



## Judges plan for impact of Boy Scouts ban

By **LYLE MORAN**, The Daily Transcript  
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The California Supreme Court's recent decision to prohibit state judges from belonging to nonprofit youth organizations that practice discrimination, namely the Boy Scouts, has local jurists, like Julia Kelety, planning to ensure they are in compliance.

The court's unanimous decision targeted at the Boy Scouts, which does not allow gay and lesbian adults to be leaders, has other judges wondering how far the implications of the court's action extend.

Legal experts say the Scouts have the chance to make the seven-member court's decision moot by changing their policies before the new rule takes effect Jan. 21, 2016.

Kelety, a San Diego Superior Court judge, said the court's stance will force her to give up her role as committee chair of Troop 24. It is a position that involves a lot of administrative work that lightens the load for the scoutmaster.

Kelety, who has two teenage sons who are on the path to becoming Eagle Scouts, said she is already working with other parents to come up with her successor.

"I'm extremely grateful they gave us a year to gracefully transition out of our responsibilities and commitments," said Kelety, who expects at least a handful of, if not more, San Diego judges will be affected by the new rule.

She said she sees the court's prohibition as a "political decision," but thinks the time has come for the Boy Scouts to end the policy of banning gay and lesbian leaders.

Kelety hopes the change, which would follow the Boy Scouts' decision in 2014 to allow openly gay youth, comes this year.

"It is my sincere wish some compromise or accommodation can be reached to satisfy the concerns of all groups, including the concerns of religious groups and the concerns of gay and lesbian adults," she said.

San Diego Superior Court Judge Tony Maino, who has never participated in the Scouts, said he was in favor of giving judges the opportunity to work with the organization if they desired because he doesn't think it causes them to show bias in their actions on the bench.

Maino said the new rule has left him wondering if he can still be a quarter-owner of a family corporation and partnership that supports the Boy Scouts financially.

A spokesman for the Supreme Court said he did not know the answer, calling it a legal ethics question that would be best addressed by someone with that expertise.

Maino also said it struck him as odd that the state's high court is going to allow something they deemed improper continue for a year. More importantly, he said he would have liked to have seen the Supreme Court explain to the public why it took this action.

"I find it disturbing when judges make decisions with far-reaching import and don't give any reasons why," Maino said.

In a press release announcing the action, the only quote was from Fourth District Court of Appeal Justice Richard D. Fybel, chair of the Supreme Court's Advisory Committee on the Code of Judicial Ethics.

The Supreme Court adopted the recommendation of the advisory committee to eliminate an exception for nonprofit youth organizations to an ethics rule that prohibits judges from holding membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.

Of the states that bar membership in organizations that discriminate on the basis of class, California was the only one with an exception for nonprofit youth organizations.

Fybel's comments highlighted the only remaining exception to the rule is membership in a religious organization, as the exception for belonging to a military organization was also eliminated "because the U.S. armed forces no longer restrict military service based on sexual orientation."

Barbara Cox, a professor at California Western School of Law, praised the Supreme Court for prohibiting judges from belonging to the Boy Scouts.

"We would be concerned if judges were participating in organizations promoting race or gender discrimination or discriminating against the disabled," said Cox. "The idea is that a judge needs to be impartial."

Cox, board chair of the pro-gay marriage group Freedom to Marry, said the Boy Scouts could enable judges to participate in their organization by simply changing their policy.

"They can easily quit discriminating," Cox said.

But Judge Kelety, who also wants to see a policy change, said it would be easier said than done because the Scouts receive strong financial backing from religious organizations that support the ban on gay leaders.

"Any organization has to proceed carefully before taking action that could result in withdrawal of support from a substantial portion of supporters," she said.