

# New Jersey court: Boy Scouts can't discriminate

by Christine Dinsmore

When James Dale was a Boy Scout, two of his troops folded because they didn't have enough adult leaders. In 1990, after the Boy Scouts expelled Dale from his position as assistant scoutmaster because he is gay, that troop had to disband for the same reason.

"Kids want to be in the Boy Scouts, but adults don't volunteer," said Dale. "Yet someone who was more than qualified and was everything they wanted a Scout to be couldn't be a leader because of being gay."

Dale thought about those troops after receiving a call Monday informing him that the Appellate Division of the New Jersey Superior Court ruled that the Boy Scouts of America had violated the state's civil rights laws when it barred him from being a Scout leader.

"I wouldn't be here if it weren't for the Boy Scouts," said Dale. "The Boy Scouts taught me to be honest, be open, to be a leader, and to stand up for what is right. They taught me to stand up to them."

The court overruled a New Jersey Superior Court's decision that the Boy Scouts had a right to expel Dale from his troop in Matawan. The appellate court ruled that the Boy Scouts is a "public accommodation" covered by the law.

The three-judge appeals panel unanimously ruled that the Boy Scouts violate the state law, but one of the judges said he does not believe the court can force the Boy Scouts to reinstate Dale to his former position.

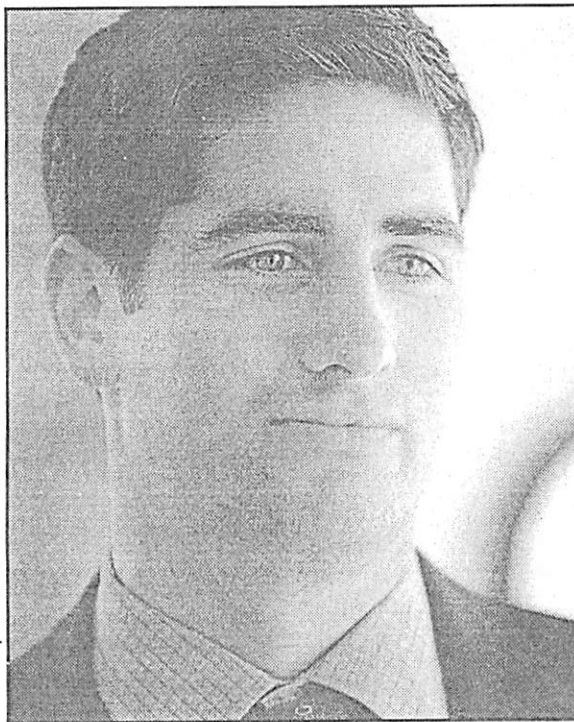
Attorneys for the Boy Scouts announced after the ruling that they will appeal the majority decision.

Evan Wolfson of Lambda Legal Defense and Education Fund, who represented Dale, said the court's decision is a big victory.

"Today's ruling returns the Boy Scouts to the kind of organization that its members already believe it is — one that is truly open to all boys and promotes self-reliance and respect for the rights of others."

In 1978, the Boy Scouts said that members should be "morally straight." In 1991, the organization clarified its stance, saying "homosexual conduct is inconsistent with the requirements in the Scout Oath" and reiterated that it would not accept "avowed homosexuals" as members or leaders.

New Jersey is not the only state where the Boy Scout policy is being challenged in the courts. Similar cases



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are under way in California, Washington, Illinois, and the District of Columbia. In addition, a 12-year-old California Boy Scout is gathering signatures in an effort to pressure the organization to change its policy.

Gregg Shields, a spokesperson for the Boy Scouts, said the organization has no plans to amend its stance on gays.

Dale, now 27, became a Cub Scout when he was 8 years old. Following in the footsteps of his father and older brother, he stayed in the organization for 12 years. He earned 30 merit badges, seven achievement honors, and the organization's highest honor, the Eagle Scout badge. The Boy Scouts invited him to become an assistant scoutmaster, and he accepted.

But in 1990, the Boy Scouts learned from an article in *The Newark Star Ledger* that Dale, then the co-chair

of the Lesbian and Gay Alliance at Rutgers University, was gay. A few days after the article ran, Dale received a letter from the Boy Scouts saying that he no longer met its standards for leadership.

In 1992, after the New Jersey legislature expanded the state's civil rights law to prohibit discrimination based on sexual orientation, Dale filed a lawsuit for reinstatement. This case was the first to invoke the state law prohibiting sexual orientation discrimination. The lower court judge ruled against Dale in 1995, making references to the Bible and saying that Dale was an "active sodomist."

In Monday's decision, the three-judge panel ruled that since the organization is supported by public institutions such as schools, it is covered by New Jersey's anti-discrimination laws and cannot exclude anyone on the basis of sexual orientation. In the 54-page decision authored by Judge James M. Harvey, the panel members praised Dale as someone who upheld the ideals of scouting. They noted that there is "a patent inconsistency" in a policy idea that enables a gay person who keeps his sexual orientation secret to remain a Scout while a gay person who adheres to the Boy Scout ideal of being honest is expelled.

Additionally, the court criticized the idea that being gay makes someone unfit to be a Scout leader.

"There is absolutely no evidence before us, empirical or other wise, supporting a conclusion that a gay scoutmaster, solely because he is a homosexual, does not possess the strength of character necessary to properly care for, or to impart the BSA humanitarian ideals to the young boys in his charge," Harvey wrote.

Judge Richard Newman concurred with Harvey's decision. The third judge, David Landau, agreed that the Boy Scouts discriminated against Dale by revoking his membership, but Landau argued that the court does not have the authority to require the Scouts to return Dale to his leadership position.

Dale said he will continue his fight to make the Boy Scouts of America more inclusive. This struggle is just a continuation of his history to give back to the community — something he learned well in the Boy Scouts.

"The Boy Scouts have a saying, 'Always try to leave the camp site better than you found it,'" said Dale. "This case is about leaving the world a better place." ▼

AP photo/Stuart Ramson

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