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A New Look at an Old Association: Will Today's Women Be Tomorrow's Jaycees?

by Neal Devins

Roberts, et al.
v.
United States Jaycees
(Docket No. 83-724)

Argued April 18, 1984

ISSUES

In *Roberts v. United States Jaycees*, the Supreme Court will tackle the knotty problems of whether freedom of association is an independent constitutional protection and, if so, whether the Jaycees can invoke freedom of association as a justifiable basis for their nationwide policy of excluding women from their rolls as full members.

The *Jaycees* case is attracting a lot of national attention for a number of reasons. First, it is unclear whether there is a straightforward protection for the freedom of the association. If one exists, its contours are unknown. Second, the Jaycees is one of the nation's largest membership organizations — with 271,000 individual male members in 6,909 chapters. Third, the Supreme Court decision might define the constitutional rights of membership organizations and this is of great significance to many of these organizations. (Not surprisingly, groups like the Rotary, Kiwanis and the Boy Scouts have all filed amicus briefs in support of the Jaycees.) Fourth, this lawsuit once again calls into question the nature of the states' interest in preventing sex discrimination. (Consequently, groups like the National Organization for Women and the American Civil Liberties Union have also filed amicus briefs on the state's side of the case.)

Finally, and most importantly, the *Jaycees* case will test the constitutionality (as it applies to the Jaycees) of a Minnesota statute which prohibits sex discrimination in "public accommodations."

This case is also of great interest because it pits two discordant elements of our constitutional system against each other. Sex discrimination laws seek to guarantee a minimum standard of treatment to a large segment of our population. In many ways, such laws reflect the socialist vision of life treatment. Freedom of association, on the other hand, is an individualistic liberation construct. It allows people to choose with whom they want

(and with whom they don't want) to keep company. The preeminence of either right is the necessary disparagement of the other. Consequently, at its roots, the *Jaycees* case raises the fundamental social policy question of whether state-created group entitlements should prevail over the individual and his or her personal preferences.

FACTS

The *Jaycees* case is an appeal by the state of Minnesota from a 1983 decision by a divided panel of the United States Eighth Circuit Court of Appeals. In March, 1982, the United States District Court for Minnesota had ruled in favor of the state. Prior to that ruling, in October, 1979, a state administrative law judge found the Jaycees had violated Minnesota's Human Rights Act prohibiting sex discrimination in public accommodations. This state decision was the basis of subsequent federal litigation.

The Jaycees, although organized in 1835 to enhance the development of young men, permitted women to become associate members. "Associate status" is akin to being a poor cousin state. An associate cannot vote, hold office, or be eligible for awards. Consequently, it is argued that women are denied the professional opportunities accorded to male members.

The origins of the *Jaycees* lawsuit was a dispute between the national organization and the Minneapolis and St. Paul chapters of the organization. In 1974 and 1975, women were allowed to become full members of the Minneapolis and St. Paul chapters. Such membership afforded women the right to vote, hold office and be eligible for awards.

The national Jaycee organization subsequently informed the Minneapolis and St. Paul chapter that their practice violated the organization's bylaws. After being notified by the national organization that their chapters were in danger, Minneapolis and St. Paul members alleged before the Minnesota Department of Human Rights that the proposed charter allocations violated a state law prohibiting discrimination in public accommodations.

A state administrative law judge held that the Jaycees was a public accommodation under the state law. Consequently, because its sexually discriminatory membership practices violated the statute, the Jaycees were enjoined from revoking the charter of any Minnesota chapter which admitted women members.

In appealing this decision in federal district court,

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the Jaycees offered three arguments: 1) Applying Minnesota's public accommodations law to the Jaycees interferes with their constitutional rights of association; 2) The state has failed to demonstrate a compelling governmental interest sufficient to outweigh the Jaycees' right of association, and 3) The Minnesota statute is unconstitutionally vague. The state disagreed with each of these assertions. At the district court level, the state prevailed on all three issues. (The state, in a decision related to this lawsuit, also prevailed in the effort to have the Minnesota Supreme Court rule that the United States Jaycees is a place of public accommodation under Minnesota law. Since state supreme court decisions are final on matters of state law, the Jaycees could not appeal this ruling.)

At the outset of this opinion, the district court noted: "It is questionable whether association not directed at the exercise of other First Amendment rights enjoys constitutional protection." The court did not resolve that issue, however. Instead, it based its conclusion on the related notions that: "Invidious private discrimination is not entitled to affirmative constitutional protection, and that the state's interest in preventing discrimination in access to public accommodations is in any event sufficiently compelling to override whatever right of association exists." The district court also rejected the Jaycees' vagueness argument.

The appellate court, in a 2 to 1 decision, reversed. Crucial to that ruling was its holding: "That the Jaycees, a substantial part of whose activities involve the expression of social and political beliefs and the advocacy of legislation and conditional change, does have a right of association protected by the First Amendment." In reaching this conclusion, the appellate court emphasized the Supreme Court's decision in *NAACP v. Alabama* (357 U.S. 449 (1958)), which held: "It is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."

This ruling is significant given that the stated purpose of the Jaycees—the professional advancement and development of young men—is not a traditionally protected First Amendment activity. Additionally, some of the Jaycees' positions on "women's issues" might have been affected by a change in membership practices. For example, the Jaycees have spoken out against the Equal Rights Amendment and a woman's right to abortion-on-demand. The state of Minnesota had contended that First Amendment association protections should not be triggered: "The Jaycees can point to no organization goal to which women cannot and do not aspire, no organization function which women cannot perform, and no organization position regarding which sex mandates a point of view."

The appellate court also ruled that the state's interest

in prohibiting sex discrimination in public accommodations is not sufficiently compelling to justify an abridgement of the associational freedom. The appellate court did recognize, however, that the state's interest in clearing "the channels of commerce of the irrelevancy of sex to make sure that goods and services and advancement in the business world are available to all on an equal basis" is a public purpose of the "first magnitude." Yet, the appellate court felt that the state could accomplish the objectives through "ways less directly and immediately intensive on the freedom of association than an outright prohibition [such as denial of tax credits or tax exemptions]." The state—stressing the state court's binding ruling that the Jaycees were a public accommodation involved in the sale of memberships—had contended that it could not accomplish its end in a less intensive manner. The appellate court also validated the Jaycees argument that denial of full membership status to women did not materially limit women in their efforts to succeed in business and professional life. The state criticized this conclusion, arguing that: "The supposition that there are other avenues of professional advancement is based upon the moribund theory of 'separate but equal.'"

The appellate court also concluded that the Minnesota statute was unconstitutionally vague. The appellate court viewed as mystifying the state court ruling that the Kiwanis organization was private and the Jaycee's public. Consequently, the appellate court concluded that persons of ordinary intelligence could not distinguish between protected private and unprotected public organizations. The state claimed that the Minnesota Supreme Court ruling was based in a principled—and discernable—application of the statute.

BACKGROUND AND SIGNIFICANCE

The *Jaycees* case speaks directly to the pressing question of whether or how the state can protect a woman's right to participate in America's "free market economy." Clearly, the state can prevent overt forms of discrimination. Yet, state action which interfered with an association's internal practices raises fundamental questions about the degree of permissible state interference in private decisionmaking. Although the Jaycees permit all males between the ages of 18 to 35 to become members, it is possible that that group of individuals have an agenda distinct both from women and from men in other age groups. Also, if the state prevails on this issue, it is an open question as to how the state can involve itself in the membership practices of other more discrete organizations.

On the other hand, sex discrimination is a proper concern of the state. The state thus should be permitted to remove artificial business which limits a woman's right to freely participate in public or quasi-public activities. This right is especially significant when it is associated

with professional self-advancement (as it is in this case).

The key task for the Court (and it is a hefty one) is to distinguish between private association and public discrimination. Such line drawing is not easy both because each side can make a convincing case and because the constitutional stakes are fairly high. On one hand, a decision in favor of the Jaycees will make it quite easy to assert the associational privilege. The plus side of such a result is increased cultural pluralism and greater self-determination. Yet, a decision in favor of the Jaycees also has the concomitant risk of allowing quasi-public organizations to indiscriminately shut their doors on certain classes of individuals. This occurrence might lead to greater social stratification.

A decision in favor of the state, on the other hand, would provide women (and possibly other groups) with a greater right to shape their own future and to shape society. Although this is a good result, such a state-guaranteed right may prove too costly. State-prescribed limitations on the associational freedom of individuals is at odds with our liberalistic tradition.

It is difficult to assess whether the Supreme Court can formulate a constitutional doctrine sensitive to the needs of both individual prerogative and group advancement. If it can, we will all gain through the *Jaycees* decision. If it cannot, either the goal of social justice or self-determinism will gain at the expense of the other.

ARGUMENTS

For the United States Jaycees

1. The application of Minnesota's Public Accommoda-

tion law to the Jaycees interferes with the Jaycees constitutional right of association.

2. The state has failed to demonstrate a compelling governmental interest sufficient to outweigh the Jaycees right of association.
3. The Minnesota statute is unconstitutional on grounds of vagueness and overbreadth.

For the State of Minnesota

1. Application of the Minnesota statute does not burden the Jaycees' First Amendment rights.
2. The state interest in prohibiting sex discrimination is compelling and there are no less restrictive means available to the state to advance that compelling interest.
3. The Minnesota statute is not unconstitutionally vague.

AMICUS BRIEFS

In Support of Minnesota

The states of New York and California, Northwestern Bell, Alliance for Women Membership, National Organization for Women, American Jewish Committee, NAACP Legal Defense Fund, American Civil Liberties Union, National League of Cities, United States Conference of Mayors, and others.

In Support of the Jaycees

Conference of Private Organizations, Boy Scouts of America, Rotary International.