

Speak Out

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transcendent neutral principles—constitutional debate has become.

Conservatives who agitate for "states' rights" defend the authority of Texas to criminalize homosexual conduct but support federal judges who ruled against New Jersey when that state sought to prohibit discrimination aimed at gay Scoutmasters. Likewise, liberals who champion the right of homosexuals to choose their partners based on sexual orientation would deny Scouts the freedom to choose their leaders on the same basis.

The underlying similarity between the claims is made clear in the Scouts' contention that the New Jersey anti-discrimination law violated their constitutional right "to enter into and maintain...intimate or private relationships." Their words echoed the gay couple's statements in Texas.

The Supreme Court has rarely applied freedom of association in unequivocal terms. In 2000 it ruled that the New Jersey law, which forbade the exclusion of gay Scoutmasters, violated the First Amendment right of "expressive association" because it would force the organization to send a message that it "accepts homosexual conduct as a legitimate form of behavior." Still, the court acknowledged the more fundamental principle that "freedom of association...plainly presupposes a freedom not to associate."

The five most conservative justices, along with conservative groups, backed the Scouts. The four liberal justices just as predictably found New Jersey's law sufficiently important to override the Scouts' right to expressive association. Their beliefs were backed by liberal and leading gay rights organizations—except one.

Gays and Lesbians for Individual Liberty, represented by my organization, the Institute for Justice, submitted a brief that deplored the Scouts' discriminatory policies but defended their right to maintain them. The brief argued, "While a creeping infringement of [freedom of association] would harm all Americans, it would particularly threaten the welfare of gay and lesbian Americans, who have historically suffered when government has not respected citizens' right to gather together free from government harassment."

John Lawrence and Tyron Garner discovered the reality of "government harassment" when Texas police raided their home on other grounds and arrested them for engaging in homosexual conduct. The principle of "expressive association" underlying the Scouts decision provided powerful support for the couple's case.

Interestingly, in the Texas case the sides flipped. This time conservative groups wrapped themselves in the government's power to police morally offensive behavior, which they eschewed in the Scouts case. Liberals now opposed a moral judgment brought about by a democratic process, something they supported in the Scouts case. Justices switched sides as well, jettisoning the principles they applied in the Scouts case to reach a result in the Texas case more congenial to their ideological predilections.

The general rule should be that freedom of association prevails and that narrow exceptions can be made only with the most compelling justifications. But for such a rule to endure, it must be applied universally, not selectively—to both homosexuals and those who would choose not to associate with them.

CLINT BOLICK
Institute for Justice

transitions

Joel Norman Jr., 1957-2003

Portland resident Joel Norman Jr. died May 24. He was 46.

He was born Feb. 14, 1957, to the late Georgia and Joel Norman Sr. Friends say it was fitting that Norman, who they all considered a "sweetheart," was born on Valentine's Day.

He moved from Washington, D.C., to Portland in the late 1980s.

He is survived by his sisters, Gladys and Michelle Norman and Lois Wright, other relatives and numerous friends.

A memorial service/celebration of life will be held 10 a.m. July 27 at The Grotto, one of Norman's favorite places in the Northwest. The Rev. Scott P. Killion will officiate. All are welcome and encouraged to attend.



Remembrances can be made to the Friends of People with AIDS Foundation or Cascade AIDS Project.


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