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September 8, 2003

City of Philadelphia  
Memorial Hall  
42<sup>nd</sup> and Parkside Ave.  
Philadelphia, PA 19131-3705

Philadelphia Phillies  
3501 South Broad Street  
Philadelphia, PA 19148

Veterans Stadium  
3501 South Broad Street  
Philadelphia, PA 19148

RE: Gay Community Day, August 12, 2003

Dear Sir or Madam:

Repent America has requested our assistance as allies of the Alliance Defense Fund to notify the City of Philadelphia, Veteran's Stadium and the Philadelphia Phillies of its unlawful denial of Repent America's right to engage in religious expression at Veteran's Stadium during "Gay Community Day", and to formally request the City and the Philadelphia Phillies cease and desist violating their First Amendment rights.

By way of introduction, the Alliance Defense Fund is a not-for-profit public interest law and educational group. The organization exists to educate the public and the government about the right to freedom of speech, particularly in the context of the expression of religious sentiments. The Alliance Defense Fund has numerous allied attorneys throughout the United States who assist the organization.

The legal principles relevant to this particular situation have been set forth in numerous Supreme Court decisions. As you will see in the pages that follow, many federal and Supreme Court decisions attest to the fact that religious expression is permitted in the public arena consistent with the First Amendment.

In the following pages, the particular facts of this matter are set forth. Following the fact statement is a discussion of relevant law. After reviewing the following, please take the necessary steps required to ensure that neither the Philadelphia Phillies franchise, Veteran's Stadium, nor the City of Philadelphia violate Repent America's constitutional rights in the future.

### STATEMENT OF RELEVANT FACTS

Repent America is an association of Christians who believe they are obligated by the commands of the Bible to go out into the streets and communities of America declaring the Word of God and proclaiming the Good News. The group believes that if they love God, they will obey his commandments, and if they love their neighbors, they will go to them with the Word of God, so that they may be saved.

In furtherance of these beliefs, Repent America participates in open air preaching, displaying Biblically based banners and signs, handing out religious literature and engaging people in conversation.

According to Robert Drake, the President of the Philadelphia Chapter National Lesbian and Gay Journalists Association, August 12, 2003, was to be "an historic evening for Philadelphia's GLBT community." He encouraged people to join the GLBT at "the first Gay Community Day with the Phillies!" Moreover, Mr. Drake encouraged the gay community with these words:

The Phillies have reserved a section of seats in the 500 and 600 level of Veteran's Stadium for us, and if enough people purchase tickets, we will have an opportunity for someone from the GLBT community to throw out the first pitch and our local chapter will receive recognition on the scoreboard, *allowing us an incredible awareness opportunity for our organization.*

Emphasis added.

Four members of Repent America read about the Gay Community Day and purchased tickets to the baseball game. They intended to place a banner in front of their seats that stated, "Homosexuality is sin. Christ can set you free." The banner complied with the Philadelphia Phillies' fan conduct policy which reads:

Banners. Banners and signs are welcome, provided they are in good taste, as determined by the Phillies. Banners may not be hung or displayed on any part of the playing

field or in any way that obstructs the view of the fans or any stadium signage. If a banner interferes with the players' sightlines, the umpires may request its removal.

During the first inning of the baseball game, Repent America observed various banners and took pictures of other displays present at the game. They observed one man dancing provocatively while waving a rainbow flag.<sup>1</sup> Repent America unfurled their banner.

After only seven minutes, stadium security approached the group and told them, "The executives said the banner must come down." They were threatened with arrest and confiscation of the banner if they did not take the banner down. They were escorted from the stadium and given tickets to another game. Clearly, "the executives" did not like the content of or viewpoint of Repent America's Banner.

#### **FANS ATTENDING SPORTING EVENTS DO NOT SHED THEIR CONSTITUTIONAL RIGHTS AT THE TICKET GATE**

As you are aware, in order to be afforded constitutional protection for first amendment rights, state action must exist. The involvement by the City of Philadelphia and the General Assembly of the Commonwealth of Pennsylvania in owning, renting and funding the stadium clearly satisfy the requirement of state action. *See ISKCON v. New Jersey Sports and Exposition Authority*, 691 F.2d 155, 159 (3<sup>rd</sup> Cir. 1982). In *ISKCON*, the Third Circuit Court of Appeals noted that the Hare Krishnas attending sporting events:

are free to speak with anyone they choose and upon any topic, whether it be religion, politics, the merits of the Giants' and Cosmos' opponents, or a "hot tip in the fifth race." They are free to wave pennants or wear clothing that demonstrate a point of view. None of these activities is proscribed by the Authority's policy, which does not in any way touch upon the content of pure or symbolic speech

*Id.* The court recognizes that a limit on first amendment activity must apply "alike to all religious, political, charitable and civic groups." *Id.* These principles were certainly not honored on August 12, 2003, when only religious speech was singled out for condemnation and punishment.

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<sup>1</sup> According to "The Official Rainbow Flag Website", the rainbow flag is "the most widely-recognized LGBT symbol in history."

By allowing banners and symbols supporting the homosexual movement during "Gay Community Day" at Veteran's Stadium, to include the rainbow flag, "the most widely-recognized LGBT symbol in history," the City and the Phillies created a limited public forum. In a limited public forum, regulation of speech is examined under the most exacting scrutiny. Here, it is evident that the use of Veteran's Stadium as a forum to "allow[] [the LGBT] an incredible awareness opportunity for [their] organization" prevents "the executives" from discriminating against Repent America based on the content of its members' viewpoint.

The City of Philadelphia and the Philadelphia Phillies and its employees must understand that, "A First Amendment violation occurs when the government 'denies access to a speaker solely to suppress the point of view he espouses on an otherwise includable subject.'" *Marilyn Manson, Inc. v. New Jersey Sports & Exposition Authority*, 971 F.Supp. 875, 887 (3<sup>rd</sup> Cir. 1997) (citing *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985)).

There can be no doubt that Repent America has free speech rights, or that these rights can be exercised at publicly owned sporting arenas in Philadelphia. While we believe Veteran's Stadium is a limited public forum, the United States Supreme Court made it quite clear that even in a *nonpublic* forum, viewpoint based distinctions are unconstitutional. *See id.* at 886 ("The government cannot deny access to a speaker solely to suppress the point of view he espouses on an otherwise includable subject.") On August 12, 2003, the Phillies hosted "Gay Community Day" and thereby made homosexuality an "includable subject" within Veteran's Stadium. The Phillies unconstitutionally suppressed the viewpoint of Repent America in violation of the First Amendment.

The principle of First Amendment protection for private religious speech was recently reaffirmed by the United States Supreme Court:

Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. ...Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

*Capitol Square Review and Advisory Bd. v. Pinette*, 115 S.Ct. 2440, 2446 (1995). Thus, Repent America's constitutional free speech rights to express religious views are fully protected by the First and Fourteenth Amendments to the United States Constitution.

The right to the freedom of speech is more than just a principle, but a reality as well:

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says.

*Tinker v. Des Moines Independent School District*, 393 U.S. 503, 513 (1969). Consequently, the Phillies' censorship of Repent America's religious expression directly violates the constitutional rights recognized above.

Repent America is aware that if their expressive activities were to violate reasonable time place and manner restrictions, then their conduct may be curtailed. However, Veteran's Stadium and the Philadelphia Phillies and their employees must understand, that they cannot deny access to an event that has been opened to the public and during which various viewpoints of an opposing character are being expressed. See *ISKCON* at 159 quoted above.

#### **THE FIRST AMENDMENT PROTECTS THE RIGHT OF FANS TO ENGAGE IN RELIGIOUS SPEECH**

Any concern by the City or the Phillies that other fans, upon seeing Repent America's banner, might be uncomfortable about the religious subject matter, does not justify prohibition. "[G]overnment may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

Therefore, Veteran's Stadium, the Phillies and their employees cannot stop Repent America from engaging in religious expression based on other fan's possible reaction to its theme. Neither Veteran's Stadium nor the Phillies may target fans for special disabilities because of their religious expression. As a unanimous United States Supreme Court said in *Church of Lukumi Babalu Aye v. City of Hialeah*, 113 S.Ct. 2217 (1993):

The principle that government, in pursuit of legitimate interest, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the

protection of the rights guaranteed by the Free Exercise Clause. The principle underlying the general applicability requirement has parallels in our First Amendment jurisprudence.

113 S.Ct. at 2232

Moreover, placing special restrictions upon a fan's banner because of the content and viewpoint of their speech forces the Phillies or Veteran's Stadium:

to scrutinize the content of ...speech, lest the expression in question – speech otherwise protected by the Constitution - contain too great a religious content. ...That eventuality raises the specter of governmental censorship, to ensure that all...[s]peakers meet some baseline standard of secular orthodoxy. To impose that standard on...speech...is to imperil the very sources of free speech and expression.

*Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 115 S. Ct. 2510, 2524 (1995).

Veteran's Stadium and the Phillies must show that this denial of free speech is necessary to serve a compelling state interest and that complete denial is the least restrictive alternative to achieve that end. *Carey v. Brown*, 447 U.S. 455, 464-65 (1980); *Widmar v. Vincent*, 454 U.S. 265, 270 (1981). Clearly, they are unable to meet this burden.

#### **DEMAND**

It is imperative that this situation be corrected immediately to avoid unnecessary litigation in Federal Court. Please instruct your client regarding Repent America's right to engage in religious expression. As you know, the violation of an individual's constitutional rights, even for a moment, results in irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976).

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Consequently, we would appreciate a response from you by the end of business on September 23, 2003, outlining your client's position regarding the matters referenced herein. Furthermore, Repent America requests assurance that they will not be discriminated against in the future and payment of attorneys' fees. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'LGB III', written in a cursive style.

Leonard G. Brown, III