

## NCA joins fray on behalf of Burning Tree Club

The National Club Association has filed a "friend of the court" brief in the Supreme Court supporting the Burning Tree Club's efforts to persuade the court to review a Maryland court's decision that forced the club to choose between changing its membership policies or losing a property-tax benefit.

NCA's brief urged the court to grant the petition for three reasons:

- It says the club and its members are entitled to a high degree of protection under the First Amendment right of Freedom of Association.
- The lower court allowed Maryland to punish Burning Tree for exercising its right of association.
- The state's interest in who plays golf at the club does not outweigh the rights of the members.

The brief was co-authored by Tom Walsh, NCA director of government relations, and NCA Directors Harold B. Berman, chairman, and Milton E. Meyer Jr., a member of NCA's Legal/Legislative Committee.

"As an advocate of private status, NCA feels that every reasonable step must be taken to clarify and to keep as expansive as possible what constitutes that private status," said NCA Executive Vice President Gerard F. Hurley. "We are also pleased to be able to

### Finances sought to fight Oregon ruling

The National Club Association has launched an intensive campaign to raise money to finance litigating the Portland (Ore.) Golf Club's Revenue Ruling 81-69 case before the U.S. Supreme Court.

Rev. Rul. 81-69 prohibits a tax-exempt private club from deducting non-members' business losses from taxable investment income. In early June, the U.S. Court of Appeals for the 9th Circuit issued decisions in *United States v. Portland Golf Club* and *United States v. North Ridge Golf Club*. The court reversed earlier Tax Court decisions that favored the clubs by affirming the IRS' position on Rev. Rul. 81-69.

Taking the Portland case to the Supreme Court marks the climax of a nine-year effort that NCA has led, spending more than \$250,000.

"We know this is a most critical issue for our members," said NCA Director of Government Relations Thomas Walsh. Walsh explained that NCA is willing to coordinate a Supreme Court fight if clubs with "Rev. Rul. 81-69 problems" are willing to support it with their contributions.

Walsh added that of the pending cases involving Rev. Rul. 81-69, the Portland Golf Club case is the strongest to take to the Supreme Court as it has been well litigated. The conflict in recent decisions between the 9th Circuit and the 6th Circuit indicates that this issue will likely be decided by the Supreme Court in the near future.

"Rather than allowing the Internal Revenue Service to select the case it wants to take to the Supreme Court, we must take the lead to insure that the best case for clubs gets there," Walsh warned.

Portland Golf Club had until Aug. 28 to file its petition for certiorari with the Supreme Court.

NCA is comprised 1,000 golf, country, yacht, city, tennis and other private clubs. It is the only organization representing the legal, legislative, business and other interests of private clubs nationwide.

bring to bear the extensive legal and club experience on our board of directors and our staff in developing this brief."

It is unlikely that the court's decision on whether to accept the case will be known before October, the NCA said.

Walsh said, "Our strategy is above all to get the Supreme Court to give us more guidance concerning the applicability of the right of free association to private clubs. We have also suggested a more reasoned and more definite method of determining whether or not a club is private, within the meaning of the Constitution. At this point, there is no way to tell what the court may do."

## GOVERNMENT UPDATE

### Privacy redefinition bill loses

In a victory for private clubs in Texas and throughout the country, the Texas Chapter of the National Club Association defeated legislation that would have redefined a private club or association as a public accommodation if it had gross receipts of more than \$100,000.

Similar to a 1987 proposal, S.B. 117, by state Sen. Bernice Johnson was approved by the Senate but was not considered by the House before the Legislature adjourned. The successful fight against S.B. 117 was

led by NCA Texas Chapter President Darrell Lester of Fort Worth, and Legislative Counsel Mary Joe Carroll of Austin.

"This legislation," said NCA Director and Past President Harold B. Berman of Dallas, "was significantly worse than the New York City Local Law 63 in that it made no attempt to define a private organization."

Berman lauded the result of the industry "working together and supporting principles of privacy to preserve the integrity of our clubs."

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