

washingtonpost.com Home | Register Web Search: GO by Google

News Politics Live Online Entertainment Marketplace onwashington.com



Find: A Loan for Me Powered by GetSmart.com

Refinancing Second Mortgage Debt Consolidation

PROMOTION 12 Years Online ARCHIVES

George F. Will

Opinion Columnist



The Boy Scouts' Unlikely Friends

By George F. Will
Sunday, March 26, 2000; Page B07

[E-Mail This Article](#)
[Printer-Friendly Version](#)

In this litigious republic, litigation often is politics carried on by other means, and like politics, litigation sometimes makes strange bedfellows, as in a case to be argued before the Supreme Court next month and decided by early summer. The question at issue is: Should New Jersey Boy Scout organizations be permitted to exclude gay men from being Scoutmasters?

New Jersey says this violates the state's anti-discrimination law. But the Scouts have acquired an unlikely ally, an organization of gays and lesbians which says the Scouts' policy is not right but the Scouts have a right to it.

Gays and Lesbians for Individual Liberty has filed a friend-of-the-court brief prepared by the Institute for Justice, a merry band of libertarian lawyers in Washington. GLIL argues that defeating the New Jersey Scouts would be a Pyrrhic victory for gays and lesbians, who have, historically and still, a large stake in society respecting what the Scouts are asserting, the First Amendment right of freedom of association.

Last year New Jersey's Supreme Court unanimously ruled that the Scouts' policy is "bigotry" and that the Scouts are, like a restaurant that is open to the general public, a "public accommodation" and therefore covered by the state's statute that forbids discrimination on the basis of sexual orientation. The court argued that the Scouts, with 5.8 million members nationwide, are not selective enough to be considered "distinctively private."

The Scouts appealed to the Supreme Court, citing their right of "expressive association," which the court has defined as "freedom to engage in association for the advancement of beliefs and ideas." In its brief GLIL vigorously deplores the Scouts' creed, which is that homosexuality is incompatible with the Scout obligation to be "morally straight" and "clean." But GLIL agrees that the Scouts are a creedal organization with an explicitly moral mission. And citing much history—for example, until the late 1970s the IRS denied tax-exempt status to organizations that "promoted" homosexuality--the GLIL brief argues that gays have suffered "when freedom of association has not been respected and governments have been allowed to trample on the rights of citizens to freely gather together."

The GLIL brief says the New Jersey decision is pernicious because "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." Furthermore, the New Jersey ruling is perverse because it says the right of expressive association belongs only to organizations that have messages more forcefully stated than is the Scouts' disapproval of homosexuality. The New Jersey court parsed the Scout oath about being "straight" and "clean" and said the oath does not forbid homosexual conduct. Furthermore, the court said the Scouts did not produce sufficient evidence that the organization wants to communicate disapproval of homosexuality. This is an incentive for the Scouts to increase their anti-gay emphasis.

The law has recently taken an interesting carom regarding gays and the First Amendment. In 1995 the Supreme Court held that the University of Virginia had impermissibly practiced viewpoint discrimination when it refused to give funds from the student activities fees to a newspaper expressing religious (and anti-gay) views. Two years later, in the first federal appellate case applying to a gay organization the principle affirmed in the University of Virginia case, a circuit court held that the University of South Alabama violated freedom of speech and association when it denied student fee funding to a gay student group.

GLIL argues that the inclusion of gays in all facets of life is profoundly desirable because it sends "a message of tolerance and acceptance." But when a private association is involved, the First Amendment requires that "this message must be sent through private choice and must not be communicated due to government coercion." As the Supreme Court has said, freedom of association "plainly presupposes a freedom not to associate." When the court affirmed the right of Minnesota to require the Jaycees to admit women, it stressed that the Jaycees were not a creedal organization using the exclusion to convey a specific message about females.

The GLIL, warning against "creeping infringement" of freedom of association, notes that gay organizations often seek and administer "gay environments," including clubs, retreats, vacations and professional and alumni organizations. America needs a livelier understanding of the arithmetic of rights that GLIL understands: Multiplying rights, such as the right of a gay to be a Scoutmaster, can mean a net subtraction from freedom.

Shopping \$18.50 Rent "Angela's Ashes" on tape! RecordedBooks.com Experience Group Buying Today

Search

News Post Archives GO

[Advanced Search](#)

Related Links

Other Articles
[Death and the Liveliest Writing](#) (The Washington Post, 03/23/00)
[Bush-Powell in 2000](#) (The Washington Post, 03/19/00)
[Free to Be Politically Intense](#) (The Washington Post, 03/16/00)
[Runnin', Gunnin' and Gambling](#) (The Washington Post, 03/12/00)

- News Home Page
- Photo Galleries
- Politics
- Nation
- World
- Metro
- Business/Tech
- Sports
- Style
- Education
- Travel
- Health
- Opinion**
- Columnists**
- Donna Britt
- David S. Broder
- Richard Cohen
- E.J. Dionne Jr.
- For the Record
- Nat Hentoff
- Fred Hiatt
- Jim Hoagland
- David Ignatius
- Michael Kelly
- Colbert I. King
- Charles Krauthammer
- Mary McGrory
- Courtland Milloy
- Ombudsman
- Geneva Overholser
- William Raspberry
- Stephen S. Rosenfeld
- Robert J. Samuelson
- Marjorie Williams
- Editorials
- Letters to the Editor
- Outlook
- Weather
- Weekly Sections
- News Digest
- Classifieds
- Print Edition
- Archives
- News Index
- Help**

Partner Sites:
[Newsweek.com](#)
[BRITANNICA.COM](#)

© 2000 The Washington Post Company

[◀ Previous Article](#) [Back to the top](#) [Next Article ▶](#)

Save 50-70% on Term Life Insurance TERM [Quote It](#)

Coverage	State	Tobacco Use	Birthdate(mmddyyyy)	Gender
<input type="button" value="Select"/>	<input type="button" value="AL"/>	<input type="button" value="Select"/>	<input type="text"/> <input type="text"/> <input type="text"/>	<input type="button" value="M"/>

wp [washingtonpost.com](#) [Home](#) | [Register](#) Web Search: [GO](#) by [Google](#)

[News](#) [Politics](#) [Live Online](#) [Entertainment](#) [Marketplace](#) [onwashington.com](#)