SUPREME COURT OF THE UNITED STATES

No. 99–699

BOY SCOUTS OF AMERICA AND MONMOUTH COUNCIL, ET AL., PETITIONERS *v.* JAMES DALE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June 28, 2000]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners are the Boy Scouts of America and the Monmouth Council, a division of the Boy Scouts of America (collectively, Boy Scouts). The Boy Scouts is a private, not-for-profit organization engaged in instilling its system of values in young people. The Boy Scouts asserts that homosexual conduct is inconsistent with the values it seeks to instill. Respondent is James Dale, a former Eagle Scout whose adult membership in the Boy Scouts was revoked when the Boy Scouts learned that he is an avowed homosexual and gay rights activist. The New Jersey Supreme Court held that New Jersey's public accommodations law requires that the Boy Scouts admit Dale. This case presents the question whether applying New Jersey's public accommodations law in this way violates the Boy Scouts' First Amendment right of expressive association. We hold that it does.

I

James Dale entered scouting in 1978 at the age of eight

by joining Monmouth Council's Cub Scout Pack 142. Dale became a Boy Scout in 1981 and remained a Scout until he turned 18. By all accounts, Dale was an exemplary Scout. In 1988, he achieved the rank of Eagle Scout, one of Scouting's highest honors.

Dale applied for adult membership in the Boy Scouts in 1989. The Boy Scouts approved his application for the position of assistant scoutmaster of Troop 73. Around the same time, Dale left home to attend Rutgers University. After arriving at Rutgers, Dale first acknowledged to himself and others that he is gay. He quickly became involved with, and eventually became the copresident of, the Rutgers University Lesbian/Gay Alliance. In 1990, Dale attended a seminar addressing the psychological and health needs of lesbian and gay teenagers. A newspaper covering the event interviewed Dale about his advocacy of homosexual teenagers' need for gay role models. In early July 1990, the newspaper published the interview and Dale's photograph over a caption identifying him as the copresident of the Lesbian/Gay Alliance.

Later that month, Dale received a letter from Monmouth Council Executive James Kay revoking his adult membership. Dale wrote to Kay requesting the reason for Monmouth Council's decision. Kay responded by letter that the Boy Scouts "specifically forbid membership to homosexuals." App. 137.

In 1992, Dale filed a complaint against the Boy Scouts in the New Jersey Superior Court. The complaint alleged that the Boy Scouts had violated New Jersey's public accommodations statute and its common law by revoking Dale's membership based solely on his sexual orientation. New Jersey's public accommodations statute prohibits, among other things, discrimination on the basis of sexual orientation in places of public accommodation. N. J. Stat. Ann. §§10:5–4 and 10:5–5 (West Supp. 2000); see Appendix, *infra*, at 18–19.

The New Jersey Superior Court's Chancery Division granted summary judgment in favor of the Boy Scouts. The court held that New Jersey's public accommodations law was inapplicable because the Boy Scouts was not a place of public accommodation, and that, alternatively, the Boy Scouts is a distinctly private group exempted from coverage under New Jersey's law. The court rejected Dale's common-law claim holding that New Jersey's policy is embodied in the public accommodations law. The court also concluded that the Boy Scouts' position in respect of active homosexuality was clear and held that the First Amendment freedom of expressive association prevented the government from forcing the Boy Scouts to accept Dale as an adult leader.

The New Jersey Superior Court's Appellate Division affirmed the dismissal of Dale's common-law claim, but otherwise reversed and remanded for further proceedings. 308 N. J. Super. 516, 70 A. 2d 270 (1998). It held that New Jersey's public accommodations law applied to the Boy Scouts and that the Boy Scouts violated it. The Appellate Division rejected the Boy Scouts' federal constitutional claims.

The New Jersey Supreme Court affirmed the judgment of the Appellate Division. It held that the Boy Scouts was a place of public accommodation subject to the public accommodations law, that the organization was not exempt from the law under any of its express exceptions, and that the Boy Scouts violated the law by revoking Dale's membership based on his avowed homosexuality. After considering the state-law issues, the court addressed the Boy Scouts' claims that application of the public accommodations law in this case violated its federal constitutional rights "'to enter into and maintain . . . intimate or private relationships . . . [and] to associate for the purpose of engaging in protected speech.'" 160 N. J. 562, 605, 734

A. 2d 1196, 1219 (1999) (quoting *Board of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U. S. 537, 544 (1987)). With respect to the right to intimate association, the court concluded that the Boy Scouts' "large size, nonselectivity, inclusive rather than exclusive purpose, and practice of inviting or allowing nonmembers to attend meetings, establish that the organization is not 'sufficiently personal or private to warrant constitutional protection' under the freedom of intimate association.'" 160 N. J., at 608–609, 734 A. 2d, at 1221 (quoting *Duarte, supra*, at 546). With respect to the right of expressive association, the court "agree[d] that Boy Scouts expresses a belief in moral values and uses its activities to encourage the moral development of its members." *Ibid*., 734 A. 2d, at 1223. But the court concluded that it was "not persuaded . . . that a shared goal of Boy Scout members is to associate in order to preserve the view that homosexuality is immoral." 160 N. J., at 613, 734 A. 2d, at 1223–1224 (internal quotation marks omitted). Accordingly, the court held "that Dale's membership does not violate the Boy Scouts' right of expressive association because his inclusion would not 'affect in any significant way [the Boy Scouts'] existing members' ability to carry out their various purposes.'" *Id.*, at 615, 734 A. 2d, at 1225 (quoting *Duarte, supra*, at 548). The court also determined that New Jersey has a compelling interest in eliminating "the destructive consequences of discrimination from our society," and that its public accommodations law abridges no more speech than is necessary to accomplish its purpose. 160 N. J., at 619–620, 734 A. 2d, at 1227–1228. Finally, the court addressed the Boy Scouts' reliance on *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), in support of its claimed First Amendment right to exclude Dale. The court determined that *Hurley* did not require deciding the case in favor of the

Boy Scouts because "the reinstatement of Dale does not compel Boy Scouts to express any message." 160 N. J., at 624, 734 A. 2d, at 1229.

We granted the Boy Scouts' petition for certiorari to determine whether the application of New Jersey's public accommodations law violated the First Amendment. 528 U. S. 1109 (2000).

II

In *Roberts* v. *United States Jaycees*, 468 U. S. 609, 622 (1984), we observed that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas. See *ibid.* (stating that protection of the right to expressive association is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority"). Government actions that may unconstitutionally burden this freedom may take many forms, one of which is "intrusion into the internal structure or affairs of an association" like a "regulation that forces the group to accept members it does not desire." *Id.*, at 623. Forcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express. Thus, "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Ibid.*

The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person 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 (1988). But the freedom of expressive associa-

tion, like many freedoms, is not absolute. We have held that the freedom could 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, supra,* at 623.

To determine whether a group is protected by the First Amendment's expressive associational right, we must determine whether the group engages in "expressive association." The First Amendment's protection of expressive association is not reserved for advocacy groups. But to come within its ambit, a group must engage in some form of expression, whether it be public or private.

Because this is a First Amendment case where the ultimate conclusions of law are virtually inseparable from findings of fact, we are obligated to independently review the factual record to ensure that the state court's judgment does not unlawfully intrude on free expression. See *Hurley, supra,* at 567–568. The record reveals the following. The Boy Scouts is a private, nonprofit organization. According to its mission statement:

> "It is the mission of the Boy Scouts of America to serve others by helping to instill values in young people and, in other ways, to prepare them to make ethical choices over their lifetime in achieving their full potential.
>
> "The values we strive to instill are based on those found in the Scout Oath and Law:
>
> "Scout Oath
>
> "On my honor I will do my best
> To do my duty to God and my country
> and to obey the Scout Law;
> To help other people at all times;
> To keep myself physically strong,
> mentally awake, and morally straight.

"Scout Law

"A Scout is:

"Trustworthy	Obedient
Loyal	Cheerful
Helpful	Thrifty
Friendly	Brave
Courteous	Clean
Kind	Reverent." App. 184.

Thus, the general mission of the Boy Scouts is clear: "[T]o instill values in young people." *Ibid.* The Boy Scouts seeks to instill these values by having its adult leaders spend time with the youth members, instructing and engaging them in activities like camping, archery, and fishing. During the time spent with the youth members, the scoutmasters and assistant scoutmasters inculcate them with the Boy Scouts' values– both expressly and by example. It seems indisputable that an association that seeks to transmit such a system of values engages in expressive activity. See *Roberts, supra*, at 636 (O'CONNOR, J., concurring) ("Even the training of outdoor survival skills or participation in community service might become expressive when the activity is intended to develop good morals, reverence, patriotism, and a desire for self-improvement").

Given that the Boy Scouts engages in expressive activity, we must determine whether the forced inclusion of Dale as an assistant scoutmaster would significantly affect the Boy Scouts' ability to advocate public or private viewpoints. This inquiry necessarily requires us first to explore, to a limited extent, the nature of the Boy Scouts' view of homosexuality.

The values the Boy Scouts seeks to instill are "based on" those listed in the Scout Oath and Law. App. 184. The Boy Scouts explains that the Scout Oath and Law provide

"a positive moral code for living; they are a list of 'do's' rather than 'don'ts.'" Brief for Petitioners 3. The Boy Scouts asserts that homosexual conduct is inconsistent with the values embodied in the Scout Oath and Law, particularly with the values represented by the terms "morally straight" and "clean."

Obviously, the Scout Oath and Law do not expressly mention sexuality or sexual orientation. See *supra*, at 6–7. And the terms "morally straight" and "clean" are by no means self-defining. Different people would attribute to those terms very different meanings. For example, some people may believe that engaging in homosexual conduct is not at odds with being "morally straight" and "clean." And others may believe that engaging in homosexual conduct is contrary to being "morally straight" and "clean." The Boy Scouts says it falls within the latter category.

The New Jersey Supreme Court analyzed the Boy Scouts' beliefs and found that the "exclusion of members solely on the basis of their sexual orientation is inconsistent with Boy Scouts' commitment to a diverse and 'representative' membership . . . [and] contradicts Boy Scouts' overarching objective to reach 'all eligible youth.'" 160 N. J., at 618, 734 A. 2d, at 1226. The court concluded that the exclusion of members like Dale "appears antithetical to the organization's goals and philosophy." *Ibid.* But our cases reject this sort of inquiry; it is not the role of the courts to reject a group's expressed values because they disagree with those values or find them internally inconsistent. See *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U. S. 107, 124 (1981) ("[A]s is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational"); see also *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 714 (1981) ("[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit

First Amendment protection").

The Boy Scouts asserts that it "teach[es] that homosexual conduct is not morally straight," Brief for Petitioners 39, and that it does "not want to promote homosexual conduct as a legitimate form of behavior," Reply Brief for Petitioners 5. We accept the Boy Scouts' assertion. We need not inquire further to determine the nature of the Boy Scouts' expression with respect to homosexuality. But because the record before us contains written evidence of the Boy Scouts' viewpoint, we look to it as instructive, if only on the question of the sincerity of the professed beliefs.

A 1978 position statement to the Boy Scouts' Executive Committee, signed by Downing B. Jenks, the President of the Boy Scouts, and Harvey L. Price, the Chief Scout Executive, expresses the Boy Scouts' "official position" with regard to "homosexuality and Scouting":

> "Q. May an individual who openly declares himself to be a homosexual be a volunteer Scout leader?
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> "A. No. The Boy Scouts of America is a private, membership organization and leadership therein is a privilege and not a right. We do not believe that homosexuality and leadership in Scouting are appropriate. We will continue to select only those who in our judgment meet our standards and qualifications for leadership." App. 453–454.

Thus, at least as of 1978– the year James Dale entered Scouting– the official position of the Boy Scouts was that avowed homosexuals were not to be Scout leaders.

A position statement promulgated by the Boy Scouts in 1991 (after Dale's membership was revoked but before this litigation was filed) also supports its current view:

> "We believe that homosexual conduct is inconsistent with the requirement in the Scout Oath that a Scout be morally straight and in the Scout Law that a Scout

> be clean in word and deed, and that homosexuals do not provide a desirable role model for Scouts." *Id.*, at 457.

This position statement was redrafted numerous times but its core message remained consistent. For example, a 1993 position statement, the most recent in the record, reads, in part:

> "The Boy Scouts of America has always reflected the expectations that Scouting families have had for the organization. We do not believe that homosexuals provide a role model consistent with these expectations. Accordingly, we do not allow for the registration of avowed homosexuals as members or as leaders of the BSA." *Id.*, at 461.

The Boy Scouts publicly expressed its views with respect to homosexual conduct by its assertions in prior litigation. For example, throughout a California case with similar facts filed in the early 1980's, the Boy Scouts consistently asserted the same position with respect to homosexuality that it asserts today. See *Curran* v. *Mount Diablo Council of Boy Scouts of America*, No. C–365529 (Cal. Super. Ct., July 25, 1991); 48 Cal. App. 4th 670, 29 Cal. Rptr. 2d 580 (1994); 17 Cal. 4th 670, 952 P. 2d 218 (1998). We cannot doubt that the Boy Scouts sincerely holds this view.

We must then determine whether Dale's presence as an assistant scoutmaster would significantly burden the Boy Scouts' desire to not "promote homosexual conduct as a legitimate form of behavior." Reply Brief for Petitioners 5. 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. See, *e.g.*, *La Follette*, *supra*, at 123–124 (considering whether a Wisconsin law burdened the National Party's associational rights and stating that "a State, or a court, may not constitutionally substitute its own judgment

for that of the Party"). That is not to say that an expressive association can erect a shield against antidiscrimination laws simply by asserting that mere acceptance of a member from a particular group would impair its message. But here Dale, by his own admission, is one of a group of gay Scouts who have "become leaders in their community and are open and honest about their sexual orientation." App. 11. Dale was the copresident of a gay and lesbian organization at college and remains a gay rights activist. Dale's presence in the Boy Scouts would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.

Hurley is illustrative on this point. There we considered whether the application of Massachusetts' public accommodations law to require the organizers of a private St. Patrick's Day parade to include among the marchers an Irish-American gay, lesbian, and bisexual group, GLIB, violated the parade organizers' First Amendment rights. We noted that the parade organizers did not wish to exclude the GLIB members because of their sexual orientations, but because they wanted to march behind a GLIB banner. We observed:

> "[A] contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals . . . . The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out of the parade. But whatever the reason, it boils down to the choice of a speaker not

> to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control." 515 U. S., at 574–575.

Here, we have found that the Boy Scouts believes that homosexual conduct is inconsistent with the values it seeks to instill in its youth members; it will not "promote homosexual conduct as a legitimate form of behavior." Reply Brief for Petitioners 5. As the presence of GLIB in Boston's St. Patrick's Day parade would have interfered with the parade organizers' choice not to propound a particular point of view, the presence of Dale as an assistant scoutmaster would just as surely interfere with the Boy Scout's choice not to propound a point of view contrary to its beliefs.

The New Jersey Supreme Court determined that the Boy Scouts' ability to disseminate its message was not significantly affected by the forced inclusion of Dale as an assistant scoutmaster because of the following findings:

> "Boy Scout members do not associate for the purpose of disseminating the belief that homosexuality is immoral; Boy Scouts discourages its leaders from disseminating *any* views on sexual issues; and Boy Scouts includes sponsors and members who subscribe to different views in respect of homosexuality." 160 N. J., at 612, 734 A. 2d, at 1223.

We disagree with the New Jersey Supreme Court's conclusion drawn from these findings.

First, associations do not have to associate for the "purpose" of disseminating a certain message in order to be entitled to the protections of the First Amendment. An association must merely engage in expressive activity that could be impaired in order to be entitled to protection. For example, the purpose of the St. Patrick's Day parade in *Hurley* was not to espouse any views about sexual orientation, but we held that the parade organizers had a right to

exclude certain participants nonetheless.

Second, even if the Boy Scouts discourages Scout leaders from disseminating views on sexual issues– a fact that the Boy Scouts disputes with contrary evidence– the First Amendment protects the Boy Scouts' method of expression. If the Boy Scouts wishes Scout leaders to avoid questions of sexuality and teach only by example, this fact does not negate the sincerity of its belief discussed above.

Third, the First Amendment simply does not require that every member of a group agree on every issue in order for the group's policy to be "expressive association." The Boy Scouts takes an official position with respect to homosexual conduct, and that is sufficient for First Amendment purposes. In this same vein, Dale makes much of the claim that the Boy Scouts does not revoke the membership of heterosexual Scout leaders that openly disagree with the Boy Scouts' policy on sexual orientation. But if this is true, it is irrelevant.[1] The presence of an avowed homosexual and gay rights activist in an assistant scoutmaster's uniform sends a distinctly different message from the presence of a heterosexual assistant scoutmaster who is on record as disagreeing with Boy Scouts policy. The Boy Scouts has a First Amendment right to choose to send one message but not the other. The fact that the organization does not trumpet its views from the housetops, or that it tolerates dissent within its ranks, does not mean that its views receive no First

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[1]The record evidence sheds doubt on Dale's assertion. For example, the National Director of the Boy Scouts certified that *"any* persons who advocate to Scouting youth that homosexual conduct is" consistent with Scouting values will not be registered as adult leaders. App. 746 (emphasis added). And the Monmouth Council Scout Executive testified that the advocacy of the morality of homosexuality to youth members by any adult member is grounds for revocation of the adult's membership. *Id*., at 761.

Amendment protection.

Having determined that the Boy Scouts is an expressive association and that the forced inclusion of Dale would significantly affect its expression, we inquire whether the application of New Jersey's public accommodations law to require that the Boy Scouts accept Dale as an assistant scoutmaster runs afoul of the Scouts' freedom of expressive association. We conclude that it does.

State public accommodations laws were originally enacted to prevent discrimination in traditional places of public accommodation– like inns and trains. See, *e.g.*, *Hurley*, *supra*, at 571–572 (explaining the history of Massachusetts' public accommodations law); *Romer* v. *Evans*, 517 U. S. 620, 627–629 (1996) (describing the evolution of public accommodations laws). Over time, the public accommodations laws have expanded to cover more places.[2] New Jersey's statutory definition of "'[a] place of public accommodation'" is extremely broad. The term is said to "'include, but not be limited to,'" a list of over 50 types of places. N. J. Stat. Ann. §10:5–5(*l*) (West Supp. 2000); see Appendix, *infra*, at 18–19. Many on the list are what one would expect to be places where the public is invited. For example, the statute includes as places of public accommodation taverns, restaurants, retail shops, and public libraries. But the statute also includes places that often

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[2] Public accommodations laws have also broadened in scope to cover more groups; they have expanded beyond those groups that have been given heightened equal protection scrutiny under our cases. See *Romer*, 517 U. S., at 629. Some municipal ordinances have even expanded to cover criteria such as prior criminal record, prior psychiatric treatment, military status, personal appearance, source of income, place of residence, and political ideology. See 1 Boston, Mass., Ordinance No. §12–9(7) (1999) (ex-offender, prior psychiatric treatment, and military status); D. C. Code Ann. §1–2519 (1999) (personal appearance, source of income, place of residence); Seattle, Wash., Municipal Code §14.08.090 (1999) (political ideology).

may not carry with them open invitations to the public, like summer camps and roof gardens. In this case, the New Jersey Supreme Court went a step further and applied its public accommodations law to a private entity without even attempting to tie the term "place" to a physical location.[3] As the definition of "public accommodation" has expanded from clearly commercial entities, such as restaurants, bars, and hotels, to membership organizations such as the Boy Scouts, the potential for conflict between state public accommodations laws and the First Amendment rights of organizations has increased.

We recognized in cases such as *Roberts* and *Duarte* that States have a compelling interest in eliminating discrimination against women in public accommodations. But in each of these cases we went on to conclude that the enforcement of these statutes would not materially interfere with the ideas that the organization sought to express. In *Roberts*, we said "[i]ndeed, the Jaycees has failed to demonstrate . . . any serious burden on the male members' freedom of expressive association." 468 U. S., at 626. In *Duarte*, we said:

> "[I]mpediments to the exercise of one's right to choose one's associates can violate the right of association protected by the First Amendment. In this case, however, the evidence fails to demonstrate that admitting

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[3] Four State Supreme Courts and one United States Court of Appeals have ruled that the Boy Scouts is not a place of public accommodation. *Welsh* v. *Boy Scouts of America*, 993 F. 2d 1267 (CA7); cert. denied, 510 U. S. 1012 (1993); *Curran* v. *Mount Diablo Council of the Boy Scouts of America*, 17 Cal. 4th 670, 952 P. 2d 218 (1998); *Seabourn* v. *Coronado Area Council, Boy Scouts of America*, 257 Kan. 178, 891 P. 2d 385 (1995); *Quinnipiac Council, Boy Scouts of America, Inc.* v. *Comm'n on Human Rights & Opportunities*, 204 Conn. 287, 528 A. 2d 352 (1987); *Schwenk* v. *Boy Scouts of America*, 275 Ore. 327, 551 P. 2d 465 (1976). No federal appellate court or state supreme court– except the New Jersey Supreme Court in this case– has reached a contrary result.

> women to Rotary Clubs will affect in any significant way the existing members' ability to carry out their various purposes." 481 U. S., at 548 (internal quotation marks and citations omitted).

We thereupon concluded in each of these cases that the organizations' First Amendment rights were not violated by the application of the States' public accommodations laws.

In *Hurley*, we said that public accommodations laws "are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments." 515 U. S., at 572. But we went on to note that in that case "the Massachusetts [public accommodations] law has been applied in a peculiar way" because "any contingent of protected individuals with a message would have the right to participate in petitioners' speech, so that the communication produced by the private organizers would be shaped by all those protected by the law who wish to join in with some expressive demonstration of their own." *Id.*, at 572–573. And in the associational freedom cases such as *Roberts*, *Duarte*, and *New York State Club Assn.*, after finding a compelling state interest, the Court went on to examine whether or not the application of the state law would impose any "serious burden" on the organization's rights of expressive association. So in these cases, the associational interest in freedom of expression has been set on one side of the scale, and the State's interest on the other.

Dale contends that we should apply the intermediate standard of review enunciated in *United States* v. *O'Brien*, 391 U. S. 367 (1968), to evaluate the competing interests. There the Court enunciated a four-part test for review of a governmental regulation that has only an incidental effect

on protected speech– in that case the symbolic burning of a draft card. A law prohibiting the destruction of draft cards only incidentally affects the free speech rights of those who happen to use a violation of that law as a symbol of protest. But New Jersey's public accommodations law directly and immediately affects associational rights, in this case associational rights that enjoy First Amendment protection. Thus, *O'Brien* is inapplicable.

In *Hurley*, we applied traditional First Amendment analysis to hold that the application of the Massachusetts public accommodations law to a parade violated the First Amendment rights of the parade organizers. Although we did not explicitly deem the parade in *Hurley* an expressive association, the analysis we applied there is similar to the analysis we apply here. We have already concluded that a state requirement that the Boy Scouts retain Dale as an assistant scoutmaster 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 Boy Scouts' rights to freedom of expressive association. That being the case, we hold that the First Amendment prohibits the State from imposing such a requirement through the application of its public accommodations law.[4]

JUSTICE STEVENS' dissent makes much of its observation that the public perception of homosexuality in this

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[4]We anticipated this result in *Hurley* when we illustrated the reasons for our holding in that case by likening the parade to a private membership organization. 515 U. S., at 580. We stated: "Assuming the parade to be large enough and a source of benefits (apart from its expression) that would generally justify a mandated access provision, GLIB could nonetheless be refused admission as an expressive contingent with its own message just as readily as a private club could exclude an applicant whose manifest views were at odds with a position taken by the club's existing members." *Id.*, at 580–581.

country has changed. See *post*, at 37–39. Indeed, it appears that homosexuality has gained greater societal acceptance. See *ibid.* But this is scarcely an argument for denying First Amendment protection to those who refuse to accept these views. The First Amendment protects expression, be it of the popular variety or not. See, *e.g.*, *Texas* v. *Johnson*, 491 U. S. 397 (1989) (holding that Johnson's conviction for burning the American flag violates the First Amendment); *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969) (holding that a Ku Klux Klan leaders' conviction for advocating unlawfulness as a means of political reform violates the First Amendment). And the fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.

JUSTICE STEVENS' extolling of Justice Brandeis' comments in *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (dissenting opinion); see *post*, at 2, 40, confuses two entirely different principles. In *New State Ice*, the Court struck down an Oklahoma regulation prohibiting the manufacture, sale, and distribution of ice without a license. Justice Brandeis, a champion of state experimentation in the economic realm, dissented. But Justice Brandeis was never a champion of state experimentation in the suppression of free speech. To the contrary, his First Amendment commentary provides compelling support for the Court's opinion in this case. In speaking of the Founders of this Nation, Justice Brandeis emphasized that they "believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth." *Whitney* v. *California*, 274 U. S. 357, 375 (concurring opinion). He continued:

> "Believing in the power of reason as applied through public discussion, they eschewed silence coerced by

> law– the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed." *Id.*, at 375–376.

We are not, as we must not be, guided by our views of whether the Boy Scouts' 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. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U. S., at 579.

The judgment of the New Jersey Supreme Court is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

N. J. Stat. Ann. §10:5–4 (West Supp. 2000). Obtaining employment, accommodations and privileges without discrimination; civil right

"All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right."

N. J. Stat. Ann. §10:5–5 (West Supp. 2000). Definitions

"As used in this act, unless a different meaning clearly appears from the context:

. . . . .

"*l.* 'A place of public accommodation' shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, any stations and terminals thereof; any bathhouse, board-

walk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry or affectional or sexual orientation in the admission of students."