

OnMyHonor.Net Response to Pro-Resolution BSA Officials' "Points of Clarification"

By Attorney John Stemberger

On May 9, 2013, pro-resolution BSA officials recently issued a document entitled "*Membership Resolution Points of Clarification*" which appears to be a direct response to OnMyHonor.Net's "Ten Reasons Delegates Should Vote No". This is a point-by-point response to the Points of Clarification written exclusively for voting BSA delegates.

First, the single most important thing that delegates should know which has never been mentioned by any the pro-resolution BSA materials is that even though the proposed resolution would not apply to adults immediately, legal experts estimate the new rule will also extend to everyone in the BSA, including adults, within only a couple of years because of lawsuits that will be brought by gay-rights activists under state non-discrimination clauses around the country once a gay Boy Scout turns 18 and is removed from the program. The resolution is the first step in a two-step process in the whole program.

Second, there has been a lack of clarity regarding the nature of the actual words being amending to the current BSA policy, namely "open and avowed homosexuality".

The essence of the difference between the old policy and the proposed new policy is that the old policy prohibits "open and avowed" homosexuality for both BSA youth and adult members but the new policy removes that prohibition for boys and *requires* every BSA unit to accept "open and avowed" homosexual youth up to 17 years old. **Importantly, the *current policy* already allows for BSA members who have a same-sex attraction but do not act out openly or inappropriately to be in good standing and to earn Scouting's highest rank of Eagle.** This is a critical point that has been obscured by pro-resolution advocates but one which is irrefutable.

Pro-Resolution BSA Officials Say:

1. "This proposal is in line with Scouting's principles and virtues."

OnMyHonor.Net Says:

This statement seems close to a reversal of the BSA's own values which were stated before the United States Supreme Court. The BSA's official position and argument before the Court in the *BSA vs. Dale* case was:

"The Boy Scouts asserts that homosexual conduct is inconsistent with the values embodied in the Scout Oath and Law, particularly those represented by the terms "morally straight" and "clean," and that the organization does not want to promote homosexual conduct as a legitimate form of behavior."

Further, in July 2012 last year, after an eleven member BSA committee studied the membership policy for *two years* they concluded that the prohibition on open and avowed homosexuality was “***the absolute best policy***” for the BSA according to the Associated Press. The sad reality of why the BSA did a complete reversal on this issue within a matter of months was the direct result of the relentless pressure and advocacy from gay-rights activists after the BSA affirmed their policy last year.

Pro-Resolution BSA Officials say:

2. “This proposal is in line with the beliefs of most of Scouting's major religious chartered organizations. We are unaware of any major religious chartered organization that believes a youth member *simply stating he or she is attracted to the same sex, but not engaging in sexual activity, should make him or her unwelcome in their congregation.*”

OnMyHonor.Net says:

This statement is remarkably disingenuous and fails to recognize the reality of the “gay” culture in America. “Open and avowed” homosexuality or to identify oneself as “openly gay” in America consistently involves a flaunting of sexuality and the promotion of a left-leaning social political agenda. Things described as “gay” (e.g. gay movies, gay websites, gay magazines, gay parades etc...) almost uniformly involve images, speech, symbols and content which is blatantly sexual and utterly inappropriate for children. This hyper-sexualized behavior and conduct (apart from sexual acts themselves) are precisely what the proposed Resolution opens to door to when it proposes to allow open homosexuality in the BSA. It is pure naiveté to think that the behavioral standard words articulated in the resolution’s not legally binding “whereas” clauses will prevent the kind of inappropriate conversations, sexual innuendo, gay symbolism and emphasis on exhibiting sexuality that accompanies “open and avowed homosexuality”. Finally, while most of “Scouting’s major religious chartered” churches would welcome a teenager who merely has, or struggles with, same-sex attraction, those same churches would not allow membership to an openly gay teenager who is “loud and proud” bluntly promoting things considered by the church to be immoral and sinful. The current policy clearly already allows young people with a same-sex attraction so long as they do not engage in conduct and behavior that distracts from the mission of Scouting.

Pro-Resolution BSA Advocates Say:

3. “This proposal remains true to the long-standing virtues of Scouting and allows all youth who sincerely want to be a part of Scouting the chance to experience this life-changing program.... While people have different opinions about this policy, kids are better off when they are in Scouting.”

OnMyHonor.Net says:

The BSA cites the Voice of the Scout survey as the primary motive for the resolution, showing most BSA members indicated they would not want to deny a boy the Eagle Scout award because he tells the review Board for the first time that he is gay. This reflects the saying "Hard cases make bad law." The rare hypothetical in the poll which most BSA members would see as unfair is no indication whatsoever of the Scouting family's views on requiring all Scouting units to accept "openly gay" young people.

The question is not whether or not openly gay "kids are better off when they are in Scouting". The question is whether the safety and security of boys in general are better off with the "open and avowed" homosexual boys living and sleeping with them in close quarters. Is the example and influence of a 16 year old, openly gay, high school activist really in the best interest of other boys in the program? Open and avowed homosexual kids are NOT "better off in Scouting" when their conduct and behavior is a distraction to the mission of Scouting and to the other boys in the program.

Pro-Resolution BSA Officials Say:

4. "The BSA would never consider a proposal that increased risk to young people."

OnMyHonor.Net Says:

Based upon personal and candid conversations with BSA officials at the highest levels, the BSA is fully aware that this proposed resolution will *absolutely increase* the risk of boy-on-boy sexual contact in Scouting and yet of there has been no discussion or risk analysis done on this topic in any of the resolution reports or presentations. It is just short of dishonest for pro-resolution BSA officials to suggest that there will be no "increased risk". BSA's own Youth Protection videos indicate that "70% of abuse to boys is by teenagers". Two-deep leadership will have to be at least three-deep for units with homosexual youth. Openly gay Boy Scouts who will likely want to be treated like everyone else will instead need to be tented separately and thus singled out and treated differently. The complexity of sleeping arrangements will create a myriad of social and legal liability challenges. Sexual awareness and harassment training will be required in all Scouting units. The BSA leaders setting forth the proposed policy clearly did not have the safety and security of the boys as their paramount concern. Enacting this resolution will result in more ugly litigation and will further the public scandal to the BSA, not to mention the tragedy of countless boys who will experience sexual, physical and psychological abuse.

Pro-Resolution BSA Officials Say:

5. “Some have asserted that this proposal will unduly interject sexuality into the BSA and take away parents' rights to discuss sexuality at the time and place of their choosing”.

OnMyHonor.Net Says:

The proposed Resolution robs parents of the sole authority to raise issues of sex and sexuality with their kids. Parents should have the exclusive right to raise issues about sex and sexuality with their children in their own time and in their own way, in the privacy of their homes; not brought up by other older boys around a campfire. Allowing open homosexuality would inject a sensitive and highly-charged political issue into the heart of the BSA, against the wishes of the vast majority of parents.

Pro-Resolution BSA Officials Say:

6. “Boy Scouts of America membership is unequivocally unified about the value of Scouting. Some have asserted that if this proposal is adopted—or if the Boy Scouts does not amend its current policy—Scouting will see significant and unrecoverable losses in membership and monetary support.”

OnMyHonor.Net Says:

While the Voice of the Scout survey does show Scouting is popular because it brings great value, if the proposal is enacted, the program will immediately become *unpopular* among hundreds of thousands of its own members. A policy change would devastate the program financially, socially and legally as the BSA membership and revenues will drop instantly and the decision will gut a major percentage of human capital in the BSA. The BSA's *own estimates* are that a policy change would create a “significant membership loss 200,000 to 400,000 youth”. OnMyHonor.Net's internal estimates show the losses will be much higher at 500,000 to 600,000 youth leaving over a three-year period as the negative effects of the policy become evident. These estimates do not even calculate the hundreds of thousands of adult volunteers and parents who will leave also.

The financial impact would be enormous. The BSA's own estimates show revenue losses at \$30 million if a change is made. Camps will close, executives will be let go, and properties will be sold off as a result of the vast loss of finances from major donors, private foundations, and declining membership. If there is no change in policy, the BSA estimates that membership losses will only gradually decline over time and financial losses will be minimal.

Pro-Resolution BSA Officials Say:

7. The BSA is committed to listening to the Scouting family and engaging in open dialogue.

OnMyHonor.Net Says:

If I ask my son to do his chores and he says “Dad, I am *listening* to you, I am not going to do my chores, but I am listening...” Is he really listening? No; he is merely hearing with his ears but mocking me with his actions or inaction. This is essentially what the pro-resolution BSA officials have done: ignored the vast majority of polling data showing the Scouting family clearly does not want this change and instead cited to polling on gay marriage and the moral acceptability of homosexuality in the wider culture. The authors of the resolution did listen to someone, but unfortunately it was not the Scouting family who overwhelmingly reject any change to the membership standards.

Closing:

To be as charitable to the authors of this resolution as possible, I believe the BSA leaders attempted in good faith to find a compromise “silver-bullet” solution to their dilemma of national controversy and pressure from traditionalists and pro-gay right advocates trying to hold the program together. They likely felt that they had a clever strategy that could stop the persistent tide of pressure and criticism from gay-rights activists while still controlling and possibly influencing openly gay Boy Scouts for good. The problem and the blind spots of the BSA officials are with their lack of understanding regarding the unintended legal consequences or how crafty and relentless their real opponents are in the gay-rights movement. This is especially true regarding the very serious lawsuits which would come almost immediately after this resolution is adopted. These legal challenges will blow the door of the new rule open to every member of the BSA, including adults. There has been no mention of this in any statements or documents made available to members.

Additionally, the pro-resolution BSA officials completely misunderstand what it means to be “openly gay” as defined and experienced by that culture in America. They also have lost sight of the true mission of the BSA by playing word games and basing moral and ethical choices on polling instead of on the “timeless values” of the Scout Oath and Scout Law. They lacked the moral courage to just do what was right and defend their policy and the values that support it. Finally, instead of doing what was clearly in the best interest of the boys, they were willing to compromise the safety and security of our young people by creating a policy designed to try to reduce the intense criticism the BSA has received under the false guise of “not denying scouting to any boy.” If the resolution passes, Scouting will eventually wither and become a much weaker movement that will fade into American history. In order for the Boy Scouts of America to continue as the robust jewel of American culture, its delegates must “Vote No” to the proposed resolution.

The author of this OnMyHonor.Net response is John Stemberger, an Eagle Scout, a Vigil Honor member of the Order of the Arrow, a former Scoutmaster, a Lifetime N.E.S.A. member and a father with two sons in Scouting. He is also an AV-rated Orlando lawyer who practices in civil and constitutional litigation.