cal.2d 734 and Stoumen v. Reilly (1951) 37 Cal.2d 713. Both of these early decisions concerned discrimination against individuals thought to be of bad moral character, the latter involving discrimination against homosexuals. Although the Unruh Act was passed subsequent to these decisions, the Court "[could] not infer from the 1959 amendment any legislative intent to deprive citizens in general of the right declared by the statute and stanchioned by public policy." Id., at 215. The Unruh Act, therefore, applies to all instances of arbitrary discrimination by "business establishments".

Cases interpreting the meaning of "business establishments" for purposes of applying the Unruh Act reveal that the term is very broadly interpreted. Nonprofit hospitals, homeowners' associations, the Boy Scouts, and the Rotary Club have been found to be "business

establishments" for purposes of the Act. Rotary Club of Duarte v. Board of Directors (1986) 178 Cal.App.3d 1035, aff'd 107 S.Ct. 1940 (1987). Courts will analyze organizations to determine whether they have "sufficient businesslike attributes" to come within the scope of the Act. If membership dues or fees are collected, if any type of revenue is derived from any service provided to members, that will be an important factor. Another important factor is the degree of selectivity used in selecting membership. If an organization or establishment is generally open to the public, or if its membership is very large, then it will be deemed a "business establishment" or a "public accommodation," which is by judicial interpretation incorporated in the concept of "business establishment." Isbister v. Boys' Club of Santa Cruz, Inc. (1985) 40 Cal.3d 72, 88-90.

Applying these criteria to City facilities which are rented out for public use, it is probable that they would be deemed "business establishments" for purposes of the Unruh Act. However, although the City is subject to the Act, there is no violation of the Act absent a showing of arbitrary discrimination by virtue of the City's policies.

A. Arbitrary Discrimination

A public accommodation or business establishment is not prevented from enacting and enforcing "reasonable regulations that are rationally related to the services performed and facilities provided." In re Cox, supra at 212. If a policy or restriction is not rationally related to the services performed or facilties provided, then it is arbitrary and unenforceable. Thus, for example, the management of a large apartment complex could not exclude all families with minor children. Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721; cert. denied 459 U.S. 858. In that case, the policy had no relationship to the facilities, which were not special accommodations for senior citizens. If the facility had been especially intended for the elderly, such a policy would have been rational because of the special needs of the elderly, and the compelling societal interest in providing such housing.

Numerous class-based exclusion policies have been stricken by the courts as violative of the Unruh Act where the justification for the policies was an expectation of immoral or disruptive conduct. See, e.g., Stouman v. Reilly (1951) 37 Cal.2d 713; Curran v. Mount Diablo Council of the Boy Scouts (1983) 147 Cal.App.3d 712; appeal dismissed 468 U.S. 1205 (1984). Hence, the Boy Scouts could not expel a homosexual, absent any showing of "significant danger of harm to the association resulting from the continued membership of the homosexual person." Curran v. Mount Diablo, supra at 717. The emphasis in Unruh Act cases is on the rights of the individual to equal access to public

accommodations. As noted by the California Supreme Court in Marina Point, "Even a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply." Marina Point, supra at 740, quoting Los Angeles Dept. of Water & Power v. Manhart (1978) 435 U.S. 702, 708 (1978).

Although the City is discriminating against businesses which have the requisite interest with South Africa, this discrimination is not arbitrary for two important reasons. First, the City has a "compelling societal interest" in refusing to subsidize or support the profits of apartheid. This compelling interest has been demonstrated by the findings set forth in the original ordinance (No. 86-126), whereby the City set forth its policy opposing apartheid. Support for this policy, and the City's requirement that anyone contracting with the City must sign a stipulation that they do not and will not discriminate on the basis of race or other specified illegal criteria, is provided by Government Code Section 12990. That section requires anyone who wishes to become a contractor with the state to submit a nondiscrimination program and to comply with it. In addition:

> [e]very state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under such clause to labor organizations with which they have a collective-bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced. Govt. Code §12990(c).

These provisions carry out the public policy of this state, expressed in Government Code Section 12920, to eliminate discriminatory practices in employment. The City has a compelling interest in enforcing its anti-apartheid policy, just as the state has a compelling interest in ending discrimination. Additionally, the City's refusal to enter contractual relationships with the targeted businesses is a measure clearly and rationally related to its anti-apartheid policy.

Second, although this is an example of "class-based" discrimination, all members of the "class", i.e., those businesses having the requisite relationship with South Africa, are currently violating the City's policy by virtue of their own choice in dealing with South Africa. The City is not, therefore, discriminating on the

basis of an expectation of unlawful or immoral conduct. Rather, the conduct has occurred, and each excluded business has the ability to remedy the situation by voluntarily altering its business relationships or requesting a waiver.

B. Application of the Unruh Act to the City

The foregoing analysis has assumed that the Unruh Act applies to the City in its proprietary capacity as owner and lessor of City facilities, and that these facilities are "business establishments" for purposes of the Unruh Act. However, it can also be argued that the City is essentially exercising its police power when it enacts restrictions on the utilization of City facilities. Seen thus as a police power regulation, the amendment may not be subject to the Unruh Act. The City has been granted plenary authority to exercise its police power under the "Home Rule" provision of the State Constitution (Art. XI, Sec. 5). As a charter city, Sacramento is exercising its plenary police power to promote the same goal as that of the Unruh Act, i.e., promoting the elimination of racial discrimination which is the basis of apartheid by refusing to support businesses which deal with South Africa.

In exercising its police power, a city must act reasonably to promote a legitimate municipal interest, and not discriminate without a reasonable basis for classification against any person or persons. (McQuillan, Section 24.01 et seq.) A municipality may regulate in the same area as that covered by the general laws, so long as the Legislature has manifested no intent to occupy the whole field. (5 Witkin, Constitutional Law, Section 445.) The relevant question regarding the Unruh Act is thus whether the City is allowed to regulate in the same area, i.e., human rights, or whether the Legislature intended to occupy the whole field of civil rights legislation.

The test for legislative intent to preempt a particular field is summarized in In re Lane (1962) 52 Cal.2d 99, 102-103. The Lane court stated that "we may look to the whole purpose and scope of the legislative scheme and are not required to find such an intent solely in the language used in the statute". This necessarily vague test varies, and must be determined on a case-by-case basis without prejudging the results. Eckl v. Davis (1975) 51 Cal.App.3d 831, 836-37.

The Unruh Act specifies particular kinds of discrimination in an illustrative, rather than restrictive, list of prohibited conduct. Further examination of the language of the Unruh Act reveals no specific intent to preempt local ordinances dealing with similar discriminations. Moreover, the California Supreme Court has stated that the broad interdiction of the Act is not absolute. In re Cox (1970) 3 Cal.3d 205, 212. The Cox court goes on to state that local authorities may "establish reasonable regulations that are rationally related

to the services performed and facilities provided." The same line of reasoning was used by Supreme Court Justice Mosk in a 1962 opinion as Attorney General. The Attorney General's Opinion dealt with the issue of state preemptions under the Unruh Act of city ordinances for discrimination in housing. Then-Attorney General Mosk opined that the city ordinance established enforcement and redress procedures supplemental to the State legislation, and was not preempted by the Unruh Act. 40 Ops.Cal.Ag. 114, 119 (1962). The Opinion also pointed to the lack of specific intent language within the body of the Unruh Act itself. The same Legislators, during the same legislative session, had expressly occupied the field of employment discrimination, yet left the nature of their scheme incomplete when penning the Unruh Act.

The language of the Unruh Act extends only to arbitrary discrimination against all persons within the jurisdiction of the state. The City's divestiture ordinance actually goes beyond the boundaries of the state in its purpose to eradicate racial discrimination in other countries. The ordinance therefore goes beyond the subject of the Unruh Act, but is attempting to further the same goals. Certainly nothing in the Unruh Act itself addresses the problem of racial discrimination in South Africa. There is, therefore, no basis for a preemption argument.

IV. RECENT LITIGATION CONCERNING DIVESTITURE LEGISLATION

Two state courts have recently considered legal issues relating to divestiture policies. In Oregon, Associated Students of the University of Oregon, et al. v. Oregon Investment Council (1986) 82 Or.App. 145, 728 P.2d 30 was brought by student organizations against the Investment Council (OIC) and the State Board of Higher Education (the Board). The students requested a declaration that the OIC could not invest endowment funds in the stocks of corporations doing business in South Africa. The Board had previously passed a resolution instructing the OIC to divest the endowment funds, but the OIC had voted not to follow the resolution, as it violated the state's prudent investor rule.

The Oregon case did not result in a ruling on the merits. Although the trial court decided in favor of the OIC's position on the prudent investor rule, on appeal the only holding was that the student organizations did not have standing to bring suit. They were unable to allege a legally cognizable injury, other than a generalized desire to support divestiture.

The case brought in Michigan did result in a ruling on the merits. The Regents of the University of Michigan, etc. v. the State of Michigan (1988) 166 Mich.App. 314, 419 N.W. 2d 773, was brought as a challenge to the constitutionality, under state law, of an amendment

to Michigan's Civil Rights Act (CRA). The CRA amendment prohibited investment of state educational institution funds in organizations operating in South Africa and/or the U.S.S.R. The Regents alleged that this restriction on their power to control university funds violated the state constitutional provision which originally gave the regents exclusive authority over university affairs.

The court agreed with the Regents, noting that although the Regents were compelled by virtue of other legislative enactments, notably worker's compensation laws and retirement system legislation, to give up some of their exclusive authority, in this case there was no "clearly established public policy" favoring divestitute in Michigan. The legislature had not enacted a program of divestiture for all public funds. Because the CRA amendment stood in such isolation, and was directed solely at the university, it could not constitutionally override the Regents' authority over investments.

These two cases do not undermine the City's position on divestiture. The Oregon case was decided only on the basis of standing. The Michigan case was decided on the grounds that the decision to divest university funds was not supported by clearly established public policy. The City can show that divestitute is supported by clearly established public policy in this state, which has been codified.

CONCLUSION

While there is no clear-cut answer, it is probable that the policies and interests which have been expressed by the City Council provide sufficient justification for the proposed ordinance to insulate it from attack based upon the California and United States Constitutions, and the Unruh Act.

Respectfully submitted,

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All districts