**Tinker v. Des Moines**

John and Mary Beth Tinker were public school students in Des Moines, Iowa in December of 1965. As part of a group against American involvement in the Vietnam War, they decided to publicize their opposition by wearing black armbands to school. Having heard of the students' plans, the principals of the public schools in Des Moines adopted and informed students of a new policy concerning armbands. This policy stated that any student who wore an armband to school would be asked immediately to remove it. A student who refused to take off his or her armband would be suspended until agreeing to return to school without the band.

Two days later and aware of the school policy, the Tinker children and a friend decided to wear armbands to school. Upon arriving at school, the children were asked to remove their armbands. They did not remove the armbands and were subsequently suspended until they returned to school without their armbands.

The children returned to school without armbands after January 1, 1966, the date scheduled for the end of their protest. However, their fathers filed suit in U.S. District Court. This suit asked the court for a small amount of money for damages and an injunction to restrain school officials from enforcing their armband policy. Although the District Court recognized the children's First Amendment right to free speech, the court refused to issue an injunction, claiming that the school officials' actions were reasonable in light of potential disruptions from the students' protest. The Tinkers appealed their case to the U.S. Court of Appeals but were disappointed when a tie vote in that court allowed the District Court's ruling stand. As a result they decided to appeal the case to the Supreme Court of the United States.

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected? The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this rule to state governments as well, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court of the United States has made many attempts to determine what types of symbolic speech are protected under the First Amendment. In 1919, the Court decided in *Schenck* v. *United States* that an individual could be punished for distributing anti-World War I pamphlets urging non-compliance with the draft because the pamphlets "create[ed] a clear and present danger that they will bring about [a] substantive evil[ . . .] Congress has a right to prevent"—draft obstruction. The Court wrestled with the issue of the right to symbolic speech again in the case of *Thornhill* v. *Alabama* (1940) when the Court ruled that picketing was a form of symbolic speech protected by the First Amendment because no clear and present danger of destruction of life or property or of breach of the peace was inherent in the action. Three years later in *West Virginia* v. *Barnette* (1943), the Court extended the First Amendment protection of symbolic speech to students in public schools. In *Barnette*, the Court held "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ."

In 1968 the Supreme Court of the United States agreed to hear Tinker's case and consider the constitutionality of the Des Moines principals' anti-armband policy. The Court's decision in *Tinker* v. *Des Moines* was handed down in 1969.

**Hazlewood v. Kuhlmeier**

In May 1983, students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri, generated the final edition of their school paper, the Spectrum. As was customary, they submitted the paper to their advisor, Howard Emerson, who was new to the job. He followed the procedures of the recently departed previous advisor, giving the principal, Robert Reynolds, the opportunity to review the paper prior to publication.

When Reynolds reviewed the paper, he found two articles that concerned him. The first article addressed the issue of teen pregnancy, including comments from pregnant students at the school. Although names were not given, Reynolds thought there were enough details in the article to make it easy for other students to determine the identities of the pregnant teens. He was concerned about the privacy of those students. The second article was about divorce and, like the first article, this one included personal articles. In this article, Reynolds was not concerned so much about the students, but, rather, about what they said about their families. For instance, one student whose parents were divorced made negative comments about her father, claiming that her father was always out with the guys, that he didn't spend enough time with his family, and that the father and mother were always arguing. Reynolds was troubled by the fact that the father had not been given a chance to defend himself by responding to his daughter's comments. He also noticed that the article mentioned sex and birth control. He did not think that students in ninth grade should be reading about sex and birth control.

Reynolds wanted the students to make changes in their articles, but he was afraid that if they took the time to do so, they would miss the deadline for publishing the Spectrum. He did not want that to happen, especially because it was the last issue of the year and there would not be another chance to publish the paper. He felt like he had to make a quick decision, so he told Emerson to delete the two pages with the questionable articles and publish the remainder of the paper. He informed his superiors in the school system of this decision; they supported him wholeheartedly.

The students had invested a great deal of time and energy in producing the paper and felt that they had followed proper journalism procedures. If they had been approached about the problems, they may have been able to resolve them. They were upset to find out instead that two pages, which included a number of non-offensive articles, had been deleted. They felt that this censorship was a direct violation of their First Amendment rights, so they took their case to the U.S. District Court for the Eastern District of Missouri. This court did not agree with the students; the judges said that school officials might impose limits on students' speech in activities that are "an integral part of the school's educational function" as long as their decision "has a substantial and reasonable basis." In other words, the court felt that if the school has a good reason to do so, it could place limits on curricular activities, such as the publication of the school newspaper.

Unhappy with the outcome, the students appealed their case to the Court of Appeals for the Eighth Circuit. This court reversed the decision of the lower court, saying that the students' First Amendment rights were violated. In the opinion, the court conceded that the newspaper was indeed a part of the school curriculum but noted that it was also a "public forum." As a public forum, the newspaper was "intended to be and operated as a conduit for student viewpoint." Because the paper was a forum for student discussion, the principal or other officials could censor it only when "necessary to avoid material and substantial interference with school work or discipline . . . or the rights of others."

The school appealed the decision of the Court of Appeals and the Supreme Court of the United States agreed to hear the case. In determining whether or not students' rights were violated, it would consider whether or not the student newspaper was a public forum and whether the First Amendment "requires a school affirmatively to promote particular student speech."

**Bethel v. Fraser**

In the wake of the Tinker decision of 1969, a new legal view of people under 18 began to emerge. The Court made clear that “students do not abandon their Constitutional rights at the schoolhouse gate.” The 1st Amendment rights of students– “freedoms of expression”– were guaranteed, as long as there was no threat of “substantial disruption” of the school program. Then, in Goss v. Lopez, 1975, the Court found that public schools had to provide some adult due process rights to juveniles facing severe disciplinary action in school. Under the law, the doctrine of in loco parentis gave way to a new conception of “student citizen.”

However, what were the limits of the Tinker rule? What procedures were fair to students and, at the same time, conducive to good discipline and order in the schools? What kind of balance could be struck between the “compelling and overriding need of the state” to establish and enforce order, and the “right” of students to express themselves? The question was tested 17 years after Tinker by the case Bethel v. Fraser, 1986.

On April 26, 1983, 17-year-old Matthew Fraser, a senior at Bethel High School in Bethel, Oregon, spoke to a school assembly to nominate a classmate for vice president of the student government. Students were required either to attend the assembly or go to study hall. Prior to the assembly, Matthew consulted three teachers about a short speech he proposed to present. Two of the faculty said out-right that he should not deliver the speech because it was “inappropriate.” The text of the speech was filled with sexual references and innuendos, although it contained no obscenities or vulgarities. On the day of the assembly, Fraser delivered the speech with enthusiasm and emphasis, and the “faculty and student body were stunned.” The speech was greeted by his classmates with hoots, cheers, and lewd motions. Kuhlman, the candidate nominated by Matt Fraser, was elected by a wide margin.

On the day after the speech, Fraser was called to the office and told that he “had violated the school’s disruptive conduct rule which prohibits ‘conduct which materially and substantially interferes with the educational process . . . including the use of obscene, profane language or gestures.’” At that first hearing Fraser admitted that he had used sexual innuendoes in his speech. Fraser was suspended from school for three days and “removed from the list of students who were eligible to make graduation remarks . . .” because school authorities “no longer had confidence in his judgment. . . .” He ranked second in his graduating class at the time.

His parents appealed the school district’s disciplinary action on the basis that the 1st Amendment protects political speeches. The speech was not offensive to the great majority of students, nor would it turn anyone’s head if heard in a public forum. The Oregon Supreme Court upheld Fraser’s right to free speech. The school district then appealed to the Supreme Court.

The Court was asked to examine the 1st Amendment rights of students. Was Fraser within his rights to make such a speech? What limits on speech are school districts permitted to make, given their role in the educational and civic development of students? Are students guaranteed the same rights as adults? Is it more offensive to hear something spoken out loud than to read it in a book?

**Engle v. Vitale**

After World War II, the United States experienced another period of intense concern about the spread of communism abroad and fear of subversion at home. Some states enacted a variety of programs to encourage patriotism, moral character, and other values of good citizenship. They also began challenging separation of church and state issues in hopes of providing students with strong moral and spiritual stamina. In this case, the Warren Court once again was to take up a controversial issue.  
  
In 1951 the New York State Board of Regents (the State board of education) approved a 22-word “nondenominational prayer” for recitation each morning in the public schools of New York. It read: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.” The Regents believed that the prayer could be a useful tool for the development of character and good citizenship among the students of the State of New York. The prayer was offered to the school boards in the State for their use, and participation in the “prayer-exercise” was voluntary. In New Hyde Park, New York, the Union Free School District No. 9 directed the local principal to have the prayer “said aloud by each class in the presence of a teacher at the beginning of the school day.”

The parents of ten pupils in the New Hyde Park schools objected to the prayer. They filed suit in a New York State court seeking a ban on the prayer, insisting that the use of this official prayer in the public schools was contrary to their own and their children's beliefs, religions, or religious practices. They argued that the separation of church and state requires that government stay out of the business of prescribing religious activities of any kind. The New York Regents argued that they did not establish a religion by providing a prayer for those who wanted to say it, and it would be an intrusion into State matters for the Supreme Court to strike down their right to compose the prayer and encourage its recitation. The State appeals court upheld the use of the prayer, “so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection.”

The question before the Court involved the Establishment Clause of the 1st Amendment. Did the Regents of New York violate the religious freedom of students by providing time during the school day for this particular prayer? Did the prayer itself represent an unconstitutional action—in effect, the establishment of a religious code—by a public agency? Did the Establishment Clause of the 1st Amendment prevent schools from engaging in “religious activity”? Was the “wall of separation” between church and state breached in this case?

**New Jersey v. TLO**

In 1980, a teacher at Piscataway High School in New Jersey found two girls smoking in a restroom. At the school, smoking in the restrooms was a violation of school rules; smoking was allowed only in the designated smoking area. The teacher escorted the two girls to the principal's office, where they met with an assistant vice principal, Theodore Choplick. One of the girls was T.L.O., a freshman who was 14 years old. The girl who was with T.L.O. admitted that she had been smoking; T.L.O., however, denied the allegation, and said that she did not, in fact, smoke at all.

When Choplick opened the purse and found a pack of cigarettes, he noticed a package of cigarette rolling papers, which he believed were an indicator of involvement with marijuana. Therefore, he proceeded with a more thorough search of T.L.O.'s purse. This search yielded the following items: a small amount of marijuana, a pipe, empty plastic bags, a significant amount of money in one-dollar bills, a list of students who owed T.L.O. money, and letters implicating T.L.O. in dealing marijuana.

Choplick then called T.L.O.'s mother and the police. The mother came to the school and, at the request of the police, took her daughter to the police station. Choplick turned the evidence from the purse over to the police. At the police station, T.L.O. admitted that she had been selling marijuana at school. As a result of T.L.O.'s confession and the evidence from her purse, the State of New Jersey brought delinquency charges against T.L.O.

T.L.O. tried to have the evidence from her purse suppressed, contending that the search violated the Fourth Amendment. She also claimed that her confession should be suppressed on the grounds that it was tainted by the unlawful search. The juvenile court rejected her Fourth Amendment arguments, although it conceded that the Fourth Amendment applies to searches by school officials. However, it held that a school official may search a student if that official has a "reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." This is a lower standard than the "probable cause" standard, which is required when police conduct a search.

The juvenile court concluded that Choplick's search was, therefore, reasonable. Choplick was justified in searching the purse, the Court said, because of his reasonable suspicion that T.L.O. had violated school rules by smoking in the restroom. When he opened the purse, evidence of marijuana use was in plain view; this justified the further search of the purse. T.L.O. was found to be a delinquent and, in January 1982, she was sentenced to one year of probation.

Several appeals were made in the New Jersey court system which resulted in a reversal of the original decision, based on the Supreme Court precedent to hold that whenever an "official" search violates constitutional rights, the evidence may not be used in a criminal case. Furthermore, the Supreme Court of New Jersey found that Choplick's search was not reasonable. Mere possession of cigarettes was not a violation of school rules; therefore, a desire for evidence of smoking in the restroom did not justify the search. In addition, the further search of the purse was not justified by the presence of cigarette rolling papers.

In 1983, the Supreme Court of the United States granted the State of New Jersey's petition for certiorari. In 1985, the Court handed down its decision.

**Swann v. Charlotte-Mecklenburg**

During the 15 years that followed the Supreme Court's momentous [School Desegregation](http://legal-dictionary.thefreedictionary.com/School+Desegregation) decision in *Brown v. Board of Education* (1954), school boards throughout the South did little to eliminate racial separation in the public schools. In some cases school boards merely announced a race-neutral school attendance policy. In other cases white-dominated school boards closed schools that were ripe for [Integration](http://legal-dictionary.thefreedictionary.com/Integration) and instead built new schools in suburban areas that would be virtually white-only.

When Swannwas argued before the Supreme Court, the Charlotte-Mecklenburg school system was one of the largest and most diverse in the United States.  The system included schools in downtown Charlotte and in smaller suburban communities.  In 1965, the system began implementing a federal court-approved desegregation plan that stipulated geographic zoning while permitting voluntary student transfers. The plan proved ineffectual. During the 1968-1969 school year, the school system's student population numbered approximately 84,000, a figure that included 24,000 African-American students.  Of those 24,000, 14,000 attended schools in which student bodies were at least 99 percent African American.

After the NAACP took the Charlotte-Mecklenburg school board to court for its failure to desegregate in 1968, the board drafted a new desegregation plan. The new plan relied principally on school zone gerrymandering to desegregate but left large numbers of African American students in all-black or nearly all-black schools. Consequently, a federal district court enlisted an expert, Dr. John Finger, to produce an alternative desegregation plan. Finger's plan called for the busing of African American elementary school students in Charlotte to suburban schools. It also recommended that fifth- and sixth-grade students from suburban Mecklenburg County be bused to schools in Charlotte.

Although the Charlotte-Mecklenburg school board adopted the Finger plan, it asserted that the plan was unreasonable. A federal court of appeals upheld the district court's ruling, and the case reached the U.S. Supreme Court in late 1970.

The main questions before the Court were: (1) When school boards refused to act in [Good Faith](http://legal-dictionary.thefreedictionary.com/Good+Faith), do the federal courts had broad discretion to order, implement, and oversee the desegregation of school systems? (2) Should the Court endorse the use of busing to ensure desegregation?

**University of CA v. Bakke**

In the early 1970s, the medical school of the University of California at Davis devised a dual admissions program to increase representation of "disadvantaged" students. Under the regular admissions procedure, a screening process was used to evaluate candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were automatically rejected. Of the remaining candidates, some were selected for interviews. Following an interview, the admissions committee rated candidates who survived the screening process on a scale of 1 to 100. The rating considered the interviewer's evaluation, the candidate's overall and science grade point averages, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. The ratings were added together to arrive at each candidate's "benchmark score."

On the application form, candidates could indicate that they were members of a "minority group," which the medical school designated as "Blacks," "Chicanos," "American Indians," or "Asians." Candidates could also choose to be considered "economically and/or educationally disadvantaged." The applications of those who did so were sent to the special admissions committee, where applications were screened to determine whether the candidate met the criteria established for disadvantaged and minority groups. These applicants did not have to meet the 2.5 grade point average cut off used in the regular program, nor were the candidates in the special admissions program compared to the candidates in the regular admissions program. Of the 100 spots in the medical school, 16 spaces were set aside for this program.

From 1971 to 1974 the special program resulted in the admission of 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students. During the same period, the regular admissions program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates received admission through the special program.

Allan Bakke was a white male who applied to and was rejected from the regular admissions program in 1973 and 1974. During those same years, minority applicants with lower grade point averages, MCAT scores, and benchmark scores were admitted to the medical school under the special program. He aalleged that the special admissions program violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the *Civil Rights Act of 1964* because it excluded him on the basis of race.

The university argued that their system of admission preferences served several important purposes.  It helped counter the effects of discrimination in society.  Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that.   The university also said that the special program increased the number of physicians who practice in underserved communities.  Finally, the university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

Through several appeals in the California court system, the program was decided to be unconstitutional but there was no agreement on whether Bakke should be admitted to the school based on the evidence provided.

The Regents of the University of California then appealed the case to the Supreme Court of the United States.

**Texas v. Johnson**

Gregory Lee Johnson participated in a political demonstration during the Republican National Convention in Dallas, Texas, in 1984. The purpose of the demonstration was to protest policies of the Reagan Administration and of certain corporations based in Dallas. Demonstrators marched through the streets, chanted slogans, and held protests outside the offices of several corporations. At one point, another demonstrator handed Johnson an American flag.

When the demonstrators reached Dallas City Hall, Johnson doused the flag with kerosene and set it on fire. During the burning of the flag, the demonstrators shouted, "America, the red, white, and blue, we spit on you." No one was hurt or threatened with injury, but some witnesses to the flag burning said they were seriously offended. One witness picked up the flag's charred remains and buried them in his backyard.

Johnson was charged with the desecration of a venerated object, in violation of the Texas Penal Code. He was convicted, sentenced to one year in prison, and fined $2,000. He appealed his conviction to the Court of Appeals for the Fifth District of Texas, which let his conviction stand. He then appealed to the Texas Court of Criminal Appeals, which is the highest court in Texas that hears criminal cases. That court overturned his conviction saying that the State, consistent with the First Amendment, could not punish Johnson for burning the flag in these circumstances.

The Appeals Court first found that Johnson's burning of the flag was expressive conduct protected by the First Amendment. Therefore in order for a state to criminalize or regulate such conduct it would have to serve a compelling state interest that would outweigh the protection of the First Amendment. The court concluded that criminally sanctioning flag desecration in order to preserve the flag as a symbol of national unity was not a compelling enough interest to survive the constitutional challenge. It also held that while preventing breaches of the peace qualified as a compelling state interest the statute was not drawn narrowly enough to only punish those flag burnings that would likely result in a serious disturbance. Further, it stressed that another Texas statute prohibited breaches of the peace and could serve the same purpose of preventing disturbances without punishing this flag desecration.

The Appeals Court said, "Recognizing that the right to differ is the centerpiece of our First Amendment freedoms . . . a government cannot mandate by fiat a feeling of unity in its citizens. Therefore that very same government cannot carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol. . . . " The court also concluded that the flag burning in this case did not cause or threaten to cause a breach of the peace.

The State of Texas filed a petition for a writ of certiorari and, in 1988, the Supreme Court of the United States agreed to hear the case. In 1989, the Court handed down its decision.

**In re Gault**

During the first hundred years of U.S. history, young offenders were treated like adults by the courts. During the reform-oriented Progressive Era, most States established juvenile court systems and training schools intended to rehabilitate delinquent minors. A court that heard cases involving juvenile offenders exclusively could be found in most major U.S. cities by the early 20th century. The Progressive reformers attempted to instill a basic compassion in the justice system through these special courts. The system viewed the young offender more as a wayward child than as a potential criminal, while the juvenile court itself—utilizing a concept of law called *parens patriae*—functioned essentially as a surrogate parent. Proceedings were civil rather than criminal, and their intent was to protect and correct, rather than to punish.

A woman in Arizona accused Gerald Gault, a 15-year-old neighborhood boy, of having made an obscene phone call to her house. He had a bad reputation and was serving probation for a prior offense. The sheriff's officer went to the Gault home, placed Gerald in custody, and took him to the juvenile detention center. The sheriff's department failed to notify his parents that their son had been taken into custody. His mother eventually got word of a hearing for her son scheduled for the following afternoon at the juvenile detention center. She attended the hearing, where the sheriff's officer who had conducted the investigation recounted the accusation. The accuser was not present, nor was any record made of the proceedings. No one was sworn in before giving testimony, Gault had no attorney with him, and he had not been advised of his rights. The judge decided that Gault was "involved" in the offense and ordered him detained.

A week later, Gault appeared at a dispositional hearing to determine what should be done with him. Again, no record was kept, nor was he informed of his right to remain silent or of his right to legal counsel. Neither he nor his parents were informed of the exact charges against him. During the hearing, Gault admitted that he had dialed the phone number, but that a "friend had done the talking." The hearing judge found Gault to be a "child in need of supervision" and assigned him to the Arizona Youth Industrial School until he reached age 21. While a person 18 years of age or older would have faced a maximum penalty of a $50.00 fine and jail term of two months, Gault was sentenced to reform school for six years.

His parents filed a petition for his release, but under Arizona state law, there was no appeals process for juvenile proceedings because they are confidential and not subject to review. The state argued that there were two proceedings, Gault admitted his guilt, and that the parents could have retained legal counsel but did not.

When it reached the Supreme Court, the case centered on the 14th Amendment and the due process rights of minors under the law. Did juveniles facing criminal charges have the same protections under the Constitution as adults? Was the State's effort to protect juveniles an unconstitutional infringement on their rights?

**Boy Scouts of America v. Dale**

James Dale joined the Cub Scouts in 1978 at the age of eight. Three years later he became a Boy Scout and remained one until he turned 18. By all accounts, Dale was an exemplary scout, eventually achieving the status of Eagle Scout, the highest rank to which a scout can aspire. In 1989 Dale applied for adult membership and was approved. He then served as an assistant troop scoutmaster in Matawan, New Jersey during the periods he was not away at Rutgers University attending college. On August 5, 1990, Dale received a letter from the Monmouth Scout Council, informing him that his registration had been revoked. Registration was a prerequisite for service as an adult volunteer.

Asked to identify the grounds for the decision, Monmouth Council Executive James Kay told Dale that the BSA forbids "membership to homosexuals." Kay noted that Dale had been in a newspaper photograph taken at Rutgers, where he was co-president of the university's gay and lesbian campus organization. The accompanying newspaper story reported that Dale "admitt[ed] his homosexuality during his second year at Rutgers." According to Kay, Dale had demonstrated his inability to live by the Scout Oath and Law by publicly avowing his homosexuality.

Dale filed suit against the BSA in New Jersey state court, charging that his expulsion as an assistant scoutmaster violated New Jersey's Law Against Discrimination (LAD). LAD prohibits discrimination based on several categories, including affectional or sexual orientation, which encompasses male or female heterosexuality, homosexuality, or bisexuality. The suit sought money damages and a court order reinstating him as assistant scoutmaster.

The trial court dismissed his suit, ruling that the BSA had consistently excluded any self-declared homosexuals. The court found that homosexuality, from a Biblical and historical perspective, was both morally wrong and criminal. The BSA had implicitly subscribed to this historical view since its inception, the court said. The LAD did not apply in Dale's case because the BSA was not a place of public accommodation and because the BSA, as a private association, could not be compelled to accept a gay scoutmaster because this would violate the Freedom of Association guaranteed by the First Amendment to the U.S. Constitution.

The trial court's decision was overturned on appeal by New Jersey Superior Court, which concluded that the BSA was a "place of public accommodation" under the LAD. There were more than 100,000 BSA members in New Jersey alone, the appeals court said, demonstrating the public nature of the organization. The New Jersey Supreme Court affirmed the Superior Court's decision in *Dale v. Boy Scouts of America* (1999). The court found BSA had not demonstrated that it was a sufficiently private organization to warrant constitutional protection under the freedom of expression and association guarantees of the First Amendment.

The U.S. Supreme Court then heard the case. The main constitutional issue remained: Does the application of New Jersey's public accommodations law violate the Boy Scouts' First Amendment right of expressive association to bar homosexuals from serving as troop leaders? Also, does the Boy Scouts’ action violate the equality of opportunity protected by the Fourteenth Amendment?