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# **Justice White’s decision vs. Justice Rehnquist decision**

This essay is both the comparative and contrast analysis about **Justice White’s** opinion in R.A.V v. The city of St. Paul case with that of **Chief Justice Rehnquist’s** opinion in Bay Scouts of America vs. Dale case. Justice White opined in R.A.V v. The city of St. Paul that the decision of the Minnesota Supreme Court is considered the reverse. In doing so, the court provided none of the reason for advancing. The court mentioned that the decision has been made on the basis of the issues that are not an inherent part of the court proceedings in this case(Kommers et al. 151). The court went on to write that the decision was made without any prior case briefing and it also challenged the established precedents of the court. Justice White mentioned that the case R.A.V v. The city of St. Paul could have been decided on well-developed pieces of evidence (Kommers et al. 152). Justice White also mentioned the first amendment precedent that it could also have been incorporated. He remarked that in this decision the ordinance is overboard. The ordinance, according to him reached unprotected speech that prohibited expression. The repugnant was just protected by the first amendment.

The court opined in the Boy Scouts of America vs. Dale case that since the Boy Scouts is adamant of its values, therefore, it has the right to dispel any gay scoutmaster(Kommers et al. 172). Chief Justice Rehnquist argued his decision on the basis that the teachings of the Boy Scouts are in contradiction with the adult conduct, therefore they have the right to decide about what is right or wrong. He also argued that any judicial disapproval of the tenet doesn't justify the state efforts to force the organization to accept those who have conducted against the very norms of the organization(Kommers et al. 173). Chief Justice also argued that the law of the land is free to expand the conduct of every sort but it cannot discourage approved conduct of any organization. These opinions have been extracted from chapter seven titled "Freedom of Speech" which is authored by *John E. Finn*. Considering the opinions of the judges in both the cases it appears that *the first amendment cannot be argued against any organization’s approved laws or its values unless they are against the very law of the land.*

# **Comparative analysis of R.A.V v. The city of St. Paul and Boy Scouts of America vs. Dale case**

*R.A.V v. The city of St. Paul case analysis:* In this case presented in front of the Court in the year 1992. The court struck an ordinance, which was later interpreted as a bar on the freedom of speech. In the ordinance, the court mentioned that it is illegal (and will from now onwards considered) top burn the cross or swastika, in order to show the feelings of hate or anger. It also mentioned that it is also barred to arouse anger on the basis of cast, color or creed. Another court’s decision mentioned it as the violation of the first amendment and overturned the conviction of the cross- burning(Kommers et al. 153)The case was presented involving a juvenile named Viktora, who in an attempt to intimidate a black family burned the cross inside the fence of their home. The juvenile was charged against the bias-motivated crime. (Victoria was referred to in the case by his initials, as per his juvenile identity). The trial court agreed with the attorney of the Juvenile that the ordinance violated the first amendment. The Minnesota Supreme court also held the juvenile court decision legal. After when Viktora appealed to the Supreme Court, the court reversed the decision. The Supreme Court argued that the statue was designed to prohibit the expressions that are against another's will, or which cause anger and fear in other people. The Supreme Court argued that it was not right to consider the ban as content- specific discrimination. The Court opined that it appears not reasonable for St. Paul to consider it as the content- specific discrimination.

*Boy Scouts of America vs. Dale case analysis:* The Boy Scouts of America vs. the Dale case involved a private organization with that of a gay citizen. The Bay scouts is a non- for profit organization in the U.S. the organization claims that its values do not involve any such action which is against the natural act. They also maintain that their motto is to instill the values in young people. In the court, the Boy Scouts maintained that the homosexual conduct comes against the values of nature, therefore it is also inconsistent with the values of the Boy Scouts organization. On the other side, Dale was an extraordinary student, whose academic record proved that he has been an exceptional student. But when he found that he was more prone towards the LGBT community, he became the resident of that society. Considering his such activities, the Boy Scouts revoked his membership(Kommers et al. 172). Dale challenged the decision of the Bay scouts’ organization in the state court of New Jersey that the Boy Scouts decision of eliminating him is against the public accommodation law of the New Jersey state. In the case, the court upheld that any private organization can eliminate any citizen if it found the activities of that person in violation of the values of that organization. The court mentioned in this context also that the private organizations must value the concerns of the first amendment also. The New Jersey Supreme Court held in its decision that Dale presence in ineffective to the other scouts. However, when the case was forwarded in the U.s Supreme court, it upheld that the first amendment protects the scope if each and every member of any organization is needed to take on board. This expressive association, however, do not limit the association of any individual. The Supreme Court considered the New Jersey court's decision aloof to the first amendment. The court refrained from giving any opinion about homosexuality and allowed the Boy Scouts to practice their values.

*Comparative Analysis*: Considering the case circumstances in both cases, it appears that both these cases follow different perspectives. In *R.A.V v. St. Paul* case, it has been noticed that the complete action was considered by the Supreme Court as challenging the first amendment of the U.S constitution. This case is much related to the expansion in the discrimination theory. Mowrer suggests that the discrimination theory is relatively relevant in describing the court opinion in *R.A.V v. St. Paul* case(Mowrer 5). The discrimination theory makes the court and the liberal democratic institutions stand in front of each. It suggests that the court opinion just remains against any entity for the reason as it is baring anyone to suppress his or her anguish feelings. Since the human has different feelings at a different place in times, therefore it remains pertinent to imply the discrimination theory in this case. In the other case, *Boy Scouts of America vs. Dale* case, the Supreme Court barred from expressing its opinion about homosexuality. The Supreme Court had all the options to give a legal stance on the issue pertaining to homosexuality in the United States but is restrained from doing so. This is what the judicial restraint theory suggests. Although Dale had all the options to pursue the membership of the American Scouts club, as by no manner he or his association was found guilty against the first amendment. But considering all such perspective, the U.S Supreme Court upheld the private organization's stance. The Supreme Court's actions must, therefore, conform to that of the judicial restraint theory.

*Contrast Analysis*: In both the cases the United States Supreme Court had over ruined the opinions of the lower court. It suggests that the interpretation of the laws in both cases remained different for the judges. In the first case, the judges opined their remarks on the basis of racial discrimination. As the juvenile was first released on the basis that he has exercised his freedom of action which he can enjoy under the first amendment. The Supreme Court overruled this decision on the basis that since the Juvenile has gone into the territory of the neighbors, he has, therefore, violated the first amendment by impeding in the freedom of the other. This decision was also based on the fact that the Juvenile did all the action on the basis of creed discrimination, therefore he has overruled what the first amendment provides to him. In the second case, there is a whole new legal perspective. The legal entities are an organization versus the homosexual person. At first instance, it involves not a single person and that of an organization, on another hand it involves not a naturally normal person but a homosexual person. As Koppelman argues that on the basis of such facts the Supreme Court overruled the lower court decision that the organization has the right to exercise freely its will, as it is not contradictory to the constitution of the United States(Koppelman 89). For the part of Dale, the Supreme Court refrained from giving its stance.

*The first amendment:* The first amendment of the constitution of the United States assures complete freedom in terms of religion, assembly, speech, and expression. Brennan and Harv have argued that the first amendment remains largely debatable(Brennan Jr 97). They believe that the interpretation of the first amendment by the Courts largely depends upon the aspect that how the judge has been witnessing the case in hand. In the circumstances in these two cases, the Supreme Court has maintained the freedom enshrined over the participants from the constitution. In the first case, the Supreme Court held the freedom of the victim party, whereas the lower court opined that the juvenile had the freedom to exercise his expression or feelings. In the next case, the Supreme Court rested its opinion with the organization, as some believe that the organization was much more obedient in exercising its freedom, as it was not violating the values he had surrendered in front of the state of the U.S. the Supreme Court remained silent on the fate of the second party which shows that- t some extent, the court is adamant of its responsibility towards the citizen also.

# **The central concern of Laura Beth Nielsen, set forth in her chapter titled License to Harass**

The concerns of Laura Beth Nielsen in her chapter License to Harass are widely related to the public offensive speeches. She has observed the hate words being spoken to any American remains hostile and derogatory. She has placed just not the disadvantageous groups to analyze the impact of such words but has also examined the impressions of those who don't belong to the low classes or the immigrant classes. In doing so, she has analyzed the words being thrown over to women, to gays, to the lesbians, and to other such communities. *The concern raised by her in this chapter is about aggression and hostility*(Nielsen 172). She believes that such words raise hostility and aggression in the disadvantageous groups. She has also raised concerns on the role of the state authorities, which she believe that must be more broadened and hostile toward such actors of the society. The questions that remain relevant in this context put forward by Laura Beth could be that is there any mechanism that suggests that the society and all such actors can remain in a collaborative way? And also that what the law mentions specifically about the hate speeches thrown towards the disadvantageous groups?

These questions could have been asked during the Michigan affirmative action cases. These questions remain important as the fourteenth amendment claims the equal protection of rights for all the citizens of the U.S. these questions remained relevant as they talk about the direct role of the United States authorities in calling for the provisions of the equal rights to the United States citizens. Perry argues that calling and debating all this in a very straight forward manner can make sense(Perry 111). She believes that doing so affirms the case of everyone calling out for the provision of rights and freedom. The questions also make sense in the manner that the amendments of the U.S constitution somewhere remain contradictory. For example, they call for freedom but remains too narrow in defining the actual limits of speech.

# **Conclusion**

This essay has looked into two different cases. The main argument in both the cases was relevant to the freedom enshrined by the first amendment of the U.S constitution. Considering the facts based argument and the opinions of the judges, it becomes much observable that the first amendment cannot be read as violating the freedom of citizens by the organizations. Since every organization work in limits of the freedom endowed upon it by the constitution, therefore the organizations with time develop some values, that could in some time comes in clash of the constitution. It is, therefore, remains important to look over to the extent of this clash between the institutional values and that of the constitution.

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