tion provisions of the Human Rights Law certainly could be constitutionally applied at least to some of the large clubs, under the Court's decisions in *Rotary* and *Roberts*," and the fact that the clubs were "'commercial' in nature," helped to defeat the facial challenge.[624]

Some amount of First Amendment protection is still due such organizations; the Jaycees had taken public positions on a number of issues, and, the Court in *Roberts* noted, "regularly engage[d] in a variety of civic, charitable, lobbying, fundraising, and other activities worthy of constitutional protection under the First Amendment. There is, however, no basis in the record for concluding that admission of women as full voting members will impede the organization's ability to engage in these protected activities or to disseminate its preferred views."[625] Moreover, the state had a "compelling interest to prevent . . . acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages. . . ."[626]

Because of the near-public nature of the Jaycees and Rotary Clubs—the Court in *Roberts* likening the situation to a large business attempting to discriminate in hiring or in selection of customers—the cases may be limited in application, and should not be read as governing membership discrimination by private social clubs.[627] In *New York City*, the Court noted that "opportunities for individual associations to contest the constitutionality of the Law as it may be applied against them are adequate to assure that any overbreadth . . . will be curable through case-by-case analysis of specific facts."[628]

When application of a public accommodations law was viewed as impinging on an organization's ability to present its message, the Court found a First Amendment violation. Massachusetts could not require the private organizers of Boston's St. Patrick's Day parade to allow a group of gays and lesbians to march as a unit proclaiming its members' gay and lesbian identity, the Court held in *Hurley v. Irish-American Gay Group*.[629] To do so would require parade organizers to promote a message they did not wish to promote. *Roberts* and *New York City* were distinguished as not involving "a trespass on the organization's message itself."[630] Those cases

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[624] 487 U.S. at 11–12.

[625] 468 U.S. at 626–27 (citations omitted).

[626] 468 U.S. at 628.

[627] The Court in *Rotary* rejected an assertion that *Roberts* had recognized that Kiwanis Clubs are constitutionally distinguishable, and suggested that a case-by-case approach is necessary to determine whether "the 'zone of privacy' extends to a particular club or entity." 481 U.S. at 547 n.6.

[628] 487 U.S. at 15.

[629] 514 U.S. 334 (1995).

[630] 515 U.S. at 580.