

FIELD USE POLICY FAVORED RESIDENTS

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In the case of *San Andreas Youth Soccer Organization v. City of San Carlos* (N.D. Calif. 5/10/2007), plaintiff San Andreas Youth Soccer Organization (SAYSO) alleged that the defendant City of San Carlos "engaged in a selective, arbitrary and shifting interpretation of its field-use policy" to deprive SAYSO of the use of playing fields in the City of San Carlos.

SAYSO is a youth soccer organization that operates primarily on the San Francisco Peninsula. SAYSO offers its players competitive soccer; it is a selective organization and players must try out in order to join. The primary soccer club providing competitive soccer in San Carlos has been San Carlos United. The San Carlos American Youth Soccer Association (San Carlos AYSO) provides recreational soccer in San Carlos, which is open to everyone. Only 14% of SAYSO's participants (70 of 500) were residents of San Carlos.

Since September 2001, to cope with the high demand, the City's parks and playing fields had been governed by a City Field Use Policy which limited permits for the use of City fields to "organizations and teams" with a majority of San Carlos residents in their membership. Further, the Field Use Policy stated that "[f]irst priority shall be given to organizations with 90% or greater overall residency and not less than 80% residency per team." In order to apply the residency requirements of the Policy, the City required that applicants for field use permits provide information regarding the residency of their members.

Given the hundreds of teams playing on field in San Carlos, the City applied the majority residency requirement to applicant organizations as a whole, and not to individual teams within an organization. In addition to SAYSO, several other sports organizations had had their requests for field use permits denied because they did not have a majority of San Carlos residents in their organizations.

In the fall of 2001, Michael Lindeburg, the President of SAYSO, asked Jennifer Moore, an employee of the Parks and Recreation Department of the City of San Carlos, for a playing field for his team to practice. Moore mistakenly believed that Lindeburg's team was part of San Carlos United, a San Carlos-based soccer club with a majority of San Carlos residents that receives field use permits. Moore issued Lindeburg a field use permit for one field once a week for practices because she believed that it was part of the field use time that had been allotted to San Carlos United. SAYSO therefore used a City field for practices in the spring of 2002.

In the spring of 2002, the City also implemented a "freeze" on new field use permit allocations in order to help control the overuse of the City's playing fields. New programs were not allowed to use the fields, and existing programs were not allowed to expand their use. Under the freeze, many sports programs had been denied permits either to start a program or to expand an existing program.

In March of 2002, Moore was informed by a representative of San Carlos AYSO that, although SAYSO operated under the umbrella of California Youth Soccer Association (CYSA), it was not part of San Carlos United. When SAYSO again asked for field use permits, its request was denied because “the City now understood that SAYSO was a separate organization from San Carlos United and did not have a majority of San Carlos residents.” Moreover, according to the City, it would have violated the freeze to issue field use permits to SAYSO because it was a new program.

On November 4, 2003, the City issued a formal denial of SAYSO's request for Field use permits. The City's reasons for denying SAYSO's request for Field use permits -- the residency requirement and the freeze -- were reiterated in e-mails, correspondence, and orally.

On November 24, 2003, Lindeburg appeared before the City Council to discuss the denial. On December 2, 2003, Parks and Recreation Director Barry Weiss wrote Lindeburg, responding to Lindeburg's comments at the City Council meeting. In his written response to Lindeburg, Weiss stated:

San Andreas Youth Soccer Organization (SAYSO) does not have a majority of San Carlos residents in its league as required by the City's Field Use Policy. You do state that two teams you request field space for would consist of primarily San Carlos residents. As required by the City's Field Use Policy, first priority shall be given to organizations with 90% or greater residency and not less than 80% residency per team. Second priority shall be given to all other leagues and organizations. Using this Field Use Policy criteria, SAYSO is in this second priority group.

Although SAYSO was unable to obtain permits to play on San Carlos fields, SAYSO was able to secure sufficient permitted field use in the cities of San Mateo, Redwood City, Foster City, and Belmont.

## EQUAL PROTECTION

In its lawsuit, SAYSO claimed “the City's denial of Field use permits to SAYSO violated the equal protection rights of SAYSO because “similarly situated organizations and individuals have obtained access to the City's playing fields.” In so doing, SAYSO conceded that “the Policy's limitation requiring organizations to have 50% or more resident members to qualify for field use permits” was valid on its face. SAYSO further conceded that “significantly less than 50% of SAYSO's members are San Carlos residents.” SAYSO, however, argued that “the Policy is unconstitutional as applied because other, supposedly more favored organizations with less than 50% resident members have been granted field use permits while SAYSO has been denied such permits.”

In response, the City contended that SAYSO's “equal protection claims should fail” because SAYSO could not show that it had been “treated differently from other similarly situated applicants for field use permits.” Specifically, the City claimed numerous other organizations, like SAYSO, which also had less than a majority of their members as resident of San Carlos, had

been denied permits. SAYSO, however, maintained that it was “singled out for disparate treatment” because it was “initially issued field permits, but was subsequently denied their renewal after members of competing soccer leagues pointed out that allowing SAYSO to use the field was inconsistent with the Policy.”

Because the City's residency restriction related to “recreational activities and did not implicate a suspect classification” (i.e., based on race, creed, color or national origin), the federal district court noted that “the City need only have a rational basis for the restriction.”

When a government's action does not involve a suspect classification or implicate a fundamental right, it will survive constitutional scrutiny for an equal protection violation as long as it bears a rational relation to a legitimate state interest.

Evidence of a legitimate state interest could be found in an October 2001 agronomic report on the condition of the City's playing fields. The report found that San Carlos's playing fields were being used too intensively to sustain healthy turf and to maintain safe playing surfaces. It found that in 2000 the fields were used at 2.1 times the maximum recommended rate and estimated that in 2001, with the projected increase of soccer and baseball usage, the field usage would be 2.5 times the maximum recommended rate. The Report suggested reducing the number of games by 10% to 20% and practices by 25%. In response to the agronomic report, in January of 2002 the City required the sports organizations using San Carlos playing fields to reduce their practice time by 25%. Moreover, there was a rational relationship between the problem of overuse and the City's Field Use Policy which was implemented to reduce field usage.

As noted by the federal district court, SAYSO could still prevail on its equal protection claim based if it could establish that it had been “intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” In this particular instance, SAYSO argued that it had been treated differently from others similarly situated organization, specifically the statewide AYSO. As a branch of the statewide AYSO, SAYSO argued that San Carlos AYSO should not have qualified for field use permits because “a statewide organization has only a fraction of members who are residents of San Carlos.” SAYSO, therefore, claimed the Policy was “arbitrarily or discriminatorily applied to SAYSO” because “other organizations with less than 50% membership [like AYSO] have been granted field use permits.” The federal district court rejected this argument.

In this particular instance, the “applicant organization” was San Carlos AYSO, not the statewide AYSO. As a result, unlike SAYSO, the court found that San Carlos AYSO qualified for field permits consistent with Field Use the Policy because it was an organization with a majority of San Carlos residents.

In 2005, San Carlos AYSO had 164 teams. It covers a geographic area that is coterminous with the boundaries of the City of San Carlos, and with a few limited exceptions, only residents of San Carlos may join San Carlos AYSO; 97% of the players in San Carlos AYSO are residents of San Carlos. Simply put, San Carlos is an organization with nearly all of its members as residents of San Carlos,

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whereas SAYSO is an organization with approximately 14% San Carlos resident members.

SAYSO had also argued that the City had made "ad hoc" exceptions to the residency rule, but refused to make such an exception in SAYSO's case. Specifically, SAYSO pointed out that the "City issues special permits for tournaments, which include out-of-town teams, and also allows a city-run non-profit organization, 'Kidz Love Soccer,' to use the field without permits." In the opinion of the federal district court, SAYSO had failed to present any "affirmative argument" to support its assertion that SAYSO was "similarly situated to the applicants who received permits under these exceptions."

As a result, the court rejected the notion that "SAYSO has been treated differently from other similarly situated applicants" in violation of its equal protection rights. The federal district court, therefore, granted summary judgment in favor of the defendant city.