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SUPREME COURT OF THE UNITED STATES

Syllabus

HURLEY ET AL. v. IRISH-AMERICAN GAY, LESBIAN AND
BISEXUAL GROUP OF BOSTON ET AL.

CERTIORARI TO THE SUPREME JUDICIAL COURT OF
MASSACHUSETTS

No. 94-749. Argued April 25, 1995—Decided June 19, 1995

Petitioner South Boston Allied War Veterans Council, an unincorporated association of individuals elected from various veterans groups, was authorized by the city of Boston to organize and conduct the St. Patrick's Day-Evacuation Day Parade. The Council refused a place in the 1993 event to respondent GLIB, an organization formed for the purpose of marching in the parade in order to express its members' pride in their Irish heritage as openly gay, lesbian, and bisexual individuals, to show that there are such individuals in the community, and to support the like men and women who sought to march in the New York St. Patrick's Day parade. GLIB and some of its members filed this suit in state court, alleging that the denial of their application to march violated, *inter alia*, a state law prohibiting discrimination on account of sexual orientation in places of public accommodation. In finding such a violation and ordering the Council to include GLIB in the parade, the trial court, among other things, concluded that the parade had no common theme other than the involvement of the participants, and that, given the Council's lack of selectivity in choosing parade participants and its failure to circumscribe the marchers' messages, the parade lacked any expressive purpose, such that GLIB's inclusion therein would not violate the Council's First Amendment rights. The Supreme Judicial Court of Massachusetts affirmed.

Held: The state courts' application of the Massachusetts public accommodations law to require private citizens who organize a parade to include among the marchers a group imparting a message that the organizers do not wish to convey violates the First Amendment. Pp. 8-24.

(a) Confronted with the state courts' conclusion that the

factual characteristics of petitioners' activity place it within the realm of non-expressive conduct, this Court has a constitutional duty to conduct an independent examination of the record as a whole, without deference to those courts, to assure that their judgment does not constitute a forbidden intrusion on the field of free expression. See, e.g., *New York Times Co. v. Sullivan*, 376 U. S. 254, 285. Pp. 8-10.

(b) The selection of contingents to make a parade is entitled to First Amendment protection. Parades such as petitioners' are a form of protected expression because they include marchers who are making some sort of collective point, not just to each other but to bystanders along the way. Cf., e.g., *Gregory v. Chicago*, 394 U. S. 111, 112. Moreover, such protection is not limited to a parade's banners and songs, but extends to symbolic acts. See, e.g., *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 632, 642. Although the Council has been rather lenient in admitting participants to its parade, a private speaker does not forfeit constitutional protection simply by combining multifarious voices, by failing to edit their themes to isolate a specific message as the exclusive subject matter of the speech, or by failing to generate, as an original matter, each item featured in the communication. Thus, petitioners are entitled to protection under the First Amendment. GLIB's participation as a unit in the parade was equally expressive, since the organization was formed to celebrate its members' sexual identities and for related purposes. Pp. 10-13.

(c) The Massachusetts law does not, as a general matter, violate the First or Fourteenth Amendments. Its provisions are well within a legislature's power to enact when it has reason to believe that a given group is being discriminated against. And the statute does not, on its face, target speech or discriminate on the basis of its content. Pp. 13-14.

(d) The state court's application, however, had the effect of declaring the sponsors' speech itself to be the public accommodation. Since every participating parade unit affects the message conveyed by the private organizers, the state courts' peculiar application of the Massachusetts law essentially forced the Council to alter the parade's expressive content and thereby violated the fundamental First Amendment rule that a speaker has the autonomy to choose the content of his own message and, conversely, to decide what not to say. Petitioners' claim to the benefit of this principle is sound, since the Council selects the expressive units of the parade from potential participants and clearly decided to exclude a message it did not like from the communication it chose to make, and that is enough to invoke its right as a private speaker to shape its expression by speaking on one subject while remaining silent on another, free from state interference. The constitutional violation is not saved by *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. ___. The Council is a speaker in its own right; a

parade does not consist of individual, unrelated segments that happen to be transmitted together for individual selection by members of the audience; and there is no assertion here that some speakers will be destroyed in the absence of the Massachusetts law. Nor has any other legitimate interest been identified in support of applying that law in the way done by the state courts to expressive activity like the parade. *PruneYard Shopping Center v. Robins*, 447 U. S. 74, 87, and *New York State Club Assn., Inc. v. City of New York*, 487 U. S. 1, 13, distinguished. Pp. 14-23.

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418 Mass. 238, 636 N. E. 2d 1293, reversed and remanded.
SOUTER, J., delivered the opinion for a unanimous Court.