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Associations' Freedom v. Freedom of Association: Another Look at All-Male Clubs

by Neal Devins

Board of Directors of Rotary International

v.

Rotary Club of Duarte

(Docket No. 86-421)

Argued March 30, 1987

Three years ago, in *Roberts v. United States Jaycees* (104 S.Ct. 3244 (1984); *Preview*, 1983-84 term, pp. 535-37), the Supreme Court ruled that Minnesota could force the all-male Jaycees to open its membership rolls to women. That decision, however, was idiosyncratic; ultimately offering little clarification to an understanding of the manner in which state antidiscrimination laws may impinge on associational practices. On one hand, the Court broadly proclaimed that: "The Bill of Rights . . . must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the state."

At the same time, by emphasizing that all males under thirty-five could join the Jaycees and that women affiliated with Jaycees participate in many of the organization's projects and functions, the Court distinguished the Jaycees from groups—such as the Kiwanis Club—which have "a formal procedure for choosing members on the basis of specific and selective criteria." Moreover, while speaking of private associations as "critical buffers between the individual and the state," the Court used cases pertaining to the "creation and sustenance of a family" to exemplify associational relationships. In the end, other than saying that the Jaycees could not make a freedom of association claim, *Roberts* provided little information helpful to determining the boundaries of this right.

ISSUE

This term, in *Board of Directors of Rotary International v. Rotary Club of Duarte, California*, the Court will return to this vexing issue of the constitutional bounds of the First Amendment's freedom of association. In this case, the Court will review the California Court of Appeal's decision requiring Rotary International to accede to the

Rotary Club of Duarte's 1977 decision to admit women. (After learning of Duarte's decision, Rotary International—pointing to club by-laws prohibiting the admission of women—revoked Duarte's chapter.)

FACTS

California's Unruh Civil Rights Act guarantees "full and equal accommodations, advantages, facilities, privileges, or services in all *business establishments*." Noting that Rotary International both operates as a business (utilizing paid staff to manage, coordinate, supervise and direct its activities) and offers its members goods, privileges and services (such as Rotary publications and Rotary emblem), the California Court of Appeal ruled that the Unruh Act applies to Rotary International (178 Cal. App. 3d 1051 (1986)).

The appellate court next rejected Rotary's freedom of association claim. First, the court noted that—with close to one million members worldwide—Rotary is not sufficiently intimate to invoke this constitutional protection. Second, the court ruled that the state interest in eradicating sex discrimination outweighed any possible associational interest of Rotary International.

BACKGROUND AND SIGNIFICANCE

In its review of this decision, the Supreme Court will be principally concerned with the freedom of association issue. Since state courts are the ultimate arbiters of state law, the Supreme Court will not determine whether the California Court of Appeal erred in its interpretation of the Unruh Act. In other words, the Court will determine whether Rotary International is sufficiently different from the United States Jaycees to warrant increased associational protection.

Rotary chapters, like Jaycee chapters, are service organizations. Also like Jaycees (which provides leadership training to its members), Rotary chapters seek to enhance the careers of its members, primarily through publications and workshops. There are, however, substantial differences between the two organizations. While *all* males between the ages of eighteen and thirty-five could join the Jaycees, membership in Rotary is by invitation only. To receive such an invitation: 1) the club or a club member must submit a candidate's name to the club's board of directors; 2) a classification committee makes sure that the candidate's business or profession will not be overrepresented in the chapter; and 3) the

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candidate is screened on the basis of character and moral fitness. Furthermore, Rotary clubs, unlike Jaycees, have no women's affiliate.

Differences between Rotary and Jaycees will force the Court to confront two significant issues. First, the question of what type of association can use the First Amendment to shield its discriminatory admissions practices will need to be reconsidered. Because its opinion in *Jaycees* placed great emphasis on Jaycees' unselectivity, it is possible that a large selective association can successfully invoke the freedom of association.

Second, if more significant associational interests do exist, the Court will have to determine whether the state's interest in eradicating sex discrimination outweighs the Rotary's associational interest. In *Jaycees*, this determination was simplified because the Court concluded that the Jaycees' associational claim was weak.

Resolving this issue is of great practical and symbolic importance. As a practical matter, if the state's interest in sex discrimination outweighs the associational interests of a selective club, the freedom of association protection may be meaningless in the face of antidiscrimination laws. As a symbolic matter, the decision between associational freedom and nondiscrimination is a choice between two central societal values—namely, pluralism (supporting selective organization's right to flourish) and egalitarianism (favoring maintenance of antidiscrimination and other norms of behavior).

ARGUMENTS

For the Rotary Club of Duarte (Counsel of Record, Carol

Agate, 633 S. Shatto Place, Los Angeles, CA 90005; telephone (213) 487-1720)

1. Rotary International is too large, unselective and involved in the community to invoke freedom of association protection. Moreover, California's compelling interest in eliminating sex discrimination outweighs whatever associational interests Rotary International might have.
2. The Unruh Act is neither vague nor overbroad.

For Rotary International (Counsel of Record, William Suttler, Three First National Plaza, Chicago, IL 60602; telephone (312) 558-6616)

1. Rotary Clubs are selective in their membership and therefore entitled to protection of their freedom of intimate association. No compelling state interest justifies interference with the Rotary's male-only membership policy.
2. The Unruh Act is both vague and overbroad.

AMICUS BRIEFS

In Support of the Rotary International

Conference of Private Organizations, Kiwanis International, Boy Scouts of America, International Association of Lions Clubs

In Support of Rotary Club of Duarte

American Jewish Congress, Anti-Defamation League of B'nai B'rith, state of California, Legal Aid Society of San Francisco, Rotary Clubs of Seattle, San Francisco and Boston

(As this issue of *Preview* was being published, the Court issued an opinion in the case. It held, 7-0, in favor of the Rotary Club of Duarte, ruling that the Unruh Act does not violate the First Amendment by requiring California clubs to admit women.)