

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOY SCOUTS OF AMERICA ET AL. v. DALE

CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

No. 99–699. Argued April 26, 2000– Decided June 28, 2000

Petitioners are the Boy Scouts of America and its Monmouth Council (collectively, Boy Scouts). The Boy Scouts is a private, not-for-profit organization engaged in instilling its system of values in young people. It asserts that homosexual conduct is inconsistent with those values. Respondent Dale is an adult whose position as assistant scoutmaster of a New Jersey troop was revoked when the Boy Scouts learned that he is an avowed homosexual and gay rights activist. He filed suit in the New Jersey Superior Court, alleging, *inter alia*, that the Boy Scouts had violated the state statute prohibiting discrimination on the basis of sexual orientation in places of public accommodation. That court's Chancery Division granted summary judgment for the Boy Scouts, but its Appellate Division reversed in pertinent part and remanded. The State Supreme Court affirmed, holding, *inter alia*, that the Boy Scouts violated the State's public accommodations law by revoking Dale's membership based on his avowed homosexuality. Among other rulings, the court held that application of that law did not violate the Boy Scouts' First Amendment right of expressive association because Dale's inclusion would not significantly affect members' ability to carry out their purposes; determined that New Jersey has a compelling interest in eliminating the destructive consequences of discrimination from society, and that its public accommodations law abridges no more speech than is necessary to accomplish its purpose; and distinguished *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, on the ground that Dale's reinstatement did not compel the Boy Scouts to express any message.

Held: Applying New Jersey's public accommodations law to require the Boy Scouts to admit Dale violates the Boy Scouts' First Amendment right of expressive association. Government actions that unconstitu-

Syllabus

tionally burden that right may take many forms, one of which is intrusion into a group's internal affairs by forcing it to accept a member it does not desire. *Roberts v. United States Jaycees*, 468 U. S. 609, 623. Such forced membership is unconstitutional if the person's presence affects in a significant way the group's ability to advocate public or private viewpoints. *New York State Club Assn., Inc. v. City of New York*, 487 U. S. 1, 13. However, the freedom of expressive association is not absolute; it can be overridden by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *Roberts*, 468 U. S., at 623. To determine whether a group is protected, this Court must determine whether the group engages in "expressive association." The record clearly reveals that the Boy Scouts does so when its adult leaders inculcate its youth members with its value system. See *id.*, at 636. Thus, the Court must determine whether the forced inclusion of Dale would significantly affect the Boy Scouts' ability to advocate public or private viewpoints. The Court first must inquire, to a limited extent, into the nature of the Boy Scouts' viewpoints. 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. The Court gives deference to the Boy Scouts' assertions regarding the nature of its expression, see, *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S. 107, 123–124. The Court then inquires whether Dale's presence as an assistant scoutmaster would significantly burden the expression of those viewpoints. Dale, by his own admission, is one of a group of gay Scouts who have become community leaders and are open and honest about their sexual orientation. His presence as an assistant scoutmaster would interfere with the Scouts' choice not to propound a point of view contrary to its beliefs. See *Hurley*, 515 U. S., at 576–577. This Court disagrees with the New Jersey Supreme Court's determination that the Boy Scouts' ability to disseminate its message would not be significantly affected by the forced inclusion of Dale. First, contrary to the state court's view, an association need not associate for the purpose of disseminating a certain message in order to be protected, but must merely engage in expressive activity that could be impaired. Second, even if the Boy Scouts discourages Scout leaders from disseminating views on sexual issues, its method of expression is protected. Third, the First Amendment does not require that every member of a group agree on every issue in order for the group's policy to be "expressive association." Given that the Boy Scouts' expression would be bur-

Syllabus

dened, the Court must inquire whether the application of New Jersey's public accommodations law here runs afoul the Scouts' freedom of expressive association, and concludes that it does. Such a law is within a State's power to enact when the legislature has reason to believe that a given group is the target of discrimination and the law does not violate the First Amendment. See, e.g., *id.*, at 572. The Court rejects Dale's contention that the intermediate standard of review enunciated in *United States v. O'Brien*, 391 U. S. 367, should be applied here to evaluate the competing interests of the Boy Scouts and the State. Rather, the Court applies an analysis similar to the traditional First Amendment analysis it applied in *Hurley*. A state requirement that the Boy Scouts retain Dale would significantly burden the organization's right to oppose or disfavor homosexual conduct. The state interests embodied in New Jersey's public accommodations law do not justify such a severe intrusion on the freedom of expressive association. In so ruling, the Court is not guided by its view of whether the Boy Scouts' teachings with respect to homosexual conduct are right or wrong; public or judicial disapproval of an organization's expression does not justify the State's effort to compel the organization to accept members in derogation of the organization's expressive message. While the law may promote all sorts of conduct in place of harmful behavior, it may not interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may seem. *Hurley*, *supra*, at 579. Pp. 5–17.

160 N. J. 562, 734 A. 2d 1196, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined. SOUTER, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined.