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Constitutional Law: The Freedom of Expressive Association, an Organization's Right to Choose What Not to Say

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CONSTITUTIONAL LAW: THE FREEDOM OF EXPRESSIVE ASSOCIATION, AN ORGANIZATION'S RIGHT TO CHOOSE WHAT NOT TO SAY

Boy Scouts of America v. Dale, 120 S. Ct. 2446 (2000)

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The Boy Scouts of America expelled the respondent from his position as an assistant scoutmaster for the Boy Scouts of America when the organization learned that he was an avowed homosexual.[1] Respondent filed suit against the petitioners alleging that his expulsion,[2] which was based solely upon his sexual orientation,[3] violated New Jersey's public accommodations statute.[4] The trial court granted the petitioners' motion for summary judgment, holding that the public accommodations statute was inapplicable because the Boy Scouts was not a place of public accommodation.[5] The New Jersey Superior Court's Appellate Division reversed the trial court's ruling and remanded the case for further proceedings,[6] holding that the Boy Scouts was a place of public accommodation within the meaning of the New Jersey public accommodations statute[7] and that the petitioners had violated this statute.[8]

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* To my parents, Agusta and Robert, and my sister, Thora, for their never-ending love and support. And to my fiancé, Jose, for his boundless patience and inspiration. Your constant faith in me helped to make this possible.

1. Boy Scouts of Am. v. Dale, 120 S. Ct. 2446, 2449 (2000). Respondent's expulsion was based upon a newspaper article identifying the respondent as the co-president of the Rutgers University Lesbian Gay Alliance. *Id.* at 2472-73 (Stevens, J., dissenting).

2. *Id.* at 2449. Respondent requested three types of relief: a declaration that his rights had been violated, reinstatement of his membership, and compensatory and punitive damages. *Id.* at 2464 n.6.

3. *Id.* at 2449. Respondent received a letter informing him that his adult membership had been revoked. *Id.* When he inquired into the reason for the revocation, he was informed that the Boy Scouts forbid homosexuals from being members. *Id.*

4. *Id.* New Jersey's public accommodations statute forbids discrimination based on sexual orientation in places of public accommodation. *Id.* at 2449-50 (citing N.J. STAT. ANN. §§ 10:5-4, 10:5-5 (West Supp. 2000)).

5. *Id.* at 2450.

6. *Id.*

7. *Id.* A number of other courts have ruled that the Boy Scouts are not a place of public accommodation. *Id.* at 2456 n.3; *see also* Welsh v. Boy Scouts of Am., 993 F.2d 1267, 1270 (7th Cir. 1993) (holding that the Boy Scouts are not a place of public accommodation for purposes of Title II of the Civil Rights Act of 1964 because the plain meaning of the statute excludes those organizations that are not tied specifically to a physical location); Curran v. Mount Diablo Council of the Boy Scouts of Am., 952 P.2d 218, 236 (Cal. 1998) (holding that the Boy Scouts did not fall under the "business establishment" language of California's civil rights statute because the language of that Act did not include social organizations such as the Boy Scouts); Quinnipiac

The Supreme Court of New Jersey affirmed the appellate court's ruling.[9] The United States Supreme Court granted certiorari,[10] reversed the New Jersey Supreme Court's decision, and HELD that the application of New Jersey's public accommodations statute, which required the petitioners to admit the respondent, violated the petitioners' First Amendment right to freedom of expressive association.[11]

The freedom of expressive association has been recognized by the Court as the right to associate for the purpose of engaging in activities protected by the First Amendment, such as speech.[12] In *Roberts v. United States Jaycees*,[13] the Court addressed the conflict between a state's compelling interest in eliminating gender-based discrimination[14] and the constitutional guarantee of freedom of expressive association.[15] The Jaycees were an exclusively male, non-profit organization formed to pursue educational and charitable purposes and to promote the growth of young men's civic organizations.[16] The plaintiff argued that the exclusion of women from the organization violated the Minnesota Human Rights Act ("Act").[17] The defendant organization countered that the forced inclusion of women by application of the Act would violate the male members' freedom of association and freedom of speech.[18]

The Court held that the Jaycees failed to show that application of the Act imposed any serious burdens on the male members' freedom of expressive association.[19] The Court concluded that the right of expressive

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Council v. Comm'n on Human Rights & Opportunities, 528 A.2d 352, 359 (Conn. 1987) (holding that the anti-discrimination statute did not apply because the female denied membership was not denied an "accommodation" as was required by the statute); Seabourn v. Coronado Area Council, 891 P.2d 385, 406 (Kan. 1995) (holding that the Boy Scouts were not a place of "public accommodation" for purposes of the Kansas anti-discrimination statute because it was not a business establishment).

8. *Dale*, 120 S. Ct. at 2450.

9. *Id.*

10. *Id.* The Court granted certiorari in order to determine if the application of the New Jersey public accommodations law violated the First Amendment. *Id.*

11. *Id.* at 2457.

12. Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984).

13. 468 U.S. 609 (1984).

14. *Id.* at 623. The Court recognized that Minnesota had a compelling interest in eliminating gender-based discrimination. *Id.*; *see also* Bd. of Dirs. of Rotary Int'l v. Rotary Club, 481 U.S. 537, 549 (1987) (holding that California had a compelling interest in eradicating gender-based discrimination within the Rotary Club).

15. *Roberts*, 468 U.S. at 612.

16. *Id.*

17. *Id.* at 614. The Minnesota Human Rights Act states that it is an unfair discriminatory practice to deny any person full enjoyment of the accommodations of a place of public accommodation because of sex. *Id.* at 615.

18. *Id.*

19. *Id.* at 626.

association was not absolute, and that infringement of that right could be justified, as it was in *Roberts*, by regulations that serve compelling state interests.[20] The court based its decision on the fact that application of the Act would not require the Jaycees to change their creed or turn their focus away from providing opportunities for young men.[21] The Jaycees already invited women to share in their views and philosophies and to participate in many of their activities.[22]

In a subsequent case, *New York State Club Ass'n v. City of New York*,[23] the Court clarified the question of whether it is acceptable to deny a person membership to a particular group.[24] In that case, the New York State Club Association filed suit against the city and some of its officers, seeking a declaration that the New York Human Rights Law ("Law") was unconstitutional under the First Amendment.[25] The plaintiffs claimed that the Law infringed upon every club member's right of expressive association by forcing the clubs to include members who did not share their ideologies.[26]

The Court held that it is not acceptable to deny admission to an individual based on specified characteristics, such as sex and race.[27] In finding that exclusion of prospective members based upon specified characteristics violated the Law, the Court placed emphasis on the fact that the Law did not require the clubs to accept everyone who sought admission into the organization.[28] Also important was the fact that the record contained no evidence of the specific views held by any of the clubs.[29] However, the Court also found that the exclusion of persons who

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20. *Id.* at 623; *see also* Democratic Party of United States v. Wisconsin *ex rel.* LaFollette, 450 U.S. 107, 124 (1981) (holding that a court may not interfere with a group's First Amendment protected expression simply because the court disagrees with that expression).

21. *Roberts*, 468 U.S. at 627.

22. *Id.* The Court focused on the fact that women were already admitted as members, just not full voting members. *Id.* Consequently, the Court did not accept the argument that admitting women to be full voting members would impair the Jaycees' ability to successfully advocate for the interests of young men. *Id.*

23. 487 U.S. 1 (1988).

24. *Id.* at 18.

25. *Id.* at 7. The New York Human Rights Law prohibits discrimination in any place of public accommodation. *Id.* The definition of "place of public accommodation" was broad enough to cover places such as restaurants, which were at issue in this case. *Id.* at 4-5 (citing N.Y.C. ADMIN. CODE § 8-102(9) (1986)).

26. *Id.* at 13.

27. *Id.*

28. *Id.* The Court concluded that "[i]f a club seeks to exclude individuals who do not share the views that the club's members wish to promote, the Law erects no obstacle to this end." *Id.*

29. *Id.* at 14. The *New York* Court anticipated a scenario in which an organization might conceivably be able "to show that it is organized for specific expressive purposes and that it will not be able to advocate its desired viewpoints nearly as effectively if it cannot confine its

do not share the clubs' views could be acceptable.[30] The Court stated that, conceivably, there could be a case in which an organization might be able to show that its ability to express a certain viewpoint would be hampered by the forced inclusion of a certain type of member.[31]

The Court found the case that it had anticipated in *New York*[32] in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston.*[33] In *Hurley*, the Court held that Massachusetts could not require a private parade to include a group of marchers who espoused a message that the organizers did not wish to convey.[34] The case involved a parade, organized by private citizens, in which the Irish-American Gay, Lesbian and Bisexual Group of Boston ("GLIB") expressed an interest in marching as a group, behind its own banner.[35] The Court held that the parade, although organized by private citizens, fell under the definition of a "public accommodation," as described in the Massachusetts statute.[36] The petitioners argued that forced inclusion of GLIB would violate their right to freedom of expressive association by forcing the petitioners to include in their parade a message with which the petitioners did not agree.[37]

In deciding for the petitioners, the *Hurley* Court found that parades are inherently expressive[38] and that, as such, the respondents' inclusion in the parade would have signaled to onlookers that its message was worthy of inclusion and support.[39] The Court emphasized that speakers have autonomy to choose the content of their messages and that this autonomy is protected by the First Amendment.[40] In *Hurley*, the Court reiterated the principle that those engaged in expressive association have the right to choose what to say as well as what not to say.[41] While the Court conceded that the parade was not formed for the express purpose of opposing

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membership to those who share the same sex, for example, or the same religion." *Id.* The Court found, however, that this was not the type of case anticipated by that statement. *Id.*

30. *Id.* at 13; *see also supra* note 28 and accompanying text.

31. *New York*, 487 U.S. at 13.

32. *See supra* note 29 and accompanying text.

33. 515 U.S. 557 (1995).

34. *Id.* at 559.

35. *Id.* at 561.

36. *Id.* at 572. The Massachusetts public accommodations law prohibits discrimination on the basis of sexual orientation in any place of public accommodation. *Id.* (citing MASS. GEN. LAWS § 272:98 (1992)).

37. *Id.* at 575.

38. *Id.* at 568. The Court emphasized that "parades are public dramas of social relations, and in them performers define who can be a social actor and what subjects and ideas were available for communication and consideration." *Id.* (citing SUSAN G. DAVIS, PARADES AND POWERS: STREET THEATRE IN NINETEENTH-CENTURY PHILADELPHIA 6 (1986)).

39. *Id.* at 574.

40. *Id.* at 573.

41. *Id.*

homosexuality,[42] it found that it was not necessary for a group to isolate one specific message in order to be entitled to constitutional protection.[43] The Court found that regardless of their reason and regardless of the Court's view of their position,[44] the petitioners were within their constitutional rights to exclude a message with which they did not agree.[45]

The instant Court applied the approach taken in *Hurley* by finding that the respondent's presence in the Boy Scouts would force the organization to communicate a message in which it did not believe.[46] The instant Court stated that it was clear from a number of policy statements that the petitioners did not support homosexuality as an acceptable lifestyle choice.[47] To force the petitioners to accept the respondent, the Court held, would violate the petitioners' freedom of expressive association.[48]

In reaching its decision, the instant Court first considered the question of whether the petitioners were engaged in expressive association.[49] After independently reviewing the factual record, the Court held that the petitioners did engage in expressive conduct, as their mission was to instill values in young people.[50] The instant Court stressed the fact that scoutmasters and assistant scoutmasters were teaching young boys —expressly and by example—the views and morals held by the organization.[51] Since the petitioners were attempting to influence the boys to believe in their moral codes, the Court found it indisputable that the petitioners were engaged in expressive association.[52]

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42. *Id.* at 560. The purpose of the parade was to celebrate Evacuation Day, the day that marks the evacuation of royal troops and Loyalists from the city of Boston. *Id.*

43. *Id.* at 569-70.

44. *Id.* at 581. The Court refused to rule on the message conveyed by excluding GLIB. *Id.* Instead, the Court said, "[o]ur holding today rests not on any particular view about the Council's message but on the Nation's commitment to protect freedom of speech." *Id.*

45. *Id.* at 575.

46. Boy Scouts of Am. v. Dale, 120 S. Ct. 2446, 2454 (2000).

47. *Id.* at 2453. A 1978 position statement is the only one discussed by the Court that was published before the respondent's expulsion. *Id.* It provides, in relevant part, that "[t]he Boy Scouts of America is a private membership organization. . . . [The Boy Scouts] do not believe that homosexuality and leadership in Scouting are appropriate." *Id.* (quoting the 1978 position statement by the Boy Scouts).

48. *Id.* at 2457.

49. *Id.* at 2451.

50. *Id.* at 2452. The Boy Scouts' mission statement indicates that "[i]t is the mission of the Boy Scouts of America to serve others by helping to instill values in young people." *Id.* at 2451 (quoting the Boy Scouts' mission statement).

51. *Id.* at 2452. In order to help instill values in young boys, the scout leaders spend time with the boys camping, doing archery, or fishing. *Id.* The scoutmasters attempt to instill values in the boys by providing a positive example and by engaging them in what they consider to be worthwhile pastimes. *Id.*

52. *Id.*

The second part of the instant Court's analysis focused on whether the forced inclusion of the respondent would significantly affect the petitioners' ability to advocate its public or private viewpoints.[53] The Court deferred to the petitioners' assertions that they were against homosexuality[54] and held that the inclusion of the respondent would hamper the petitioners' ability to express their views against homosexuality.[55] In finding in favor of the petitioners, the Court relied upon *Hurley*.[56] The Court held that the presence of an avowed homosexual and gay rights advocate[57] in a Boy Scout uniform would send a message that the petitioners were, at the very least, accepting of homosexuality.[58]

The final part of the instant Court's analysis focused on whether the application of New Jersey's public accommodations law,[59] which required the petitioners to extend membership to the respondent, would infringe upon the petitioners' First Amendment right to freedom of expressive association.[60] Answering in the affirmative, the instant Court stressed that the state interests furthered by New Jersey's public accommodations law do not justify forcing the petitioners to communicate a position that is completely contrary to their views.[61] The Court explained that the state has an interest in eliminating discrimination, but not at the cost of another group's constitutional rights.[62]

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53. *Id.*

54. *Id.* at 2453. The Court stated that "as we give deference to an association's assertions regarding the nature of its expression, we must also give deference to an association's view of what would impair its expression." *Id.* (citing Democratic Party of United States v. Wisconsin *ex rel.* LaFollette, 450 U.S. 107, 123-24 (1981)).

55. *Id.* at 2455.

56. *Id.* at 2454. The Court found that:

> As the presence of GLIB in Boston's . . . parade would have interfered with the parade organizers' choice not to propound a particular point of view, the presence of [respondent] as an assistant scoutmaster would just as surely interfere with the [petitioners'] choice not to propound a point of view contrary to its beliefs.

Id.

57. *Id.* at 2473 (Stevens, J., dissenting). Not only was the respondent an avowed homosexual, but he was also the co-president of the Rutgers University Lesbian Gay Alliance. *Id.* (Stevens, J., dissenting); *see also supra* note 1 and accompanying text.

58. *Dale*, 120 S. Ct. at 2473.

59. The New Jersey public accommodations law provides that "[a]ll persons shall have the opportunity to obtain . . . all . . . the privileges of any place of public accommodation . . . without discrimination because of . . . sexual orientation." N.J. STAT. ANN. § 10:5-4 (West Supp. 2000). "Place of public accommodation" is defined to include any "summer camp, day camp . . . whether for . . . accommodation of those seeking health, recreation, or rest." *Id.* § 10:5-5.

60. *Dale*, 120 S. Ct. at 2455.

61. *Id.* at 2457.

62. *Id.* at 2456.

The dissent agreed with the majority's structure of analysis, but disagreed with the majority's ultimate finding that inclusion of the respondent would significantly impair the petitioners' ability to advocate the viewpoint that homosexuality is not acceptable.[63] As the Court did in *New York*,[64] the dissent recognized that a situation might arise in which forcing a group to include a certain member would hamper the group's right to freedom of expressive association.[65] However, unlike the majority, the dissent did not feel that the instant case was such a situation.[66] What was lacking in the instant case, according to the dissent, was any real evidence that the petitioners had a public policy against homosexuality.[67] In addition, the dissent stressed the lack of any clear indication that the respondent so epitomized the acceptance of homosexuality that his presence alone would make it impossible for the petitioners to advocate an opposite viewpoint.[68]

The instant Court took the position that exclusion of the respondent was acceptable by virtue of the fact that his inclusion in the Boy Scouts sent the message to the public that the petitioners accepted homosexuality as a lifestyle.[69] In arriving at this decision, the instant Court relied a great deal on *Hurley*.[70] As in *Hurley,* the question here is not whether the Court agrees with the message advocated by the petitioners, but whether the petitioners have a constitutionally-protected right to choose which message they send to the public.[71] The Court's proper role is to rule on the law and the Constitution and not to pass judgment on an organization's

63. *Id.* at 2470 (Stevens, J., dissenting).

64. *New York*, 487 U.S. at 1.

65. *Id.* at 2471 (Stevens, J., dissenting). The dissent recognized that "there are instances in which an organization truly aims to foster a belief at odds with the purposes of a State's antidiscrimination laws and will have a First Amendment right to association that precludes forced compliance with those laws." *Id.* (Stevens, J., dissenting).

66. *Id.* (Stevens, J., dissenting). The dissent found that this was not an example of a case as was anticipated in *New York. See id.* (Stevens, J., dissenting); *see also supra* note 29 and accompanying text. To the contrary, the dissent argued that this case was nothing more than an example of an organization adopting an exclusionary membership policy, for which, the dissent contended, there should be no protection. *Dale*, 120 S. Ct. at 2471 (Stevens, J., dissenting).

67. *Id.* (Stevens, J., dissenting). The dissent argued, in part, that the 1978 memorandum was not indicative of any policy toward homosexuality because the memorandum was never distributed publicly. *Id.* at 2463 (Stevens, J., dissenting).

68. *Id.* at 2475 (Stevens, J., dissenting). The dissent argued that "[t]he notion that an organization of that size . . . implicitly endorses the views that each of those adults may express in a non-Scouting context is simply mind boggling." *Id.* at 2476 (Stevens, J., dissenting).

69. *Id.* at 2454.

70. *Id.*

71. *Id.* at 2458.

viewpoints.[72] The purpose of the First Amendment is to protect speech, regardless of message popularity.[73]

In essence, the dissent was asking the Court to find that the petitioners did not have the right to denounce homosexuality.[74] However, in order to find that the petitioners did not have the right to exclude the respondent, the Court would have been forced to implicitly rule on the validity of the petitioners' message. Had it found as the dissent urged, the Court would have communicated that the state interest in protecting homosexuals outweighed the petitioners' right to freedom of expressive association.[75] While it has been recognized that states have a compelling interest in eradicating discrimination,[76] previous case law indicates that this compelling interest cannot impose serious burdens on the freedom of expressive association.[77]

In reaching its conclusion in the instant case, the Court found that the application of New Jersey's anti-discrimination statute would have imposed a serious burden on the petitioners' right to expressive association.[78] Simply because the petitioners did not publicly denounce homosexuality does not mean that they should be forced to communicate the message that homosexuality is acceptable.[79] The Court encountered the

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72. *Id.* The Court emphasized that it was not proper for the Court to be "guided by [its] views of whether the Boy Scouts' teachings with respect to homosexual conduct are right or wrong." *Id.*

73. *Id.*

74. *See id.* at 2478 (Stevens, J., dissenting). The dissent talked at length about the history of prejudice against homosexuals. *Id.* (Stevens, J., dissenting). The dissent ended its argument with the observation that "harm [caused by past and present prejudice] can only be aggravated by the creation of a constitutional shield for a policy that is itself the product of a habitual way of thinking about strangers." *Id.* (Stevens, J., dissenting).

75. *See id.* at 2456. The Court pointed out that in freedom of association cases, as in the instant case, the freedom of expression is weighed against the State's interest. *Id.*; *see also* New York State Club Ass'n v. City of New York, 487 U.S. 1, 18 (1988) (holding that New York's interest in eradicating discrimination prevented an organization from using specified characteristics to deny membership); Bd. of Dirs. of Rotary Int'l v. Rotary Club, 481 U.S. 537, 549 (1987) (holding that slight infringement on Rotary Club members' freedom of expressive association was constitutional in light of California's interest in eliminating gender-based discrimination); Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984) (holding that even if enforcement of the Minnesota Human Rights Act caused some small abridgment of the Jaycees' protected speech, the State had a greater interest in eradicating gender-based discrimination).

76. *See supra* text accompanying note 14.

77. *Dale*, 120 S. Ct. at 2456; *see also Rotary Club*, 481 U.S. at 548 (holding that California's Unruh Civil Rights Act did not violate Rotary Club members' right to freedom of association since application of the Act did not "affect in any significant way the existing members' ability to carry out their various purposes"); *Roberts*, 468 U.S. at 626 (holding that the enforcement of the Minnesota Human Rights Law was not unconstitutional because it did not impose "any serious burdens on the male members' freedom of expressive association").

78. *Dale*, 120 S. Ct. at 2457.

79. *See id.* at 2455. The Court found that "[t]he fact that the organization does not trumpet

same issue in *Hurley*, where it ruled that the fact that the parade was not organized specifically to denounce homosexuality did not mean that the organizers were not entitled to protection under the First Amendment.[80] Similarly, in the instant case the fact that the petitioners did not form for the sole purpose of denouncing homosexuality should not deprive them of their First Amendment protections.[81]

In analyzing whether a group should be required to include a certain message, the expressive rights of the organization must be weighed against the state's interest.[82] In *Roberts*, the Court held that the Jaycees were not permitted to exclude women because the inclusion of women would not have required the organization to change its creed or philosophy.[83] In the instant case, however, forced inclusion of avowed homosexuals would have forced the petitioners to alter the philosophy of the organization since the organization did not support homosexuality.[84] The Court found ample evidence to support the idea that the petitioners' organization tries to instill values in young people.[85] Moreover, the values that the organization attempts to instill do not include homosexuality as an acceptable lifestyle.[86] Unlike *Roberts,* where the Court held that women were allowed to share the same philosophies as club members, the instant case provides no evidence to support the proposition that the petitioners previously allowed avowed homosexuals to share in their values and philosophy.[87] Therefore, to force the petitioners to accept avowed homosexuals as members would require the petitioners to change their entire organizational philosophy.

In this way, the instant case falls under the exception anticipated in *New York*, wherein the Court held that a group may exclude certain members based on ideological differences.[88] In that case, the Court held that it is unacceptable to use shorthand measures, such as race or sex, to

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its views from the housetops, or that it tolerates dissent within its ranks, does not mean that its views receive no First Amendment protection." *Id.*

80. Hurley v. Irish American Gay, Lesbian & Bisexual Group, 515 U.S. 557, 569-70 (1995); *see also supra* note 44 and accompanying text.

81. *Dale*, 120 S. Ct. at 2454.

82. *See supra* note 75 and accompanying text.

83. *See* Roberts v. United States Jaycees, 468 U.S. 609, 627 (1984).

84. *Dale*, 120 S. Ct. at 2454.

85. *Id.* at 2452; *see also supra* notes 50-51 and accompanying text.

86. *Dale*, 120 S. Ct. at 2453.

87. *Id.* In support of this proposition, the Court mentions three policy statements generated by the petitioners. *Id.* All three of these statements (admittedly only one of which was issued before the respondent's expulsion) express the petitioners' belief that homosexuals are not acceptable as scout leaders. *Id.* According to the Court, the existence of these statements indicate that "the official position of the [petitioners] was that avowed homosexuals were not to be Scout leaders." *Id.*

88. New York State Club Ass'n v. City of New York, 487 U.S. 1, 13 (1988).

exclude members.[89] The instant case, however, does not fall under one of those specified categories, and inclusion of the respondent would force the petitioners to express a philosophy with which they do not agree.[90] The petitioners' philosophy, which they attempt to instill in young men, is that Boy Scouts must have good morals and be clean, both outwardly and inwardly.[91] It is not for the Court to inquire into whether the petitioners actually succeed in instilling these values or into whether homosexuality is necessarily incompatible with this morality.[92] The success of the petitioners' undertakings or the value of their message is not at issue. Regardless of whether the petitioners actually succeed with their teachings, or whether the majority agrees with them, they have a constitutionally protected right to maintain a philosophy and, according to the Court's holding in *New York*, they have the right to exclude those who do not agree with that philosophy.[93]

The question, in the instant case, should not revolve around the value the majority places on the petitioners' message.[94] This criterion is too vague and arbitrary to be used as the basis for a judicial decision. The purpose of a court of law is to rule on the law and uphold the rights set forth in the Constitution. Often, this may mean having to infringe slightly upon one group's rights in order to protect another's. Nevertheless, it should not be the Court's role to rule on an organization's message. While it is not always easy to make the distinction between ruling on a group's message and upholding a state's interests in eradicating discrimination, such difficult distinctions are an essential part of every person's constitutionally-protected freedoms.

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89. *Id.*
90. *Dale*, 120 S. Ct. at 2454.
91. *Id.* at 2452.
92. *Id.*
93. *New York*, 487 U.S. at 13; *see also supra* notes 28-29 and accompanying text.
94. *See Dale*, 120 S. Ct. at 2458. The Court concluded its opinion with:

> We are not, as we must not be, guided by our views of whether the [petitioners'] teachings with respect to homosexual conduct are right or wrong; public or judicial disapproval of a tenet of an organization's expression does not justify the State's effort to compel the organization to accept members where such acceptance would derogate from the organization's expressive message.

Id.