THE DAILY CALLER

At Yale and in the Boy Scouts, freedom of association is in the crosshairs

By Roger Pilon

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The Daily Caller's morning e-mail today brings us two brief stories that capture nicely the growing intolerance of the Left for people and groups holding views with which they disagree. One arises from a decision by Yale's Social Justice Network (SJN) of Dwight Hall to deny membership to the school's Choose Life at Yale (CLAY) group. The second concerns a prosed California ban on judges affiliated with the Boy Scouts. Both illustrate how a bedrock American principle, freedom of association, is increasingly being gutted by the Left's anti-discrimination agenda.

The Yale case is straightforward. As blogger Katherine Timpf writes, CLAY had been a provisional member of the network for the past year, during which its members did voluntary work with a local non-profit organization that helped pregnant women. But the vote last week, making CLAY the first group to be denied full membership in the network, denies CLAY further access to the hall's resources such as funding, vehicles, and meeting spaces. Timpf points to an opinion piece written by the chair of the Yale chapter of the ACLU, itself a member of the SNJ group, urging the group not to admit CLAY because it would "divert funds away from groups that do important work pursuing actual social justice."

That's par for the course on today's campuses. It's training for the real world, as seen in the California case. Here, blogger Patrick Howley writes:

The California Supreme Court Advisory Committee on The Code of Judicial Ethics has proposed to classify the Boy Scouts as practicing "invidious discrimination" against gays, which would end the group's exemption to anti-discriminatory ethics rules and would prohibit judges from being affiliated with the group.

These politically-driven changes in status could not be limited to the Boy Scouts, of course, but it's a start. That point was made in a letter to the committee from Catherine Short, legal director of the pro-life group Life Legal Defense Foundation. The Girl Scouts, numerous pro-life and religious groups, even the military practice "discrimination" of one kind or another, she wrote.

Years ago when I was a scout leader as my son was growing up I read a lengthy insert in the handbook meant for leaders. It concerned sexual exploitation and the need for scout leaders to take it seriously, prompted doubtless by experience. Given the nature of scouting activities, often isolated in the wild, and the need to assure both boys and their parents concerning the potential for abuse, even if the BSA had never taken an express position on sexual orientation, its decision to disallow gay scout leaders would not be gratuitous.

Yet critics say that the concerns of the BSA and of scout parents should be set aside and that gay would-be scout leaders must be given the benefit of the doubt. That may or may not be a fair point, substantively, but it cuts both ways, of course. Are judges who volunteer to work with scouts presumptively unfit to serve on the bench? The California committee seems to think so. As Short's letter states:

This proposed amendment has as its overtly-stated purpose the branding of the BSA as an organization whose members must be assumed to be biased and thus unfit for the bench. The Committee states that "eliminating the exemption… would enhance public confidence in the impartiality of the judiciary."

So is this a matter simply of which principle you apply: The presumption goes either with the individual or with the organization, but it must be the same in both cases, right? No, and that takes us back to freedom of association. The BSA is a private association. Agree or disagree with the presumption it has applied, it has a right to set the conditions for membership, which it has done by deciding, in part, that it does not want to run the risk, whether reasonable or not, of allowing gay scout leaders into the group. The courts, by contrast, are public institutions, which may discriminate only for compelling reasons. Doubtless there are those who believe that anyone associated with scouting must be homophobic and incapable of unbiased judgment, but it's not likely that that view commands wide acceptance — not yet, at least.

Which brings us back to Yale: Here we have a set of private associations — setting aside the gobs of public funds the university receives. In principle, therefore, like the Boy Scouts, SJN can be as narrow and prejudiced as it wishes and Yale's internal by-laws permit. But unlike the scouts, the ground for SJN's discrimination appears to be, if not wholly gratuitous, pretty close to it: CLAY does not practice "actual" social justice, it is said. Tell that to the women CLAY has helped.

And so in these two cases we have a textbook example of how the distinction between private and public and the further distinction between reasonable and unreasonable discrimination are being undermined by a political agenda that has the freedom of private association as its ultimate target.

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