

## CONTROLLING LEGAL PRINCIPLES

*Free Exercise Clause Decision – The “Contemplation of Justice”*  
*Boy Scout of America v. Dale 530 U.S. 640 (2000)*



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

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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 association, like many freedoms, is not absolute.** We have held that the freedom could be overridden "by regulations adopted to serve compelling state

Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:  
*Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause*

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.

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.

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."

"[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.

"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.