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Gay Group Files Brief Favoring the Boy Scouts

Compiled by GayToday

Washington, D.C.-- Gays and Lesbians for Individual Liberty (GLIL) has filed an *amicus curiae* ("friend of the court") brief with the U.S. Supreme Court, arguing that the Boy Scouts of America have a constitutional right to set their own standards for membership and leadership positions, even if that means the Boy Scouts may exclude openly gay Scout leaders from participation in the organization.



Gays and Lesbians for Individual Liberty, with members in the United States and elsewhere, was founded in 1991. It promotes concepts of economic and personal freedom as well as of individual responsibility.

The organization's brief was filed in the case of Boy Scouts of America v. James Dale, which was appealed to the nation's highest court after the New Jersey Supreme Court ruled last August that the Boy Scouts may not exclude gay men from leadership positions.

"Our brief emphasizes our disagreement with the Boy Scouts policy of excluding gay members and leaders," said Richard Sincere, president of GLIL and a former Boy Scout.

"But if government forces the Boy Scouts to change that policy, the constitutional rights of all of us -- not just the Scouts, but everyone, gay or straight -- will be diminished. Freedom does not belong only to those with whom we agree. Gay men and lesbians have suffered when freedom of association has not been respected.

"We benefit when freedom of speech and freedom of association are vigorously protected. A Supreme Court ruling against the Boy Scouts will have the perverse effect of hurting gay and lesbian Americans."

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GLIL's brief before the Supreme Court was prepared by the Institute for Justice, a Washington, D.C.-based public-interest law firm.

A Summary of the GLIL Brief

Interest of *Amicus Curiae*

Gays and Lesbians for Individual Liberty (GLIL) is a non-partisan organization founded in 1991 to advance the principles of the free market, individual responsibility, and non-interference by government in the private lives of all citizens.

GLIL seeks to educate members of the gay and lesbian community about these principles, while at the same time promoting tolerance and acceptance of homosexuals among members of the wider society. GLIL is based in Washington, D.C., with members across the United States and in several foreign countries. To achieve its goals, GLIL sponsors lectures, debates, panel discussions, fundraisers for charitable organizations, and social events.

GLIL also publishes a newsletter and utilizes a website to express its views, while its members contribute articles to various publications.

Summary of Argument

The New Jersey Supreme Court's decision restricting the ability of the Boy Scouts of America (BSA) to choose its own leaders and define its own membership criteria dangerously erodes the freedom of all Americans, including gay Americans, and should be reversed. Freedom of association is one of the core liberties safeguarded by the Bill of Rights. See, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). In particular, this Court has consistently recognized that the First Amendment protects the freedom of expressive association, which it has described as the "freedom to engage in association for the advancement of beliefs and ideas." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

While a robust protection for the freedom of association is important to all Americans, it holds a special significance for gay and lesbian Americans. Throughout this nation's history, gays have suffered in a variety of contexts when freedom of association has not been respected and governments have been allowed to trample on the rights of citizens to freely gather together.

An organization's decision to associate with or to exclude openly gay individuals conveys a powerful message -- either one of openness and tolerance, or one of exclusion and disapproval. Either way, a message is sent. It is therefore troublesome, from a First Amendment perspective, when a well-intentioned law prohibiting discrimination is applied in a way to stifle such communication.

The BSA's ability to communicate its disapproval of homosexuality, for instance, is undoubtedly undermined when the State of New Jersey requires the organization to allow openly gay individuals to become Scoutmasters, individuals who are supposed to serve as role models to young Scouts.

The New Jersey Supreme Court's decision here is especially pernicious for it places the government in the intolerable position of second-guessing a private organization's interpretation of its own rules and articulation of its own message. If this litigation has made one thing clear, it is that the leadership of the BSA disapproves of homosexuality and wishes to communicate this in some form to its membership and to the outside world.

An organization's freedom of expressive association cannot depend upon the degree to which it may choose to emphasize certain aspects of its message at certain times. Such a rule, in fact, works perversely to the detriment of gay Americans. Under the test adopted by the New Jersey Supreme Court, which accords protection only to forcefully stated messages, groups such as the Boy Scouts will be encouraged to stress their anti-gay views so that they may retain their freedom of expressive association.

GLIL strongly disapproves of the BSA's moral views with respect to homosexuality and wishes the organization would voluntarily end its policy of excluding gays from serving as Scoutmasters. Nevertheless, the First Amendment protects the freedom of the BSA to maintain this misguided policy if it so desires. To deny the BSA's right to express its moral views through its decisions to associate with or exclude certain people endangers the rights of all Americans, including gay Americans.



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