

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

No. 99-699

SUPREME COURT OF THE UNITED STATES

530 U.S. 640; 120 S. Ct. 2446; 2000 U.S. LEXIS 4487; 147 L. Ed. 2d 554

April 26, 2000, Argued

June 28, 2000, Decided

**PRIOR HISTORY:** On Writ of Certiorari to the Supreme Court of New Jersey.

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

**DECISION:** Application of New Jersey's public accommodations law to require Boy Scouts of America to admit avowed homosexual assistant scoutmaster held to violate Boy Scouts' First Amendment right of expressive association.

**SUMMARY:** The Boy Scouts of America (1) was a private and not-for-profit organization engaged in instilling the Boy Scouts' system of values in young people, and (2) asserted that homosexual conduct was inconsistent with those values. An individual's position as assistant scoutmaster of a New Jersey troop was revoked after a division of the Boy Scouts learned that the individual was an avowed homosexual and gay rights activist. The assistant scoutmaster (1) filed suit in the New Jersey Superior Court, and (2) alleged, among other matters, that the Boy Scouts had violated a state law prohibiting discrimination in places of public accommodation on the basis of sexual orientation. The Superior Court's Chancery Division granted summary judgment for the Boy Scouts, but the Superior Court's Appellate Division--in reversing in pertinent part and in ordering a remand--(1) rejected the Boy Scouts' constitutional claims, and (2) ruled that (a) the state's public accommodations law applied to the Boy Scouts, and (b) the Boy Scouts had violated the law (308 NJ Super 516, 706 A2d 270). The New Jersey Supreme Court, in affirming, expressed the view that (1) the Boy Scouts had violated the public accommodations law by revoking the assistant scoutmaster's membership on the basis of his avowed homosexuality; and (2) this application of the public accommodations law did not violate the Boy Scouts' right of expressive association under the Federal Constitution's First Amendment (160 NJ 562, 734 A2d 1196).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Rehnquist, Ch. J., joined by O'Connor, Scalia, Kennedy, and Thomas, JJ., it was held that the application of New Jersey's public accommodations law to require the Boy Scouts to admit the assistant scoutmaster violated the Boy Scouts' First Amendment right of expressive association, as, among other matters, (1) the Boy Scouts (a) engaged in expressive activity, and (b) sincerely asserted the view that homosexual conduct was inconsistent with the Boy Scouts' values; (2) requiring the Boy Scouts to accept the assistant scoutmaster would significantly affect the Boy Scouts' expression, by interfering with the Boy Scouts' choice not to propound a point of view

contrary to the Boy Scouts' beliefs; and (3) the state interests embodied in the public accommodations law did not justify such a severe intrusion.

Stevens, J., joined by Souter, Ginsburg, and Breyer, JJ., dissenting, expressed the view that New Jersey's public accommodations law (1) did not impose any serious burdens on the Boy Scouts' collective effort on behalf of shared goals, (2) did not force the Boy Scouts to communicate any message that the Boy Scouts did not wish to endorse, and (3) therefore, abridged no right of the Boy Scouts under the Constitution.

Souter, J., joined by Ginsburg and Breyer, JJ., dissenting, expressed the view, among other matters, that the Boy Scouts did not make out an expressive-association claim under the First Amendment, not because of what the Boy Scouts might espouse, but because the Boy Scouts--using the channels customarily employed to state the Boy Scouts' message--had failed to make sexual orientation the subject of any unequivocal advocacy.