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Roberts v. United States Jaycees

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Though I could not be persuaded to enter this "bucket"

Petrs argue JC's are different from Rotary, Lions which now join JCs

CA8 (4 to 4 en banc) held that a Jaycee Chamber of Commerce, may exclude women.

Case arises in context of a Minn. statute that, in effect, prevents a JC from holding meetings. It's definition of "public places" includes any place of "refreshment, accomodation, entertainment, recreation" — so JC's had no place to meet.

The statute prohibits sex discrimination in "public places" by "public organizations"

PRELIMINARY MEMORANDUM

January 6, 1984 Conference
List 3, Sheet 1

No. 83-724 AFX

GOMEZ-BETHKE, et al. (Minn. state officials)

v.

UNITED STATES JAYCEES (civic organization)

Appeal from CA8 (Henley, Arnold; Lay, dissenting)

CA8's

Federal/Civil

Timely

1. SUMMARY: Appts challenge the lower court's finding that a Minn. law prohibiting sex discrimination in "places of

NOTE -- This is an appeal and the question is an important and unsettled one.

Joe

public accommodation" violates the First Amendment, and is vague, if applied to the all-male Jaycees.

2. FACTS AND DECISION BELOW: The Jaycees is a young men's civic and service organization with about 295,000 regular members. While women can participate in some of the Jaycees's activities as associate members, they cannot vote, hold office, or receive certain national awards. In 1974, the Minneapolis and St. Paul chapters began accepting women as full members. The national organization threatened to revoke their charters, and in 1978 the chapters filed complaints with the Minn. Dept. of Human Rights under the Minn. Human Rights Act, Minn. Stat. Ann. §§363.01-.14 ("the Act"). The Act prohibits sex discrimination in "place[s] of public accommodation." A "place of public accommodation" is defined as

> a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

A hearing examiner found that the Jaycees had committed an unfair discriminatory practice under the Act, and entered a cease and desist order against the national organization.

The Jaycees then instituted this suit in DC (Murphy, J.) claiming that application of the Act to it violated a constitutionally protected "freedom of association", and, subsequently, that the Act was unconstitutionally vague as construed. The DC certified to the Minn. Sup. Ct. the question of whether the Jaycees constitutes a "place of public accommodation," within the

meaning of the Act. The Minn. Sup. Ct. (Otis, J., for the court) answered in the affirmative. The court first found that the Jaycees was a "business" that sold leadership training to young men. It focused on the marketing approach of the organization's recruitment program--such as referring to prospective and current members as "customers"--and its stated aim of giving young men an "edge" in their careers. The court then found that the organization was a "public business." (It is this finding that is the focus of the vagueness challenge.) The court identified two criteria to separate public from private businesses: selectiveness of the group in admission of members, and existence of limits on size of the membership. A82. It rejected an analogy advanced by the Jaycees to the Kiwanis organization, which the court termed a private organization; the court said the Jaycees "strives for growth," and is unselective in those to whom it sells memberships. A83. Finally, the state court found that the organization was a "facility." Three justices (Sheran, Peterson, Todd) dissented.

The DC rejected the Jaycees's constitutional challenge. CA8 reversed. In its view, association for ends specifically mentioned in the First Amendment will prevail against all but "compelling" state interests, while other kinds of association may be required to yield to less imperative public needs. A18. The court placed the Jaycees in the former category. The court found that the personal development upon which the state court focused came as a by-product of various social, civic, and ideological activities. It found that, while the Jaycees is not primarily a

political group, "the advocacy of political and public causes, selected by the membership, is a not insubstantial part of what it does." A22. Further, the court noted, while the content of most of its resolutions has nothing to do with sex, some change in the Jaycees's philosophical cast might reasonably be expected. It cited the parts of the Jaycee Creed affirming the "brotherhood of man," and its declaration that "free men" can best win economic justice through the free enterprise system. A24. Finally, the court found that the Jaycees was not the only practicable way for women to advance themselves in business, and that the state might effectuate its policy through less instrusive means, such as withdrawal of tax-exempt status, prohibitions or official recognition of the organization, bars on employer support, etc. A30.

The court also held that the Act as construed by the Minn. Sup. Ct. was void for vagueness. CA8 found that the state court had not provided any discernible standard for distinguishing public from private businesses. In particular, if found no basis in the record for distinguishing the Jaycees from the Kiwanis, which is an all-male organization of 300,000 members drawn from a cross-section of business and professional life. CA8 did not reach an overbreadth challenge.

Chief Judge Lay dissented. He noted that the Jaycees does not advance solely men's interests, and that the type of advocacy it has undertaken would not be curtailed or intimidated by requiring the organization to accept women. The dissent found no basis for believing women members would alter the organization's

creed. On the vagueness challenge, Judge Lay noted that long usage as well as common understanding provided content to the public-private distinction, citing, e.g., Grayned v. City of Rockford, 408 U.S. 104, 110-112 (1972). He noted that one distinction between the Kiwanis and the Jaycees was that the latter limited membership from any one occupational classification to 20% of the total.

An equally divided en banc court declined to rehear the case. The dissenters (Lay, Heaney, Bright, McMillian) emphasized that the central purpose of the Jaycees is leadership training for business.

3. CONTENTIONS: Appts (state officials) assert that the question is substantial, noting that 33 states and D.C. have statutes prohibiting discrimination on the basis of sex in places of public accommodation. (Two have held, contrary to the Minn. Sup. Ct. in this case, that the Jaycees is not a place of public accommodation, see U.S. Jaycees v. Richardet, 666 P.2d 1008 (Alaska 1983); U.S. Jaycees v. Bloomfield, 434 A.2d 1379 (D.C. 1981). Mass. agrees with the Minn. court, see NOW Br. at 34 n.8.) Appts say that freedom of association does not have independent constitutional status but rather is a derivative protection for values protected by the First Amendment, citing summary affirmances in Garcia v. Texas State Bd. of Medical Examiners, 421 U.S. 995 (1975) (business association unprotected), and Baker v. Nelson, 409 U.S. 810 (1972) (same sex marriage unprotected). The Court has also rejected association claims in the context of racially discriminatory private schools and unions. Runyon v.

McCrary, 427 U.S. 160, 175-176 (1976); Railway Mail Ass'n v. Corsi, 326 U.S. 88, 93-94 (1945). Here, there is no evidence that the Jaycees's position on any social or political issue is one that would be dictated by sex. Appts also argue that the state interest in prohibiting sex discrimination is compelling. Finally, appts argue that CA8 focused too narrowly on the mention of the Kiwanis in the Minn. Sup. Ct.'s opinion, which was dictum. The public-private distinction is well-established. Appts urge summary reversal.

New York and California have filed an amicus brief supporting appts. They note that their public-accommodation statutes have recently been held applicable to the Boy Scouts and to a men-only power-boating club. Curran v. Mount Diablo Council of the Boy Scouts of America, 147 Cal. App. 3d 712, 195 Cal. Rptr. 325 (1983) (discrimination on the basis of sexual preference); United States Power Squadrons v. State Human Rights Appeal Bd., 59 N.Y.2d 401, 465 N.Y.S.2d 871 (1983). They essentially repeat the arguments of appts.

The National Organization for Women and other women's organizations have filed an amicus brief supporting appts. Citing cases from this court and the lower courts, they say that the criteria for distinguishing public from private groups are neither novel or elusive; they list selectivity, size limitations, formality of membership procedures, attributes of member ownership and government, and advertising to nonmembers. NOW Br. at 26-27.

Appee has filed a motion to affirm. It seeks an affirmance on First Amendment grounds, rather than narrow vagueness grounds, in order to lay to rest litigation it is facing in at least four other states. It says that there is a constitutional right to association, both as an expression in itself and as a means of protecting the expressed First Amendment guarantees, citing NAACP v. Alabama, 357 U.S. 449 (1958), Griswold v. Conn., 381 U.S. 479, 483 (1965), and Abood v. Detroit Bd. of Educ., 431 U.S. 209, 231 (1977). The State has failed to articulate any compelling interest to thwart the chosen purpose of this particular, essentially private organization to serve only young men. Appee also says the statute as construed is void for vagueness, noting that greater precision is necessary when fundamental liberties are at stake, citing, e.g., Grayned. Appee also suggests that the statute is now overbroad, since it could reach organizations based on ethnic and religious traditions, and that it violates equal protection, because of the different treatment of the Jaycees and the Kiwanis.

4. DISCUSSION: The appeal appears proper. No one suggests otherwise, and CA8 said that the suit was one "to declare the statute, as ... applied and interpreted, unconstitutional." A2.

All the parties agree that the questions raised by this case are substantial. The case implicates two related, unsettled areas of First Amendment law: (1) the protection of rights of association where an organization is not solely or primarily engaged in political speech, and (2) the protection of rights of association

for large, national organizations as opposed to smaller or narrower ones. With four judges dissenting below, it is not obvious to me that CA8 got the answer right.

While the case to a large extent turns on factual determinations about the nature of the Jaycees, I suspect that will always be true in these cases; in any event, that is probably not a reason to decline plenary review of an appeal. The factual disputes, as well as the unsettled law here, seem to me to preclude summary treatment.

The vagueness question is bound up with the merits in that an important consideration in deciding the extent of the Jaycees's First Amendment protection probably will be whether the holding can be limited to essentially public groups. In any case, I do not think CA8's answer to the vagueness question is obviously correct either. As appts assert, CA8 does appear to have focused narrowly on the Kiwanis dictum, ignoring the selectivity and size criteria set out elsewhere in the Minn. Sup. Ct.'s opinion. Especially in light of the common use of the public-private distinction, I suspect that the vagueness challenge will not prevent the Court from reaching the merits.

5. RECOMMENDATION: I recommend NOTING probable jurisdiction.

There is a motion to affirm, and two amicus briefs in support of the jurisdictional statement.

December 13, 1983 Neuhaus Opin in appx

Court ..... *Voted on*....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 83-724

Submitted ....., 19... *Announced* ....., 19...

GOMEZ-BETHKE, Commr.

VS.

U.S. JAYCEES

Also motions of National Organizations for Women and Northwestern Bell Telephone for leave to file briefs as amicus curiae.

Note

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.				✓									
Brennan, J.				✓									
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.				✓									
Powell, J.				✓									
Rehnquist, J.				✓									
Stevens, J.				✓									
O'Connor, J.				✓									

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 16, 1984

No. 83-724 Roberts v. Jaycees
(Scheduled for argument April 18, 1984)

MEMORANDUM TO THE CONFERENCE

In reading the briefs in this case, I realized that I have a possible reason to recuse myself.

I have been an active member of several single sex clubs and organizations in the past and am still a sustaining member of the Junior League, an honorary member of the Soroptimists Club, and an active member of the Women's Forum and Executive Women in Government. There is discussion in the briefs of the possible ramifications of this case on other single sex organizations.

I welcome your counsel on whether I should participate in the resolution of this case.

Sincerely,

Sandra

Jan 84/17/84

BENCH MEMORANDUM

No. 83-724

Roberts v. The United States Jaycees

Joseph Neuhaus April 17, 1984

Question Presented

Does the First Amendment prohibit Minnesota from requiring that the all-male Jaycees accept women as members?

Summary of Facts & Decisions Below

The Jaycees is a civic and service organization that excludes women from leadership and voting roles. Its purpose is to inculcate civic interest and provide an opportunity for personal development. App. to J.S. A-4. On complaint of certain local chapters that wished to admit women, a state hearing examiner found that the Jaycees' rule limiting full membership to men violated the state's anti-discrimination statute. The Jaycees then sued in federal DC, which certified a question to the Minn S Ct. The S Ct held that the Jaycees is a "place of public accommodation" within the meaning of the state law. Noting that the legislature had expressly required a liberal construction of the law, A-73, the court found that the Jaycees was a "business" that sold membership in an organization whose aim is the advancement of its members, A-79. The DC held the application of the law to the Jaycees constitutional. CA8 reversed. It held that the application of the statute to the Jaycees infringed on their First Amendment right to join together in order to advocate political and public causes. It also held the law as construed by the Minn S Ct unconstitutionally vague because that court said that the law would not apply to the Kiwanis.

Discussion

I consider the Jaycees vagueness and overbreadth arguments insubstantial, and this memo discusses at length only the First Amendment challenge. In brief, I think the vagueness argument probably misinterprets the Minn S Ct's reference to the Kiwanis

club. It would be silly to ~~strike down~~ invalidate the statute merely because of an off-hand reference in the opinion. On balance the state court provided adequate guidelines to distinguish between public and private "businesses". The overbreadth challenge depends on the Jaycees' claim that if they are a place of public accommodation, many other groups--such as religious or ethnic groups--would be as well. The fact is, however, that the Minn S Ct's application of the statute to the Jaycees depended heavily on the particular mix of business and nonbusiness aspects of the organization. The record does not reveal whether the other groups the Jaycees cite have the same mix.

1. Freedom of association generally. While the protection given to the right to associate with whom one chooses is far from defined, what seems reasonably clear is that whatever protection there is of association will be at its greatest in two situations: (1) when "privacy" rights are implicated, and (2) when the association is involved in protected First Amendment speech. Each of these poles of greatest protection can be illustrated by an extreme example. The family or the marital couple is an association that receives the highest protection from state interference. E.g., Moore v. East Cleveland, 431 U.S. 494 (1977) (invalidating ordinance barring grandmother from living with her grandsons); Griswold v. Connecticut, 381 U.S. 479 (1965) (ordinance barring use of contraceptives). Groups engaged in advocacy of political or public causes also may be interfered with only for compelling state interests. E.g., NAACP v. Alabama, 357 U.S. 449 (1958) (invalidating order requiring disclosure of membership

lists); Bates v. City of Little Rock, 361 U.S. 516, 524 (1960) (same); see also Buckley v. Valeo, 424 U.S. 1, 15, 25 (1976). In other areas, associational freedoms probably receive less protection. Thus a business--at least one of sufficient size not to implicate core privacy concerns--can be prevented from excluding blacks or women despite the owners' claim of freedom to associate with whom they like. Cf. Heart of Atlanta Motel v. United States, 379 U.S. 241, 250 (1964) (upholding application of Civil Rights Act to motel--associational freedoms not considered); Runyon v. McCrary, 427 U.S. 160, 176 (1975) (private school may be forced to admit black children).

In this case, it is plain that the state has advanced a general interest that is of the highest importance. For these purposes, there probably can be no distinction between the state's interest in combatting sexual discrimination and its interest in ending racial discrimination. Minnesota can certainly decide that the one is as important as the other. As a general matter, therefore, it is not necessary for the Court to consider the extent of the Constitution's protection for associations that are distant from the privacy and speech concerns discussed above. The state's interest clearly is sufficient to override any but these central associational interests. The crucial question in this case thus is how close the Jaycees' interest in excluding women is to privacy and First Amendment speech.[1]

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[1]It might also be argued that the state's interest in ending discrimination attenuates as it reaches increasingly

Footnote continued on next page.

2. Privacy. The nature of freedom of association as it implicates privacy concerns is that there are certain personal relationships that our society believes are fundamental or transcendent. A person has a right to enter into and maintain such relationships without any but the most essential or traditional restrictions. The idea is that these relationships are vital to the autonomy and dignity of the individual. This kind of freedom of association has not been extended beyond the family, as far as I have found. Compare Moore, supra (grandmother living with grandsons), with Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (ordinance may bar unrelated persons from living in single house). This Court has upheld laws requiring private schools and nonselective private swimming pools to admit blacks. See Runyon v. McCrary, 427 U.S. 160, 175-179 (1976) (school); Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431 (1973) (pool--no constitutional question raised).

Nevertheless, it may be that other relationships will be found to have at least some heightened protection. I can think of two examples. First, there are groups that are defined by

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intimate associations. I am not sure this is true, however. While it is true that ending discrimination in businesses and on mass transit has a more obvious effect than ending it in more intimate settings like clubs and fraternities, I do not think it can said with any confidence that the state has a lesser interest in the latter than in the former. The state presumably is entitled to eliminate discrimination root and branch, and its interest in doing so may be as great in small institutions as it is in large ones. So I think it is more helpful to speak in terms of the constitutional protection of the association increasing rather than in terms of the state's interest decreasing.

intimacy or exclusivity. If a state sought to force fraternities or private men's clubs to accept women or blacks (or whites, in some cases) the Constitution conceivably could offer protection. To require less selective admissions would be to destroy the essence of the association, a result that might conflict with the central and traditional values of our society. See Moore, supra, at 503 (limits on substantive due process come from "'respect for the teachings of history [and] solid recognition of the basic values that underlie our society'") (quoting Justice Harlan in Griswold). Second, and related, there are certain situations in which homogeneity is widely recognized as socially beneficial; the most obvious example is single-sex education. Thus, it may be that requiring the Cub Scouts to accept girls would detract from the efficacy of the education that Scouts receive. Cf. Mississippi University for Women v. Hogan, 458 U.S. 718, 739 (1982) (Powell, J., dissenting) (noting "the continuing expressions that single-sex institutions may offer singular advantages to their students") (MUW does not control, of course: it only deals with the constitutional limitations on state discriminatory action, not with what limits a state may place on private discriminatory conduct).

The Jaycees does not press the argument that its claim of associational rights is linked to these privacy or autonomy values, and on the record here I do not think it could. It hardly can be said that "selectivity" is the essence of the organization, or that requiring it to take women will destroy it. The Jaycees is utterly unselective about choosing its members, requiring only

that they be men between 18 and 35. It encourages as large and diverse a membership as possible. The Minnesota chapters at issue here use no selection committee nor any background checks. Appts' Br. at 8. Moreover, the Jaycees do not suggest that the things they do are done better in some constitutionally significant way when only men are present. Its civic functions are, at least as a general matter, open to the public. In fact, since women belong as associate members, it appears that women are not excluded entirely from virtually anything the organization does--except vote and award officers and honors. These functions are hardly at the center of the club, and no one argues otherwise.

In short, the Jaycees is distinguishable from other, more selective men's clubs and from other institutions with sex restrictions on membership. These other institutions may be able to advance a strong claim that their right to choose their associates is infringed by a state requirement that they not discriminate against a certain class. But this organization can not, since so little "choice" appears to be involved. The state's decision that sex discrimination in admissions to the Jaycees is an evil needful of correction is legitimate and here controls, unless the Jaycees' First Amendment speech rights are infringed.

3. First Amendment speech. The right to associate in order to protect and further the ability to exercise the enumerated First Amendment freedoms is more fully developed in the case law than the privacy concerns addressed above. It is well established that a content-neutral regulation may be invalidated when

applied to some organizations if it "is likely to affect adversely the ability of [the organization] and its members to pursue their collective effort to foster [their] beliefs." NAACP v. Alabama, 357 U.S. 449, 462-463 (1958). As you noted in our discussion today, the speech or beliefs may "pertain to political, economic, religious or cultural matters," id., at 460. The crucial question is whether the state regulation is in fact likely "to affect adversely" the organization's speech efforts.

The Jaycees offer two arguments that admitting women would affect its speech. First, it says, its very existence constitutes speech--an expression of its belief that "young men need or deserve such an organization." Appee Br. at 19. Thus, changing the membership of any membership organization always influences its speech. Ibid. Second, the Jaycees points to its "positions on public issues," id., at 20, saying that requiring it to take women would alter the organization's focus on issues of special concern to young men.

The first view has some appeal because it keeps the courts out of the question entirely, but it is probably too broad. Many important economic actors happen to be membership organizations, and the state surely has a right to keep the marketplace discrimination-free. The most obvious examples are labor unions. It cannot be that labor unions can exclude blacks or women solely because the union's existence stands for the proposition that white working men "need or deserve such an organization." See, e.g., Railway Mail Ass'n v. Corsi, 326 U.S. 88, 93-94 (1945) (union may not exclude blacks). The same is true of other eco-

nomic actors. It is Minnesota's view that the Jaycees, in its nonselective "selling of personal development and leadership training", is such an economic actor. I do not think that simply because it is a membership organization it can avoid the scrutiny that would otherwise be applicable.

This can be said about Rotary & ~~Kiwanis~~ others

If its status as a membership organization does not automatically protect it, then the Jaycees seek refuge in the fact that they take positions on public issues. (The Jaycees does not advance any claim relating to nonpolitical speech. This choice is sound: political speech is entitled to the greatest First Amendment protection, so if the Jaycees cannot win here, other speech will not help it.) It appears here that the Jaycees must make some showing that admitting women will influence its speech--that is, that the state restriction will somehow inhibit its exercise of its First Amendment rights. See, e.g., Runyon v. McCrary, 427 U.S., at 176 (school had not shown that admitting blacks would "inhibit in any way the teaching in these schools of [its segregationist] ideas"). While I am reluctant to have the courts making these determinations, I am inclined to agree that it is necessary. Otherwise, undeniably important political entities--such as the Democratic or Republican parties--or economic actors that make political pronouncements--such as Mobil Oil Co.--could discriminate on a claim that whatever speech they make would be influenced by altering their membership or staff. Such claims should be subjected to some scrutiny, to avoid exclusion of minorities from mainstream politics or markets. Nonetheless, some

deference should be given to the organization's choices in this regard.

The case thus boils down to whether admitting women would require the Jaycees to alter the nature or expression of its public positions. The Jaycees' best argument on this point is that while the "women's" position on any given issue is not certain, admitting women will force the organization to take positions on certain "women's issues" that it now avoids, such as the ERA or abortion. I am dubious. I am not convinced that one can say with any fair degree of certainty that abortion is an issue that women, as opposed to men, care about and renewed draft registration or the war in Vietnam were not. As we discussed, moreover, deference to the organization's choices is not called for because I doubt that the Jaycees chose to exclude women because its political positions might be influenced. That is, I do not think the Jaycees has made a choice to allow only men into its organization so it will present the young men's political position; the speech part of the organization is a sideline, incidental to its main aim of personal and career development. It would be anomalous to uphold the organization's restrictions on its membership in order to allow it to conduct what appears to be a minor part of its activities. Thus, since excluding women appears to have little to do with protected First Amendment speech, and since any other claim to associational freedom in a nonselective club must fall to the state's interest in ending sex discrimination, I recommend reversal.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 17, 1984

Re: No. 83-724 Roberts v. Jaycees

Dear Sandra:

I have seen your note to the Conference about disqualification on this subject, and I personally don't think you should disqualify yourself. If you disqualify yourself for this reason, I would guess that I and the other Members of the Court who belong to the Alfalfa Club would have to give some thought to the matter, too.

Sincerely

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1984

No. 83-724

Roberts v. Jaycees

Dear Sandra,

I too am a member of some single sex clubs, mostly honorary. I don't think this is a reason for recusing myself.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

April 18, 1984

83-724 Roberts v. Jaycees

Dear Sandra:

I "join" other Justices who arguably have some cause to disqualify in this case.

Jo was an active member of the Junior League for many years, and still has some sort of status. She also remains an active member of the Women's Club of Richmond, as was her mother. She belongs to the Colonial Dames of America.

I resigned from the Commonwealth Club and the Country Club of Virginia in Richmond, but belong to the Alibi Club (only 50 members). I also am a member of the Society of the Cincinnati.

If any member of the Court disqualifies because of family membership in a private club, perhaps others - including myself - may be inclined to follow. I suppose there could be a quorum problem which would be unfortunate, and in my view unnecessary.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

83-724 ROBERTS v. UNITED STATES JAYCEES Argued 4/18/84

Varco (Asst AG of Miss)

Jaycees (JCs) given 3 types of training: e.g. how to run programs, hold meetings, etc. Women may be limited ~~[illegible]~~ to training in their programs but no vote, etc

Jaycees - a business organization. At Tulsa Hq. they have a "Marketing Division"

~~Court~~.

Replying to WHR, Varco said fraternities & clubs are not like businesses

Responding to L.J., agreed there is a "Age discrimination" (age 35)

JC's refer to prospects as "customers"

Agree 1st Amend probably protects young men's right to promote causes favorable to their interests. ~~But JC's~~

BRW said the "facts" Varco is relying on were not found in courts below. How can he rely on them?

Varco (cont.)

BRW asked → What if "blacks" had a carbon copy of the J Cs, but admitted no whites? Varco answered Mem. law shd would apply.

If JC advocated defeating ERA, Varco said 1st amend would protect it to extent of excluding men & women who favored ERA.

Relationships in JCs are too impersonal & too commercial.

→ "Difference in some degree of selectivity" — Varco's answer as to where line may be drawn.

Hall (Rep JC's)

Tax exempt non profit corps.

Sole purpose is to promote interest of young men — whether they be preachers, lawyers, teachers, business men, etc.

Asked by JRs would any of these programs be different if women were omitted. Counsel agree may not change the types of programs — but would change character of org.

Hall (cont.)

ERA, draft, abortion ~~would~~ would be diverse issues.

See Exhibt 3 & 19 ~~=~~ that are in the Record but not in Appendix.

50% say O'Brien balancing test.

I Minn S/Ct (certified Q)

1 Construed "place of public accomodation" in light of ~~the~~ legislative intent: Not to accept the ~~Not~~ "literal, ordinary meaning of 'place of pub. accomodation"

It did'nt!

2. Findings of Court:

(a) a "business"
Sells memberships
Recruits actively.

(b) a "public business"
Not private because of absence of selectivity.

~~(c) a public~~

(c) a public business "facility"
Sells in "product"
(a term in J.C. "sales" of membership) ~~is~~ at various "sites" in Minn.

II Distinguishing criteria for me

(a) Absence of "selectivity"
(b) No criteria for full membership except "males - 18 to 35"
(c) No Club facilities

III More like Young Lawyers Div of ABA.

Rev 7-1
HAB passes

No. 83-724 , Roberts v. United States Jaycees Conf. 4/20/84

The Chief Justice Affirm

If the "liberty" includes right to abortion it applies to organizations of men & women. Can't distinguish Jaycees from Rotary.

WJB read long statement. Cited Buckley v. Valeo as limiting contributions because of threat of pub. interest

Justice Brennan Rev.

Confrontation bet. right to associate & right of State to prevent sex discrimination.

Jaycees have not shown that right to associate would be significantly affected by presence of women.

No showing of similarity to private clubs.

JC's are not selective. Engage in public activities. Women already participate as associate members.

JCs not a Political Party - not a purpose.

Justice White Rev.

Agrees generally with WJB.

No real "privacy" - women are admitted on limited grounds.

Not primarily a political org. in any real sense.

Purpose is to promote interest of young men.

State statute is presumed to be valid. Jaycees have not overcome this burden.

Justice Marshall Rev.

~~[illegible] that [illegible]~~ agrees with WJB & BRW.

Justice Blackmun Pass
(may stay out case)

Justice Powell Rev.

See my notes

Justice Rehnquist Rev.

Jaycees have not shown a
a suppressed interest either in
privacy or in political views.
This is a public organization
— not privacy case (the ~~[illegible]~~ Bill
says some of our cases will
be troublesome.)

Justice Stevens Rev.

(said little)

Justice O'Connor Rev.

Case not easy.
Jaycees a "speech plus" organization.
The State statute affects Jaycees
very little.
Interest of State is strong &
that of Jaycees is not strong.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 20, 1984

Predictable!

No. 83-724

Roberts v. United States Jaycees

Dear Chief,

I'll try my hand at the opinion for the Court in this case.

Sincerely,

WJB

The Chief Justice

Copies to the Conference

WJB sent to me on 6/14

And understand, this is a draft WJB sent me. Check with Jay

changes 7-10 made by WJB in response to my letter of June 14th

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

file

From: **Justice Brennan**

JUN 12 19..

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–724

KATHRYN R. ROBERTS, ACTING COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ET AL. *v.* UNITED STATES JAYCEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to address a conflict between a State's efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization. In the decision under review, the Court of Appeals for the Eighth Circuit concluded that, by requiring the United States Jaycees to admit women as full voting members, the Minnesota Human Rights Act violates the First and Fourteenth Amendment rights of the organization's members. We noted probable jurisdiction, —— U. S. ——, and now reverse.

I

A

The United States Jaycees (Jaycees), founded in 1920 as the Junior Chamber of Commerce, is a nonprofit membership corporation, incorporated in Missouri with national headquarters in Tulsa, Oklahoma. The objective of the Jaycees, as set out in its bylaws, is to pursue

> "such educational and charitable purposes as will promote and foster the growth and development of young men's civic organizations in the United States, designed to inculcate in the individual membership of such orga-

> nization a spirit of genuine Americanism and civic interest, and as a supplementary education institution to provide them with opportunity for personal development and achievement and an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and understanding among young men of all nations." Quoted in Brief for Appellee 2.

The organization's bylaws establish seven classes of membership, including individual or regular members, associate individual members, and local chapters. Regular membership is limited to young men between the ages of 18 and 35, while associate membership is available to individuals or groups ineligible for regular membership, principally women and older men. An associate member, whose dues are somewhat lower than those charged regular members, may not vote, hold local or national office, or participate in certain leadership training and awards programs. The bylaws define a local chapter as "any young men's organization of good repute existing in any community within the United States, organized for purposes similar to and consistent with those" of the national organization. App. to Juris. Statement A98. The ultimate policymaking authority of the Jaycees rests with an annual national convention, consisting of delegates from each local chapter, with a national president and board of directors. At the time of trial in August 1981, the Jaycees had approximately 295,000 members in 7,400 local chapters affiliated with 51 state organizations. There were at that time about 11,915 associate members. The national organization's Executive Vice President estimated at trial that women associate members make up about two percent of the Jaycees' total membership. Tr. 56.

New members are recruited to the Jaycees through the local chapters, although the state and national organizations are also actively involved in recruitment through a variety of promotional activities. A new regular member pays an ini-

tial fee followed by annual dues; in exchange, he is entitled to participate in all of the activities of the local, state, and national organizations. The national headquarters employs a staff to develop "program kits" for use by local chapters that are designed to enhance individual development, community development, and members' management skills. These materials include courses in public speaking and personal finances as well as community programs related to charity, sports, and public health. The national office also makes available to members a range of personal products, including travel accessories, casual wear, pins, awards, and other gifts. The programs, products, and other activities of the organization are all regularly featured in publications made available to the membership, including a magazine entitled "Future."

B

In 1974 and 1975, respectively, the Minneapolis and St. Paul chapters of the Jaycees began admitting women as regular members. Currently, the memberships and boards of directors of both chapters include a substantial proportion of women. As a result, the two chapters have been in violation of the national organization's bylaws for about ten years. The national organization has imposed a number of sanctions on the Minneapolis and St. Paul chapters for violating the bylaws, including denying their members eligibility for state or national office or awards programs, and refusing to count their membership in computing votes at national conventions.

In December 1978, the president of the national organization advised both chapters that a motion to revoke their charters would be considered at a forthcoming meeting of the national board of directors in Tulsa. Shortly after receiving this notification, members of both chapters filed charges of discrimination with the Minnesota Department of Human Rights. The complaints alleged that the exclusion of women from full membership required by the national organization's

bylaws violated the Minnesota Human Rights Act (Act), which provides in part:

> "It is an unfair discriminatory practice:
> "To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex." Minn. Stat. § 363.03, subd. 3 (1982).

The term "place of public accommodation" is defined in the Act as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public." *Id.*, § 363.01, subd. 18.

After an investigation, the Commissioner of the Minnesota Department of Human Rights found probable cause to believe that the sanctions imposed on the local chapters by the national organization violated the statute and ordered that an evidentiary hearing be held before a state hearing examiner. Before that hearing took place, however, the national organization brought suit against various state officials, appellants here, in the United States District Court for the District of Minnesota, seeking declaratory and injunctive relief to prevent enforcement of the Act. The complaint alleged that, by requiring the organization to accept women as regular members, application of the Act would violate the male members' constitutional rights of free speech and association. With the agreement of the parties, the District Court dismissed the suit without prejudice, stating that it could be renewed in the event the state administrative proceeding resulted in a ruling adverse to the Jaycees.

The proceeding before the Minnesota Human Rights Department hearing examiner then went forward and, upon its completion, the examiner filed findings of fact and conclusions of law. The examiner concluded that the Jaycees orga-

nization is a "place of public accommodation" within the Act and that it had engaged in an unfair discriminatory practice by excluding women from regular membership. He ordered the national organization to cease and desist from discriminating against any member or applicant for membership on the basis of sex and from imposing sanctions on any Minnesota affiliate for admitting women. *Minnesota* v. *United States Jaycees*, No. HR–79–014–GB (Minn. Office of Hearing Examiners for the Dept. of Human Rights, October 9, 1979) (hereinafter "Report"), App. to Juris. Statement A107–A109. The Jaycees then filed a renewed complaint in the District Court, which in turn certified to the Minnesota Supreme Court the question whether the Jaycees organization is a "place of public accommodation" within the meaning of the State's Human Rights Act. See App. 32.

With the record of the administrative hearing before it, the Minnesota Supreme Court answered that question in the affirmative. *United States Jaycees* v. *McClure*, 305 N. W. 2d 764 (1981). Based on the Act's legislative history, the court determined that the statute is applicable to any "public business facility." *Id.*, at 768. It then concluded that the Jaycees organization (a) is a "business" in that it sells goods and extends privileges in exchange for annual membership dues; (b) is a "public" business in that it solicits and recruits dues-paying members based on unselective criteria; and (c) is a public business "facility" in that it conducts its activities at fixed and mobile sites within the State of Minnesota. *Id.*, at 768–774.

Subsequently, the Jaycees amended their complaint in the District Court to add a claim that the Minnesota Supreme Court's interpretation of the Act rendered it unconstitutionally vague and overbroad. The federal suit then proceeded to trial, after which the District Court entered judgment in favor of the state officials. *United States Jaycees* v. *McClure*, 534 F. Supp. 766 (Minn. 1982). On appeal, a divided Court of Appeals for the Eighth Circuit reversed. 709 F. 2d

1560 (1983). The Court of Appeals determined that, because "the advocacy of political and public causes, selected by the membership, is a not insubstantial part of what [the Jaycees] does," the organization's right to select its members is protected by the freedom of association guaranteed by the First Amendment. *Id.*, at 1570. It further decided that application of the Minnesota statute to the Jaycees' membership policies would produce a "direct and substantial" interference with that freedom, *id.*, at 1572, because it would necessarily result in "some change in the Jaycees' philosophical cast," *id.*, at 1571, and would attach penal sanctions to those responsible for maintaining the policy, *id.*, at 1572. The court concluded that the State's interest in eradicating discrimination is not sufficiently compelling to outweigh this interference with the Jaycees' constitutional rights, because the organization is not wholly "public," *id.*, at 1571–1572, 1573, the state interest had been asserted selectively, *id.*, at 1573, and the anti-discrimination policy could be served in a number of ways less intrusive of First Amendment freedoms, *id.*, at 1573–1574.

Finally, the court held, in the alternative, that the Minnesota statute is vague as construed and applied and therefore unconstitutional under the Due Process Clause of the Fourteenth Amendment. In support of this conclusion, the court relied on a statement in the opinion of the Minnesota Supreme Court suggesting that, unlike the Jaycees, the Kiwanis Club is "private" and therefore not subject to the Act. By failing to provide any criteria that distinguish such "private" organizations from the "public accommodations" covered by the statute, the Court of Appeals reasoned, the Minnesota Supreme Court's interpretation rendered the Act unconstitutionally vague. *Id.*, at 1576–1578.

II

Our decisions have referred to constitutionally protected "freedom of association" in two distinct senses. In one line

of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

The intrinsic and instrumental features of constitutionally protected association may, of course, coincide. In particular, when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated. The Jaycees contend that this is such a case. Still, the nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case. We therefore find it useful to consider separately the effect of applying the Minnesota statute to the Jaycees on what could be called its members' freedom of intimate association and their freedom of expressive association.

A

The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships, most notably those arising in a family context, a substantial measure of sanctuary from unjustified interference by the State. *E. g.*, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). Without precisely identifying every

Insert for p. 8 at beginning of last paragraph.

The personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationships that might be entitled to this sort of constitutional protection, are those that attend the creation and sustenance of a family--marriage, e.g., Zablocki v. Redhail, supra; childbirth, e.g., Carey v. Population Services Int'l, supra; the raising and education of children, e.g., Smith v. Organization of Foster Families, supra; and cohabitation with one's relatives, e.g., Moore v. City of East Cleveland, supra. Family relationships, by their nature,

consideration that may underlie this type of constitutional protection, we have noted that ~~family bonds~~ certain kinds of personal bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the State. See, *e. g.*, *Zablocki* v. *Redhail*, 434 U. S. 374, 383–386 (1978); *Moore* v. *City of East Cleveland*, 431 U. S. 494, 503–504 (1977) (plurality opinion); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1973); *Griswold* v. *Connecticut*, 381 U. S. 479, 482–485 (1965); *Pierce* v. *Society of Sisters*, *supra*, at 535. See also *Gilmore* v. *City of Montgomery*, 417 U. S. 556, 575 (1974); *NAACP* v. *Alabama*, 357 U. S. 449, 460–462 (1958); *Poe* v. *Ullman*, 367 U. S. 497, 542–545 (1961) (Harlan, J., dissenting). Moreover, the constitutional shelter afforded ~~family~~ such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting ~~such~~ these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty. See, *e. g.*, *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 844 (1977); *Carey* v. *Population Services Int'l*, 431 U. S. 678, 684–686 (1977); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974); *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972); *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

INSERT ~~Some special characteristics of family relationships suggest relevant limitations on the scope of this kind of constitutional protection. By their nature, such relationships~~ involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things, therefore, they are distinguished by ~~attributes of intimacy~~ such attributes as

relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only ~~a relationship that can be described as "intimate" seems~~ likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking ~~the~~ qualities ~~of intimacy~~ such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection. Accordingly, the Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees. Compare *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) with *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 93–94 (1945).

Between these poles, of course, lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State. Determining the limits of state authority over an individual's freedom to enter into a particular association therefore unavoidably entails a careful assessment of where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments. See generally *Runyon* v. *McCrary*, 427 U. S. 160, 187–189 (1976) (POWELL, J., concurring). We need not mark the potentially significant points on this terrain with any precision in this case, however, for several features of the Jaycees clearly ~~deprive it of the intimacy that might render its members' choice of associates worthy~~ of constitutional protection.

The undisputed facts reveal that the local chapters of the Jaycees are large and basically unselective groups. At the time of the state administrative hearing, the Minneapolis chapter had approximately 430 members, while the St. Paul chapter had about 400. Report A–99, A–100. Apart from age and sex, neither the national organization nor the local

chapters employs any criteria for judging applicants for membership, and new members are routinely recruited and admitted with no inquiry into their backgrounds. See I Tr. of State Administrative Hearing 124–132, 135–136, 174–176. In fact, a local officer testified that he could recall no instance in which an applicant had been denied membership on any basis other than age or sex. *Id.*, at 135. Cf. *Tillman* v. *Wheaton-Haven Recreational Ass'n*, 410 U. S. 431, 438 (1973) (organization whose only selection criteria is race has "no plan or purpose of exclusiveness" that might make it a private club exempt from federal civil rights statute); *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 236 (1969) (same); *Daniel* v. *Paul*, 395 U. S. 298, 302 (1969) (same). Furthermore, despite their inability to vote, hold office, or receive certain awards, women affiliated with the Jaycees attend various meetings, participate in selected projects, and engage in many of the organization's social functions. See Tr. 58. Indeed, numerous non-members of both genders regularly participate in a substantial portion of activities central to the decision of many members to associate with one another, including many of the organization's various community programs, awards ceremonies, and recruitment meetings. See, *e. g.*, 305 N. W. 2d, at 772; Report A102, A103.

In short, the local chapters of the Jaycees are neither small nor selective. Moreover, much of the activity central to the formation and maintenance of the association involves the participation of strangers to that relationship. Accordingly, we conclude that the Jaycees chapters lack the distinctive characteristics ~~of intimate association~~ that might afford constitutional protection to the decision of its members to exclude women. We turn therefore to consider the extent to which application of the Minnesota statute to compel the Jaycees to accept women infringes the group's freedom of expressive association.

B

An individual's freedom to speak, to worship, and to petition the Government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, *e. g.*, *Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 294 (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, *e. g. Gilmore* v. *City of Montgomery*, 417 U. S., at 575; *Griswold* v. *Connecticut*, 381 U. S., at 482–485; *NAACP* v. *Button*, 371 U. S. 415, 431 (1963); *NAACP* v. *Alabama*, 357 U. S., at 462. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, *e. g.*, *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909, 932–933 (1982); *Larson* v. *Valente*, 456 U. S. 228, 244–246 (1982); *In re Primus*, 436 U. S. 412, 426 (1978); *Abood* v. *Detroit Board of Education*, 431 U. S. 209, 231 (1977).

Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, *e. g.*, *Healy* v. *James*, 408 U. S. 169, 180–184 (1972); it may attempt to require disclosure of the fact of membership in a group seeking anonymity, *e. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S. 87, 91–92 (1982); and it may try to interfere with the internal organization or affairs of the group, *e. g.*, *Cousins* v. *Wigoda*, 419 U. S. 477, 487–488 (1975). By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can

be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See *Abood* v. *Detroit Board of Education*, *supra*, at 234–235.

The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *E. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S., at 91–92; *Democratic Party* v. *Wisconsin*, 450 U. S., at 124; *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976) *(per curiam)*; *Cousins* v. *Wigoda*, 419 U. S., at 488; *American Party* v. *White*, 415 U. S. 767, 780–781 (1974); *NAACP* v. *Button*, 371 U. S., at 438; *Shelton* v. *Tucker*, 364 U. S. 486, 488 (1960). We are persuaded that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms.

On its face, the Minnesota Act does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria. See also *infra*, at 18–19. Nor do the Jaycees contend that the Act has been applied in this case for the purpose of hampering the organization's ability to express its views. Instead, as the Minnesota Supreme Court explained, the Act reflects the State's strong historical commitment to eliminating discrimination and assuring its citizens equal access to publicly available goods and services. See 305 N. W. 2d, at 766–768.

That goal, which is unrelated to the suppression of expression, plainly serves compelling state interests of the highest order.

The Minnesota Human Rights Act at issue here is an example of public accommodations laws that were adopted by some States beginning a decade before enactment of their federal counterpart, the Civil Rights Act of 1875, ch. 114, 48 Stat. 335. See Survey, 7 NYU Rev. L. & Soc. Change 215, 238 (1978) (hereinafter NYU Survey). Indeed, when this Court invalidated that federal statute in the *Civil Rights Cases*, 109 U. S. 3 (1883), it emphasized the fact that state laws imposed a variety of equal access obligations on public accommodations. *Id.*, at 19, 25. In response to that decision, many more States, including Minnesota, adopted statutes prohibiting racial discrimination in public accommodations. These laws provided the primary means for protecting the civil rights of historically disadvantaged groups until the Federal Government reentered the field in 1957. See NYU Survey 239; Brief for the States of California and New York as *Amicus Curiae* 1. Like many other States, Minnesota has progressively broadened the scope of its public accommodations law in the years since it was first enacted, both with respect to the number and type of covered facilities and with respect to the groups against whom discrimination is forbidden. See 305 N. W. 2d, at 766–768. In 1973, the Minnesota legislature added discrimination on the basis of sex to the types of conduct prohibited by the statute. Act of May 24, 1973, ch. 729, § 3, 1973 Minn. Laws 2158, 2164.

By prohibiting gender discrimination in places of public accommodation, the Minnesota Act protects the State's citizenry from a number of serious social and personal harms. In the context of reviewing state actions under the Equal Protection Clause, this Court has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces in-

dividuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life. See, *e. g.*, *Heckler* v. *Mathews*, —— U. S. ——, —— (1984); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718, 723–726 (1982); *Frontiero* v. *Richardson*, 411 U. S. 677, 684–687 (1973) (plurality opinion). These concerns are strongly implicated with respect to gender discrimination in the allocation of publicly available goods and services. Thus, in upholding Title II of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. § 2000a, which forbids race discrimination in public accommodations, we emphasized that its "fundamental object . . . was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 250 (1964). That stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race.

Nor is the state interest in assuring equal access limited to the provision of purely tangible goods and services. See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U. S. 592, 609 (1982). A State enjoys broad authority to create rights of public access on behalf of its citizens. *Pruneyard Shopping Center* v. *Robins*, 447 U. S. 74, 81–88 (1980). Like many States and municipalities, Minnesota has adopted a functional definition of public accommodations that reaches various forms of public, quasi-commercial conduct. See 305 N. W. 2d, at 768; Brief for National League of Cities *et al.* as *Amicus Curiae* 15–16. This expansive definition reflects a recognition of the changing nature of the American economy and of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain

disadvantaged groups, including women. See *Califano* v. *Webster*, 430 U. S. 313, 317 (1977) (*per curiam*); *Frontiero* v. *Richardson*, *supra*, at 684–686. Thus, in explaining its conclusion that the Jaycees local chapters are "place[s] of public accommodations" within the meaning of the Act, the Minnesota court noted the various commercial programs and benefits offered to members and stated that, "[l]eadership skills are 'goods,' [and] business contacts and employment promotions are 'privileges' and 'advantages'. . . ." 305 N. W. 2d, at 772. Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests.

In applying the Act to the Jaycees, the State has advanced those interests through the least restrictive means of achieving its ends. Indeed, the Jaycees have failed to demonstrate that the Act imposes any serious burdens on the male members' freedom of expressive association. See *Buckley* v. *Valeo*, 424 U. S., at 71–74; *American Party* v. *White*, 415 U. S., at 790. To be sure, as the Court of Appeals noted, a "not insubstantial part" of the Jaycees' activities constitutes protected expression on political, economic, cultural, and social affairs. 709 F. 2d, at 1570. Over the years, the national and local levels of the organization have taken public positions on a number of diverse issues, see *id.*, at 1569–1570; Brief for Appellee 4–5, and members of the Jaycees regularly engage in a variety of civic, charitable, lobbying, fundraising and other activities worthy of constitutional protection under the First Amendment, *ibid.*, see, *e. g.*, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 632 (1980). 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. The Act requires no change in the Jaycees' creed of promoting the interests of young men, and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or

philosophies different from those of its existing members. Cf. *Democratic Party* v. *Wisconsin*, 450 U. S., at 122 (recognizing the right of political parties to "protect themselves 'from intrusion by those with adverse political principles'"). Moreover, the Jaycees already invite women to share the group's views and philosophy and to participate in much of its training and community activities. Accordingly, any claim that admission of women as full voting members will impair a symbolic message conveyed by the very fact that women are not permitted to vote is attenuated at best. Cf. *Spence* v. *Washington*, 418 U. S. 405 (1974); *Griswold* v. *Connecticut*, 381 U. S., at 483.

While acknowledging that "the specific content of most of the resolutions adopted over the years by the Jaycees has nothing to do with sex," 709 F. 2d, at 1571, the Court of Appeals nonetheless entertained the hypothesis that women members might have a different view or agenda with respect to these matters so that, if they are allowed to vote, "some change in the Jaycees' philosophical cast can reasonably be expected," *ibid.* It is similarly arguable that, insofar as the Jaycees is organized to promote the views of young men whatever those views happen to be, admission of women as voting members will change the message communicated by the group's speech because of the gender-based assumptions of the audience. Neither supposition, however, is supported by the record. In claiming that women might have a different attitude about such issues as the federal budget, school prayer, voting rights, and foreign relations, see 709 F. 2d, at 1570, or that the organization's public positions would have a different effect if the group were not "a purely young men's association," the Jaycees rely solely on unsupported generalizations about the relative interests and perspectives of men and women. See Brief for Appellees 20–22 and n. 3. Although such generalizations may or may not have a statistical basis in fact with respect to particular positions adopted by the Jaycees, we have repeatedly condemned legal decision-

making that relies uncritically on such assumptions. See, *e. g.*, *Palmore* v. *Sidoti*, —— U. S. ——, ——— (1984); *Heckler* v. *Mathews*, —— U. S., at ———. In the absence of a showing far more substantial than that attempted by the Jaycees, we decline to indulge in the sexual stereotyping that underlies appellee's contention that, by allowing women to vote, application of the Minnesota Act will change the content or impact of the organization's speech. Compare *Wengler* v. *Druggists Mutual Insurance Co.*, 446 U. S. 142, 151–152 (1980) with *Schlesinger* v. *Ballard*, 419 U. S. 498, 508 (1975).

In any event, even if enforcement of the Act causes some incidental abridgement of the Jaycees' protected speech, that effect is no greater than is necessary to accomplish the State's legitimate purposes. As we have explained, acts of invidious discrimination cause unique evils that government has a compelling interest to prevent—wholly apart from the point of view such conduct may transmit. Accordingly, like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, the actual practice of invidious discrimination by an individual or group—as distinguished from its advocacy—is entitled to no constitutional protection. *Hishon* v. *King & Spalding*, —— U. S. ——, —— (1984); *Runyon* v. *McCrary*, 427 U. S. 160, 175–176 (1976). Compare *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909 (1982) (peaceful picketing) with *id.*, at 916 (violence). In prohibiting such practices in the distribution of publicly available goods and services, the Minnesota Act therefore "responds precisely to the substantive problem which legitimately concerns" the State and abridges no more speech or associational freedom than is necessary to accomplish that purpose. See *City Council* v. *Taxpayers for Vincent*, *ante*, at —— U. S. ——, —— (1984).

III

We turn finally to appellee's contentions that the Minnesota Act, as interpreted by the State's highest court, is unconstitutionally vague and overbroad. The void-for-vagueness doctrine reflects the principle that "a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Constuction Co.*, 269 U. S. 385, 391 (1925). The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review. See, *e. g.*, *Kolender* v. *Lawson*, —— U. S. ——, —— – —— (1983); *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972); *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402–404 (1966).

We have little trouble concluding that these concerns are not seriously implicated by the Minnesota Act, either on its face or as construed in this case. In determining that the Act reaches the Jaycees, the Minnesota Supreme Court used a number of specific and objective criteria—regarding the organization's size, selectivity, commercial nature, and use of public facilities—typically employed in determining the applicability of state and federal anti-discrimination statutes to the membership policies of assertedly private clubs. See, *e. g.*, *Nesmith* v. *Young Men's Christian Ass'n*, 397 F. 2d 96 (CA4 1968); *National Organization for Women* v. *Little League Baseball, Inc.*, 127 N. J. Super. 522, 318 A. 2d 33, *aff'd mem.*, 67 N. J. 320, 338 A. 2d 198 (1974). See generally NYU Survey 223–224, 250–252. The Court of Appeals seemingly acknowledged that the Minnesota court's construc-

tion of the Act by use of these familiar standards ensures that the reach of the statute is readily ascertainable. It nevertheless concluded that the Minnesota court introduced a constitutionally fatal element of uncertainty into the statute by suggesting that the Kiwanis Club might be sufficiently "private" to be outside the scope of the Act. See 709 F. 2d, at 1577. Like the dissenting judge in the Court of Appeals, however, we read the illustrative reference to the Kiwanis Club, which the record indicates has a formal procedure for choosing members on the basis of specific and selective criteria, as simply providing a further refinement of the standards used to determine whether an organization is "public" or "private." See *id.*, at 1582 (Lay, C. J., dissenting). By offering this counter-example, the Minnesota Supreme Court's opinion provided the statute with more, rather than less, definite content.

The contrast between the Jaycees and the Kiwanis Club drawn by the Minnesota court also disposes of appellee's contention that the Act is unconstitutionally overbroad. The Jaycees argue that the statute is "susceptible of sweeping and improper application," *NAACP* v. *Button*, 371 U. S. 415, 433 (1963), because it could be used to restrict the membership decisions of wholly private groups organized for a wide variety of political, religious, cultural, or social purposes. Without considering the extent to which such groups may be entitled to constitutional protection from the operation of the Minnesota Act, we need only note that the Minnesota Supreme Court expressly rejected the contention that the Jaycees should "be viewed analogously to private organizations such as the Kiwanis International Organization." 305 N. W. 2d, at 771. The state court's articulated willingness to adopt limiting constructions that would exclude private groups from the statute's reach, together with the commonly used and sufficiently precise standards it employed to determine that the Jaycees is not such a group, establish that the Act, as currently construed, does not create an unacceptable risk

of application to a substantial amount of protected conduct. Cf. *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, 216–217 (1975); *NAACP* v. *Button*, *supra*, at 434. See *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982).

IV

The judgment of the Court of Appeals is

Reversed

Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 12 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-724

KATHRYN R. ROBERTS, ACTING COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ET AL. *v.* UNITED STATES JAYCEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to address a conflict between a State's efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization. In the decision under review, the Court of Appeals for the Eighth Circuit concluded that, by requiring the United States Jaycees to admit women as full voting members, the Minnesota Human Rights Act violates the First and Fourteenth Amendment rights of the organization's members. We noted probable jurisdiction, —— U. S. ——, and now reverse.

I

A

The United States Jaycees (Jaycees), founded in 1920 as the Junior Chamber of Commerce, is a nonprofit membership corporation, incorporated in Missouri with national headquarters in Tulsa, Oklahoma. The objective of the Jaycees, as set out in its bylaws, is to pursue

> "such educational and charitable purposes as will promote and foster the growth and development of young men's civic organizations in the United States, designed to inculcate in the individual membership of such orga-

> nization a spirit of genuine Americanism and civic interest, and as a supplementary education institution to provide them with opportunity for personal development and achievement and an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and understanding among young men of all nations." Quoted in Brief for Appellee 2.

The organization's bylaws establish seven classes of membership, including individual or regular members, associate individual members, and local chapters. Regular membership is limited to young men between the ages of 18 and 35, while associate membership is available to individuals or groups ineligible for regular membership, principally women and older men. An associate member, whose dues are somewhat lower than those charged regular members, may not vote, hold local or national office, or participate in certain leadership training and awards programs. The bylaws define a local chapter as "any young men's organization of good repute existing in any community within the United States, organized for purposes similar to and consistent with those" of the national organization. App. to Juris. Statement A98. The ultimate policymaking authority of the Jaycees rests with an annual national convention, consisting of delegates from each local chapter, with a national president and board of directors. At the time of trial in August 1981, the Jaycees had approximately 295,000 members in 7,400 local chapters affiliated with 51 state organizations. There were at that time about 11,915 associate members. The national organization's Executive Vice President estimated at trial that women associate members make up about two percent of the Jaycees' total membership. Tr. 56.

New members are recruited to the Jaycees through the local chapters, although the state and national organizations are also actively involved in recruitment through a variety of promotional activities. A new regular member pays an ini-

tial fee followed by annual dues; in exchange, he is entitled to participate in all of the activities of the local, state, and national organizations. The national headquarters employs a staff to develop "program kits" for use by local chapters that are designed to enhance individual development, community development, and members' management skills. These materials include courses in public speaking and personal finances as well as community programs related to charity, sports, and public health. The national office also makes available to members a range of personal products, including travel accessories, casual wear, pins, awards, and other gifts. The programs, products, and other activities of the organization are all regularly featured in publications made available to the membership, including a magazine entitled "Future."

B

In 1974 and 1975, respectively, the Minneapolis and St. Paul chapters of the Jaycees began admitting women as regular members. Currently, the memberships and boards of directors of both chapters include a substantial proportion of women. As a result, the two chapters have been in violation of the national organization's bylaws for about ten years. The national organization has imposed a number of sanctions on the Minneapolis and St. Paul chapters for violating the bylaws, including denying their members eligibility for state or national office or awards programs, and refusing to count their membership in computing votes at national conventions.

In December 1978, the president of the national organization advised both chapters that a motion to revoke their charters would be considered at a forthcoming meeting of the national board of directors in Tulsa. Shortly after receiving this notification, members of both chapters filed charges of discrimination with the Minnesota Department of Human Rights. The complaints alleged that the exclusion of women from full membership required by the national organization's

bylaws violated the Minnesota Human Rights Act (Act), which provides in part:

> "It is an unfair discriminatory practice:
> "To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex." Minn. Stat. § 363.03, subd. 3 (1982).

The term "place of public accommodation" is defined in the Act as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public." *Id.*, § 363.01, subd. 18.

After an investigation, the Commissioner of the Minnesota Department of Human Rights found probable cause to believe that the sanctions imposed on the local chapters by the national organization violated the statute and ordered that an evidentiary hearing be held before a state hearing examiner. Before that hearing took place, however, the national organization brought suit against various state officials, appellants here, in the United States District Court for the District of Minnesota, seeking declaratory and injunctive relief to prevent enforcement of the Act. The complaint alleged that, by requiring the organization to accept women as regular members, application of the Act would violate the male members' constitutional rights of free speech and association. With the agreement of the parties, the District Court dismissed the suit without prejudice, stating that it could be renewed in the event the state administrative proceeding resulted in a ruling adverse to the Jaycees.

The proceeding before the Minnesota Human Rights Department hearing examiner then went forward and, upon its completion, the examiner filed findings of fact and conclusions of law. The examiner concluded that the Jaycees orga-

nization is a "place of public accommodation" within the Act and that it had engaged in an unfair discriminatory practice by excluding women from regular membership. He ordered the national organization to cease and desist from discriminating against any member or applicant for membership on the basis of sex and from imposing sanctions on any Minnesota affiliate for admitting women. *Minnesota* v. *United States Jaycees*, No. HR–79–014–GB (Minn. Office of Hearing Examiners for the Dept. of Human Rights, October 9, 1979) (hereinafter "Report"), App. to Juris. Statement A107–A109. The Jaycees then filed a renewed complaint in the District Court, which in turn certified to the Minnesota Supreme Court the question whether the Jaycees organization is a "place of public accommodation" within the meaning of the State's Human Rights Act. See App. 32.

With the record of the administrative hearing before it, the Minnesota Supreme Court answered that question in the affirmative. *United States Jaycees* v. *McClure*, 305 N. W. 2d 764 (1981). Based on the Act's legislative history, the court determined that the statute is applicable to any "public business facility." *Id.*, at 768. It then concluded that the Jaycees organization (a) is a "business" in that it sells goods and extends privileges in exchange for annual membership dues; (b) is a "public" business in that it solicits and recruits dues-paying members based on unselective criteria; and (c) is a public business "facility" in that it conducts its activities at fixed and mobile sites within the State of Minnesota. *Id.*, at 768–774.

Subsequently, the Jaycees amended their complaint in the District Court to add a claim that the Minnesota Supreme Court's interpretation of the Act rendered it unconstitutionally vague and overbroad. The federal suit then proceeded to trial, after which the District Court entered judgment in favor of the state officials. *United States Jaycees* v. *McClure*, 534 F. Supp. 766 (Minn. 1982). On appeal, a divided Court of Appeals for the Eighth Circuit reversed. 709 F. 2d

1560 (1983). The Court of Appeals determined that, because "the advocacy of political and public causes, selected by the membership, is a not insubstantial part of what [the Jaycees] does," the organization's right to select its members is protected by the freedom of association guaranteed by the First Amendment. *Id.*, at 1570. It further decided that application of the Minnesota statute to the Jaycees' membership policies would produce a "direct and substantial" interference with that freedom, *id.*, at 1572, because it would necessarily result in "some change in the Jaycees' philosophical cast," *id.*, at 1571, and would attach penal sanctions to those responsible for maintaining the policy, *id.*, at 1572. The court concluded that the State's interest in eradicating discrimination is not sufficiently compelling to outweigh this interference with the Jaycees' constitutional rights, because the organization is not wholly "public," *id.*, at 1571–1572, 1573, the state interest had been asserted selectively, *id.*, at 1573, and the anti-discrimination policy could be served in a number of ways less intrusive of First Amendment freedoms, *id.*, at 1573–1574.

Finally, the court held, in the alternative, that the Minnesota statute is vague as construed and applied and therefore unconstitutional under the Due Process Clause of the Fourteenth Amendment. In support of this conclusion, the court relied on a statement in the opinion of the Minnesota Supreme Court suggesting that, unlike the Jaycees, the Kiwanis Club is "private" and therefore not subject to the Act. By failing to provide any criteria that distinguish such "private" organizations from the "public accommodations" covered by the statute, the Court of Appeals reasoned, the Minnesota Supreme Court's interpretation rendered the Act unconstitutionally vague. *Id.*, at 1576–1578.

II

Our decisions have referred to constitutionally protected "freedom of association" in two distinct senses. In one line

of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

The intrinsic and instrumental features of constitutionally protected association may, of course, coincide. In particular, when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated. The Jaycees contend that this is such a case. Still, the nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case. We therefore find it useful to consider separately the effect of applying the Minnesota statute to the Jaycees on what could be called its members' freedom of intimate association and their freedom of expressive association.

A

The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships, most notably those arising in a family context, a substantial measure of sanctuary from unjustified interference by the State. *E. g.*, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). Without precisely identifying every

consideration that may underlie this type of constitutional protection, we have noted that family bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the State. See, *e. g.*, *Zablocki* v. *Redhail*, 434 U. S. 374, 383–386 (1978); *Moore* v. *City of East Cleveland*, 431 U. S. 494, 503–504 (1977) (plurality opinion); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1973); *Griswold* v. *Connecticut*, 381 U. S. 479, 482–485 (1965); *Pierce* v. *Society of Sisters*, *supra*, at 535. See also *Gilmore* v. *City of Montgomery*, 417 U. S. 556, 575 (1974); *NAACP* v. *Alabama*, 357 U. S. 449, 460–462 (1958); *Poe* v. *Ullman*, 367 U. S. 497, 542–545 (1961) (Harlan, J., dissenting). Moreover, the constitutional shelter afforded family relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting such relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty. See, *e. g.*, *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 844 (1977); *Carey* v. *Population Services Int'l*, 431 U. S. 678, 684–686 (1977); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974); *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972); *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

Some special characteristics of family relationships suggest relevant limitations on the scope of this kind of constitutional protection. By their nature, such relationships involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things, therefore, they are distinguished by attributes of intimacy—

relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only a relationship that can be described as "intimate" seems likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking the qualities of intimacy—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection. Accordingly, the Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees. Compare *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) with *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 93–94 (1945).

Between these "poles", of course, lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State. Determining the limits of state authority over an individual's freedom to enter into a particular association therefore unavoidably entails a careful assessment of where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments. See generally *Runyon* v. *McCrary*, 427 U. S. 160, 187–189 (1976) (POWELL, J., concurring). We need not mark the potentially significant points on this terrain with any precision in this case, however, for several features of the Jaycees clearly deprive it of the intimacy that might render its members' choice of associates worthy of constitutional protection.

The undisputed facts reveal that the local chapters of the Jaycees are large and basically unselective groups. At the time of the state administrative hearing, the Minneapolis chapter had approximately 430 members, while the St. Paul chapter had about 400. Report A–99, A–100. Apart from age and sex, neither the national organization nor the local

chapters employs any criteria for judging applicants for membership, and new members are routinely recruited and admitted with no inquiry into their backgrounds. See I Tr. of State Administrative Hearing 124–132, 135–136, 174–176. In fact, a local officer testified that he could recall no instance in which an applicant had been denied membership on any basis other than age or sex. *Id.*, at 135. Cf. *Tillman* v. *Wheaton-Haven Recreational Ass'n*, 410 U. S. 431, 438 (1973) (organization whose only selection criteria is race has "no plan or purpose of exclusiveness" that might make it a private club exempt from federal civil rights statute); *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 236 (1969) (same); *Daniel* v. *Paul*, 395 U. S. 298, 302 (1969) (same). Furthermore, despite their inability to vote, hold office, or receive certain awards, women affiliated with the Jaycees attend various meetings, participate in selected projects, and engage in many of the organization's social functions. See Tr. 58. Indeed, numerous non-members of both genders regularly participate in a substantial portion of activities central to the decision of many members to associate with one another, including many of the organization's various community programs, awards ceremonies, and recruitment meetings. See, *e. g.*, 305 N. W. 2d, at 772; Report A102, A103.

In short, the local chapters of the Jaycees are neither small nor selective. Moreover, much of the activity central to the formation and maintenance of the association involves the participation of strangers to that relationship. Accordingly, we conclude that the Jaycees chapters lack the distinctive characteristics of intimate association that might afford constitutional protection to the decision of its members to exclude women. We turn therefore to consider the extent to which application of the Minnesota statute to compel the Jaycees to accept women infringes the group's freedom of expressive association.

B

An individual's freedom to speak, to worship, and to petition the Government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, *e. g.*, *Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 294 (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, *e. g. Gilmore* v. *City of Montgomery*, 417 U. S., at 575; *Griswold* v. *Connecticut*, 381 U. S., at 482–485; *NAACP* v. *Button*, 371 U. S. 415, 431 (1963); *NAACP* v. *Alabama*, 357 U. S., at 462. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, *e. g.*, *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909, 932–933 (1982); *Larson* v. *Valente*, 456 U. S. 228, 244–246 (1982); *In re Primus*, 436 U. S. 412, 426 (1978); *Abood* v. *Detroit Board of Education*, 431 U. S. 209, 231 (1977).

Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, *e. g.*, *Healy* v. *James*, 408 U. S. 169, 180–184 (1972); it may attempt to require disclosure of the fact of membership in a group seeking anonymity, *e. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S. 87, 91–92 (1982); and it may try to interfere with the internal organization or affairs of the group, *e. g.*, *Cousins* v. *Wigoda*, 419 U. S. 477, 487–488 (1975). By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can

be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See *Abood* v. *Detroit Board of Education*, *supra*, at 234–235.

The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *E. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S., at 91–92; *Democratic Party* v. *Wisconsin*, 450 U. S., at 124; *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976) *(per curiam)*; *Cousins* v. *Wigoda*, 419 U. S., at 488; *American Party* v. *White*, 415 U. S. 767, 780–781 (1974); *NAACP* v. *Button*, 371 U. S., at 438; *Shelton* v. *Tucker*, 364 U. S. 486, 488 (1960). We are persuaded that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms.

On its face, the Minnesota Act does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria. See also *infra*, at 18–19. Nor do the Jaycees contend that the Act has been applied in this case for the purpose of hampering the organization's ability to express its views. Instead, as the Minnesota Supreme Court explained, the Act reflects the State's strong historical commitment to eliminating discrimination and assuring its citizens equal access to publicly available goods and services. See 305 N. W. 2d, at 766–768.

That goal, which is unrelated to the suppression of expression, plainly serves compelling state interests of the highest order.

The Minnesota Human Rights Act at issue here is an example of public accommodations laws that were adopted by some States beginning a decade before enactment of their federal counterpart, the Civil Rights Act of 1875, ch. 114, 48 Stat. 335. See Survey, 7 NYU Rev. L. & Soc. Change 215, 238 (1978) (hereinafter NYU Survey). Indeed, when this Court invalidated that federal statute in the *Civil Rights Cases*, 109 U. S. 3 (1883), it emphasized the fact that state laws imposed a variety of equal access obligations on public accommodations. *Id.*, at 19, 25. In response to that decision, many more States, including Minnesota, adopted statutes prohibiting racial discrimination in public accommodations. These laws provided the primary means for protecting the civil rights of historically disadvantaged groups until the Federal Government reentered the field in 1957. See NYU Survey 239; Brief for the States of California and New York as *Amicus Curiae* 1. Like many other States, Minnesota has progressively broadened the scope of its public accommodations law in the years since it was first enacted, both with respect to the number and type of covered facilities and with respect to the groups against whom discrimination is forbidden. See 305 N. W. 2d, at 766–768. In 1973, the Minnesota legislature added discrimination on the basis of sex to the types of conduct prohibited by the statute. Act of May 24, 1973, ch. 729, § 3, 1973 Minn. Laws 2158, 2164.

By prohibiting gender discrimination in places of public accommodation, the Minnesota Act protects the State's citizenry from a number of serious social and personal harms. In the context of reviewing state actions under the Equal Protection Clause, this Court has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces in-

dividuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life. See, *e. g.*, *Heckler* v. *Mathews*, —— U. S. ——, —— (1984); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718, 723–726 (1982); *Frontiero* v. *Richardson*, 411 U. S. 677, 684–687 (1973) (plurality opinion). These concerns are strongly implicated with respect to gender discrimination in the allocation of publicly available goods and services. Thus, in upholding Title II of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. § 2000a, which forbids race discrimination in public accommodations, we emphasized that its "fundamental object . . . was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 250 (1964). That stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race.

Nor is the state interest in assuring equal access limited to the provision of purely tangible goods and services. See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U. S. 592, 609 (1982). A State enjoys broad authority to create rights of public access on behalf of its citizens. *Pruneyard Shopping Center* v. *Robins*, 447 U. S. 74, 81–88 (1980). Like many States and municipalities, Minnesota has adopted a functional definition of public accommodations that reaches various forms of public, quasi-commercial conduct. See 305 N. W. 2d, at 768; Brief for National League of Cities *et al.* as *Amicus Curiae* 15–16. This expansive definition reflects a recognition of the changing nature of the American economy and of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain

disadvantaged groups, including women. See *Califano* v. *Webster*, 430 U. S. 313, 317 (1977) (*per curiam*); *Frontiero* v. *Richardson*, *supra*, at 684–686. Thus, in explaining its conclusion that the Jaycees local chapters are "place[s] of public accommodations" within the meaning of the Act, the Minnesota court noted the various commercial programs and benefits offered to members and stated that, "[l]eadership skills are 'goods,' [and] business contacts and employment promotions are 'privileges' and 'advantages'. . . ." 305 N. W. 2d, at 772. Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests.

In applying the Act to the Jaycees, the State has advanced those interests through the least restrictive means of achieving its ends. Indeed, the Jaycees have failed to demonstrate that the Act imposes any serious burdens on the male members' freedom of expressive association. See *Buckley* v. *Valeo*, 424 U. S., at 71–74; *American Party* v. *White*, 415 U. S., at 790. To be sure, as the Court of Appeals noted, a "not insubstantial part" of the Jaycees' activities constitutes protected expression on political, economic, cultural, and social affairs. 709 F. 2d, at 1570. Over the years, the national and local levels of the organization have taken public positions on a number of diverse issues, see *id.*, at 1569–1570; Brief for Appellee 4–5, and members of the Jaycees regularly engage in a variety of civic, charitable, lobbying, fundraising and other activities worthy of constitutional protection under the First Amendment, *ibid.*, see, *e. g.*, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 632 (1980). 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. The Act requires no change in the Jaycees' creed of promoting the interests of young men, and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or

philosophies different from those of its existing members. Cf. *Democratic Party* v. *Wisconsin*, 450 U. S., at 122 (recognizing the right of political parties to "protect themselves 'from intrusion by those with adverse political principles'"). Moreover, the Jaycees already invite women to share the group's views and philosophy and to participate in much of its training and community activities. Accordingly, any claim that admission of women as full voting members will impair a symbolic message conveyed by the very fact that women are not permitted to vote is attenuated at best. Cf. *Spence* v. *Washington*, 418 U. S. 405 (1974); *Griswold* v. *Connecticut*, 381 U. S., at 483.

While acknowledging that "the specific content of most of the resolutions adopted over the years by the Jaycees has nothing to do with sex," 709 F. 2d, at 1571, the Court of Appeals nonetheless entertained the hypothesis that women members might have a different view or agenda with respect to these matters so that, if they are allowed to vote, "some change in the Jaycees' philosophical cast can reasonably be expected," *ibid.* It is similarly arguable that, insofar as the Jaycees is organized to promote the views of young men whatever those views happen to be, admission of women as voting members will change the message communicated by the group's speech because of the gender-based assumptions of the audience. Neither supposition, however, is supported by the record. In claiming that women might have a different attitude about such issues as the federal budget, school prayer, voting rights, and foreign relations, see 709 F. 2d, at 1570, or that the organization's public positions would have a different effect if the group were not "a purely young men's association," the Jaycees rely solely on unsupported generalizations about the relative interests and perspectives of men and women. See Brief for Appellees 20–22 and n. 3. Although such generalizations may or may not have a statistical basis in fact with respect to particular positions adopted by the Jaycees, we have repeatedly condemned legal decision-

making that relies uncritically on such assumptions. See, *e. g.*, *Palmore* v. *Sidoti*, —— U. S. ——, ——-—— (1984); *Heckler* v. *Mathews*, —— U. S., at ——-——. In the absence of a showing far more substantial than that attempted by the Jaycees, we decline to indulge in the sexual stereotyping that underlies appellee's contention that, by allowing women to vote, application of the Minnesota Act will change the content or impact of the organization's speech. Compare *Wengler* v. *Druggists Mutual Insurance Co.*, 446 U. S. 142, 151–152 (1980) with *Schlesinger* v. *Ballard*, 419 U. S. 498, 508 (1975).

In any event, even if enforcement of the Act causes some incidental abridgement of the Jaycees' protected speech, that effect is no greater than is necessary to accomplish the State's legitimate purposes. As we have explained, acts of invidious discrimination cause unique evils that government has a compelling interest to prevent—wholly apart from the point of view such conduct may transmit. Accordingly, like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, the actual practice of invidious discrimination by an individual or group—as distinguished from its advocacy—is entitled to no constitutional protection. *Hishon* v. *King & Spalding*, —— U. S. ——, —— (1984); *Runyon* v. *McCrary*, 427 U. S. 160, 175–176 (1976). Compare *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909 (1982) (peaceful picketing) with *id.*, at 916 (violence). In prohibiting such practices in the distribution of publicly available goods and services, the Minnesota Act therefore "responds precisely to the substantive problem which legitimately concerns" the State and abridges no more speech or associational freedom than is necessary to accomplish that purpose. See *City Council* v. *Taxpayers for Vincent*, *ante*, at —— U. S. ——, —— (1984).

Omit — only an allegation

III

We turn finally to appellee's contentions that the Minnesota Act, as interpreted by the State's highest court, is unconstitutionally vague and overbroad. The void-for-vagueness doctrine reflects the principle that "a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Constuction Co.*, 269 U. S. 385, 391 (1925). The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review. See, *e. g.*, *Kolender* v. *Lawson*, —— U. S. ——, —— – —— (1983); *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972); *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402–404 (1966).

We have little trouble concluding that these concerns are not seriously implicated by the Minnesota Act, either on its face or as construed in this case. In determining that the Act reaches the Jaycees, the Minnesota Supreme Court used a number of specific and objective criteria—regarding the organization's size, selectivity, commercial nature, and use of public facilities—typically employed in determining the applicability of state and federal anti-discrimination statutes to the membership policies of assertedly private clubs. See, *e. g.*, *Nesmith* v. *Young Men's Christian Ass'n*, 397 F. 2d 96 (CA4 1968); *National Organization for Women* v. *Little League Baseball, Inc.*, 127 N. J. Super. 522, 318 A. 2d 33, *aff'd mem.*, 67 N. J. 320, 338 A. 2d 198 (1974). See generally NYU Survey 223–224, 250–252. The Court of Appeals seemingly acknowledged that the Minnesota court's construc-

tion of the Act by use of these familiar standards ensures that the reach of the statute is readily ascertainable. It nevertheless concluded that the Minnesota court introduced a constitutionally fatal element of uncertainty into the statute by suggesting that the Kiwanis Club might be sufficiently "private" to be outside the scope of the Act. See 709 F. 2d, at 1577. Like the dissenting judge in the Court of Appeals, however, we read the illustrative reference to the Kiwanis Club, which the record indicates has a formal procedure for choosing members on the basis of specific and selective criteria, as simply providing a further refinement of the standards used to determine whether an organization is "public" or "private." See *id.*, at 1582 (Lay, C. J., dissenting). By offering this counter-example, the Minnesota Supreme Court's opinion provided the statute with more, rather than less, definite content.

The contrast between the Jaycees and the Kiwanis Club drawn by the Minnesota court also disposes of appellee's contention that the Act is unconstitutionally overbroad. The Jaycees argue that the statute is "susceptible of sweeping and improper application," *NAACP* v. *Button*, 371 U. S. 415, 433 (1963), because it could be used to restrict the membership decisions of wholly private groups organized for a wide variety of political, religious, cultural, or social purposes. Without considering the extent to which such groups may be entitled to constitutional protection from the operation of the Minnesota Act, we need only note that the Minnesota Supreme Court expressly rejected the contention that the Jaycees should "be viewed analogously to private organizations such as the Kiwanis International Organization." 305 N. W. 2d, at 771. The state court's articulated willingness to adopt limiting constructions that would exclude private groups from the statute's reach, together with the commonly used and sufficiently precise standards it employed to determine that the Jaycees is not such a group, establish that the Act, as currently construed, does not create an unacceptable risk

of application to a substantial amount of protected conduct. Cf. *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, 216–217 (1975); *NAACP* v. *Button*, *supra*, at 434. See *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982).

IV

The judgment of the Court of Appeals is

Reversed

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 12, 1984

Re: 83-724 - Roberts v. U.S. Jaycees

MEMORANDUM TO THE CONFERENCE:

When this case came up, I concluded I would "hear them out" and then decide on participation.

A century ago (or is it a half?), I was President of the St. Paul Jr. Association. Later, I was national vice president. With some others I advocated that business and professional women be admitted on the same basis as men. It was an idea whose time had not arrived. It has now, even though the Minnesota opinion leaves something to be desired.

As of now, it seems to me it would be better if I "recuse."

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1984

Re: 83-724 - Roberts v. United States Jaycees

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

jen 06/13/84

MEMORANDUM TO JUSTICE POWELL

From: Joe

Re: 83-724 Roberts v. US Jaycees

You asked for my comments on your proposed note to WJB. I see now that the note is concerned only with his choice of labels for the idea he is developing. Since he uses the term "intimate" in quotes on p. 9, I am not sure that readers will think he is talking about the normal sense of the word, rather than the sense that is defined in the carryover sentence on page 9. Nevertheless, it is probably true, as you suggest, that the label will exert a subtle pressure in a direction that would tend to exclude at least the larger clubs of the sort you are talking about.

I have three suggestions on your letter. First, I have suggested new language for one sentence on page 2. Second, I suggest deleting the example you give on page 3. I am not sure what it is intended to show. I do not think it is needed merely as an example of a large club. And it may not be self-evident to all the Justices which side of the line of constitutional protection this particular club falls. Third, one other sentence of WJB's opinion might also be cited to him, to wit, the final sentence of the only full paragraph on page 9.

June 14, 1984

83-724 Roberts v. Jaycees

Dear Bill:

I am circulating the enclosed comments on your opinion to the Conference because of the lateness of the Term.

Normally I would exchange views privately - as you and I frequently do. But in view of our hope to conclude this Term in another couple of weeks, it may be helpful to get our thoughts out on the table promptly for all of us to see.

I do think your opinion is excellent, and with modest changes along the lines suggested, it will be another hallmark decision.

Sincerely,

Justice Brennan

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1984

Re: Roberts v. United States Jaycees, No. 83-724

Dear Lewis:

I'm delighted to adopt your very helpful suggestions and will incorporate them in the next circulation as per the enclosed. Does this do the job?

Sincerely,

Bill

WJB, Jr.

Justice Powell

June 14, 1984

83-724 Roberts v. Jaycees

Dear Bill:

Subject to the suggestions mentioned below, I will be happy to join your well written opinion.

You identify protected "freedom of association" in "two distinct senses" (p. 6, 7). I am with you, and what you have written, with respect to the second of these: activities protected by the First Amendment such as speech, assembly, etc.

It seems to me, however, that you unnecessarily limit the first "sense" - "human relationships" - too narrowly. The only example given is the "family context", and you emphasize the necessity that the relationships be "intimate". See particularly the first full sentence on page 9, the final sentence of the full paragraph on p. 9, and the next to last sentence on page 10.

This opinion is likely to have its greatest effect when applied to the enormous number and variety of clubs that are so typically American. Intimacy is unlikely to be a characteristic of most of these. Nor will they all be small.

Rather than say that "only a relationship that can be described as 'intimate'" is likely to come within the concept of personal liberty (p. 9), would it not be more judicious simply to identify - without indicating relative importance - some of the considerations that may be relevant: e.g., selectivity, size, purpose, congeniality, and other characteristics that may in particular cases be important.

Very modest changes in some of the language on pages 7-10 would leave open for consideration on a case-by-case basis the almost infinite types of "club" situations in our country.

The remainder of your opinion is first rate.

Sincerely,

Justice Brennan

lfp/ss
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1984

No. 83-724 Roberts v. United States

Dear Bill,

I have read with interest your opinion in this exceedingly difficult case. While I generally agree with Part IIB, I doubt that I will be able to join Part IIA as it now stands. Memories of New York v. Uplinger are still too fresh for me to be eager to go along with any very detailed exposition of constitutional rights to intimate association. I am most uncomfortable with the material in Part IIA that begins on page 7 and ends at the end of the last full paragraph on page 9.

Would you be willing to shorten Part IIA to something along the following lines instead?

> The Court has previously held that the formation and preservation of certain kinds of highly personal relationships, most notably those arising in a family context, find some measure of constitutional protection. See, e.g., Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925); Wisconsin v. Yoder, 406 U.S. 205, 232 (1973); Zablocki v. Redhail, 434 U.S. 374, 383-386 (1978). The relationships involved in these cases were distinguished by several attributes--relative smallness, high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship.

> Whatever the precise scope of the constitutional protection involved in these cases may be, it certainly does not extend to an organization of 295,000 members divided into 7,400 local chapters that accepts into membership any and all male applicants within certain age groups. [From here on I would be prepared to go along with the material of your Part IIA that starts with the runover paragraph on pp. 9-10 and ends at the bottom of p.10.]

Lewis has also written you about Part IIA and I do not disagree with his suggestions.

I also wonder if your Part IIB might not be adjusted to include a somewhat greater emphasis on the commercial nature of the Jaycees' operation. I don't have anything specific in mind here, but I do wish to avoid deciding the rights of, say, the Girl Scouts, the Boy Scouts, or other single-sex or single-race organizations that are less commercial in character than the Jaycees.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

June 15, 1984

83-724 Roberts v. Jaycees

Dear Bill:

The changes in the draft you were good enough to "mark up" are entirely satisfactory with respect to the "personal affiliations" that - as you say - "attend the creation and sustenance of a family . . ."

The clarification you are making in the final sentence of the full paragraph on p. 9 is particularly helpful. I think some additional guidance would be given if this concluding sentence were enlarged as follows:

> "We need not mark the potentially significant points on this terrain with any precision. We note only that factors that may be relevant include size, purpose, policies, selectivity, and other characteristics that in a particular case may be pertinent. In this case, however, several features of the Jaycees clearly place the organization outside of the category of relationships worthy of this kind of constitutional protection."

If you could accommodate me on this clarification, you will have my join note promptly.

Sincerely,

Justice Brennan

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 15, 1984

No. 83-724-Roberts v. United States Jaycees

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1984

Re: No. 83-724 - Roberts v. United States Jaycees

Dear Bill:

At the end of your opinion, will you please add the following:

"JUSTICE BLACKMUN took no part in the decision of this case."

Sincerely,

Harry

Justice Brennan

cc: The Conference

style +
7-12,18,20

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: 6/18/84

Bill made changes requested

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-724

KATHRYN R. ROBERTS, ACTING COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ET AL. *v.* UNITED STATES JAYCEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to address a conflict between a State's efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization. In the decision under review, the Court of Appeals for the Eighth Circuit concluded that, by requiring the United States Jaycees to admit women as full voting members, the Minnesota Human Rights Act violates the First and Fourteenth Amendment rights of the organization's members. We noted probable jurisdiction, —— U. S. ——, and now reverse.

I

A

The United States Jaycees (Jaycees), founded in 1920 as the Junior Chamber of Commerce, is a nonprofit membership corporation, incorporated in Missouri with national headquarters in Tulsa, Oklahoma. The objective of the Jaycees, as set out in its bylaws, is to pursue

> "such educational and charitable purposes as will promote and foster the growth and development of young men's civic organizations in the United States, designed to inculcate in the individual membership of such orga-

> nization a spirit of genuine Americanism and civic interest, and as a supplementary education institution to provide them with opportunity for personal development and achievement and an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and understanding among young men of all nations." Quoted in Brief for Appellee 2.

The organization's bylaws establish seven classes of membership, including individual or regular members, associate individual members, and local chapters. Regular membership is limited to young men between the ages of 18 and 35, while associate membership is available to individuals or groups ineligible for regular membership, principally women and older men. An associate member, whose dues are somewhat lower than those charged regular members, may not vote, hold local or national office, or participate in certain leadership training and awards programs. The bylaws define a local chapter as "any young men's organization of good repute existing in any community within the United States, organized for purposes similar to and consistent with those" of the national organization. App. to Juris. Statement A98. The ultimate policymaking authority of the Jaycees rests with an annual national convention, consisting of delegates from each local chapter, with a national president and board of directors. At the time of trial in August 1981, the Jaycees had approximately 295,000 members in 7,400 local chapters affiliated with 51 state organizations. There were at that time about 11,915 associate members. The national organization's Executive Vice President estimated at trial that women associate members make up about two percent of the Jaycees' total membership. Tr. 56.

New members are recruited to the Jaycees through the local chapters, although the state and national organizations are also actively involved in recruitment through a variety of promotional activities. A new regular member pays an ini-

tial fee followed by annual dues; in exchange, he is entitled to participate in all of the activities of the local, state, and national organizations. The national headquarters employs a staff to develop "program kits" for use by local chapters that are designed to enhance individual development, community development, and members' management skills. These materials include courses in public speaking and personal finances as well as community programs related to charity, sports, and public health. The national office also makes available to members a range of personal products, including travel accessories, casual wear, pins, awards, and other gifts. The programs, products, and other activities of the organization are all regularly featured in publications made available to the membership, including a magazine entitled "Future."

B

In 1974 and 1975, respectively, the Minneapolis and St. Paul chapters of the Jaycees began admitting women as regular members. Currently, the memberships and boards of directors of both chapters include a substantial proportion of women. As a result, the two chapters have been in violation of the national organization's bylaws for about 10 years. The national organization has imposed a number of sanctions on the Minneapolis and St. Paul chapters for violating the bylaws, including denying their members eligibility for state or national office or awards programs, and refusing to count their membership in computing votes at national conventions.

In December 1978, the president of the national organization advised both chapters that a motion to revoke their charters would be considered at a forthcoming meeting of the national board of directors in Tulsa. Shortly after receiving this notification, members of both chapters filed charges of discrimination with the Minnesota Department of Human Rights. The complaints alleged that the exclusion of women from full membership required by the national organization's

bylaws violated the Minnesota Human Rights Act (Act), which provides in part:

> "It is an unfair discriminatory practice:
>
> "To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex." Minn. Stat. § 363.03, subd. 3 (1982).

The term "place of public accommodation" is defined in the Act as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public." *Id.*, § 363.01, subd. 18.

After an investigation, the Commissioner of the Minnesota Department of Human Rights found probable cause to believe that the sanctions imposed on the local chapters by the national organization violated the statute and ordered that an evidentiary hearing be held before a state hearing examiner. Before that hearing took place, however, the national organization brought suit against various state officials, appellants here, in the United States District Court for the District of Minnesota, seeking declaratory and injunctive relief to prevent enforcement of the Act. The complaint alleged that, by requiring the organization to accept women as regular members, application of the Act would violate the male members' constitutional rights of free speech and association. With the agreement of the parties, the District Court dismissed the suit without prejudice, stating that it could be renewed in the event the state administrative proceeding resulted in a ruling adverse to the Jaycees.

The proceeding before the Minnesota Human Rights Department hearing examiner then went forward and, upon its completion, the examiner filed findings of fact and conclu-

sions of law. The examiner concluded that the Jaycees organization is a "place of public accommodation" within the Act and that it had engaged in an unfair discriminatory practice by excluding women from regular membership. He ordered the national organization to cease and desist from discriminating against any member or applicant for membership on the basis of sex and from imposing sanctions on any Minnesota affiliate for admitting women. *Minnesota* v. *United States Jaycees*, No. HR–79–014–GB (Minn. Office of Hearing Examiners for the Dept. of Human Rights, October 9, 1979) (hereinafter "Report"), App. to Juris. Statement A107–A109. The Jaycees then filed a renewed complaint in the District Court, which in turn certified to the Minnesota Supreme Court the question whether the Jaycees organization is a "place of public accommodation" within the meaning of the State's Human Rights Act. See App. 32.

With the record of the administrative hearing before it, the Minnesota Supreme Court answered that question in the affirmative. *United States Jaycees* v. *McClure*, 305 N. W. 2d 764 (1981). Based on the Act's legislative history, the court determined that the statute is applicable to any "public business facility." *Id.*, at 768. It then concluded that the Jaycees organization (a) is a "business" in that it sells goods and extends privileges in exchange for annual membership dues; (b) is a "public" business in that it solicits and recruits dues-paying members based on unselective criteria; and (c) is a public business "facility" in that it conducts its activities at fixed and mobile sites within the State of Minnesota. *Id.*, at 768–774.

Subsequently, the Jaycees amended their complaint in the District Court to add a claim that the Minnesota Supreme Court's interpretation of the Act rendered it unconstitutionally vague and overbroad. The federal suit then proceeded to trial, after which the District Court entered judgment in favor of the state officials. *United States Jaycees* v. *McClure*, 534 F. Supp. 766 (Minn. 1982). On appeal, a divided

Court of Appeals for the Eighth Circuit reversed. 709 F. 2d 1560 (1983). The Court of Appeals determined that, because "the advocacy of political and public causes, selected by the membership, is a not insubstantial part of what [the Jaycees] does," the organization's right to select its members is protected by the freedom of association guaranteed by the First Amendment. *Id.*, at 1570. It further decided that application of the Minnesota statute to the Jaycees' membership policies would produce a "direct and substantial" interference with that freedom, *id.*, at 1572, because it would necessarily result in "some change in the Jaycees' philosophical cast," *id.*, at 1571, and would attach penal sanctions to those responsible for maintaining the policy, *id.*, at 1572. The court concluded that the State's interest in eradicating discrimination is not sufficiently compelling to outweigh this interference with the Jaycees' constitutional rights, because the organization is not wholly "public," *id.*, at 1571–1572, 1573, the state interest had been asserted selectively, *id.*, at 1573, and the anti-discrimination policy could be served in a number of ways less intrusive of First Amendment freedoms, *id.*, at 1573–1574.

Finally, the court held, in the alternative, that the Minnesota statute is vague as construed and applied and therefore unconstitutional under the Due Process Clause of the Fourteenth Amendment. In support of this conclusion, the court relied on a statement in the opinion of the Minnesota Supreme Court suggesting that, unlike the Jaycees, the Kiwanis Club is "private" and therefore not subject to the Act. By failing to provide any criteria that distinguish such "private" organizations from the "public accommodations" covered by the statute, the Court of Appeals reasoned, the Minnesota Supreme Court's interpretation rendered the Act unconstitutionally vague. *Id.*, at 1576–1578.

II

Our decisions have referred to constitutionally protected "freedom of association" in two distinct senses. In one line

of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

The intrinsic and instrumental features of constitutionally protected association may, of course, coincide. In particular, when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated. The Jaycees contend that this is such a case. Still, the nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case. We therefore find it useful to consider separately the effect of applying the Minnesota statute to the Jaycees on what could be called its members' freedom of intimate association and their freedom of expressive association.

A

The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State. *E. g.*, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). Without precisely identifying every consideration that may underlie this type of constitutional protection, we have noted that certain kinds of

personal bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the State. See, *e. g.*, *Zablocki* v. *Redhail*, 434 U. S. 374, 383–386 (1978); *Moore* v. *City of East Cleveland*, 431 U. S. 494, 503–504 (1977) (plurality opinion); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1973); *Griswold* v. *Connecticut*, 381 U. S. 479, 482–485 (1965); *Pierce* v. *Society of Sisters*, *supra*, at 535. See also *Gilmore* v. *City of Montgomery*, 417 U. S. 556, 575 (1974); *NAACP* v. *Alabama*, 357 U. S. 449, 460–462 (1958); *Poe* v. *Ullman*, 367 U. S. 497, 542–545 (1961) (Harlan, J., dissenting). Moreover, the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty. See, *e. g.*, *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 844 (1977); *Carey* v. *Population Services Int'l*, 431 U. S. 678, 684–686 (1977); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974); *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972); *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

The personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationships that might be entitled to this sort of constitutional protection, are those that attend the creation and sustenance of a family—marriage, *e. g.*, *Zablocki* v. *Redhail*, *supra*; childbirth, *e. g.*, *Carey* v. *Population Services Int'l*, *supra*; the raising and education of children, *e. g.*, *Smith* v. *Organization of Foster Families*, *supra*; and cohabitation with one's relatives, *e. g.*, *Moore* v. *City of East Cleveland*, *supra*. Family relationships, by their nature, involve deep

attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things, therefore, they are distinguished by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection. Accordingly, the Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees. Compare *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) with *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 93–94 (1945).

Between these poles, of course, lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State. Determining the limits of state authority over an individual's freedom to enter into a particular association therefore unavoidably entails a careful assessment of where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments. See generally *Runyon* v. *McCrary*, 427 U. S. 160, 187–189 (1976) (POWELL, J., concurring). We need not mark the potentially significant points on this terrain with any precision. We note only that factors that may be relevant include size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent. In this case, however, several features of the Jay-

cees clearly place the organization outside of the category of relationships worthy of this kind of constitutional protection.

The undisputed facts reveal that the local chapters of the Jaycees are large and basically unselective groups. At the time of the state administrative hearing, the Minneapolis chapter had approximately 430 members, while the St. Paul chapter had about 400. Report A–99, A–100. Apart from age and sex, neither the national organization nor the local chapters employs any criteria for judging applicants for membership, and new members are routinely recruited and admitted with no inquiry into their backgrounds. See I Tr. of State Administrative Hearing 124–132, 135–136, 174–176. In fact, a local officer testified that he could recall no instance in which an applicant had been denied membership on any basis other than age or sex. *Id.*, at 135. Cf. *Tillman* v. *Wheaton-Haven Recreational Ass'n*, 410 U. S. 431, 438 (1973) (organization whose only selection criteria is race has "no plan or purpose of exclusiveness" that might make it a private club exempt from federal civil rights statute); *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 236 (1969) (same); *Daniel* v. *Paul*, 395 U. S. 298, 302 (1969) (same). Furthermore, despite their inability to vote, hold office, or receive certain awards, women affiliated with the Jaycees attend various meetings, participate in selected projects, and engage in many of the organization's social functions. See Tr. 58. Indeed, numerous non-members of both genders regularly participate in a substantial portion of activities central to the decision of many members to associate with one another, including many of the organization's various community programs, awards ceremonies, and recruitment meetings. See, *e. g.*, 305 N. W. 2d, at 772; Report A102, A103.

In short, the local chapters of the Jaycees are neither small nor selective. Moreover, much of the activity central to the formation and maintenance of the association involves the participation of strangers to that relationship. Accordingly, we conclude that the Jaycees chapters lack the distinctive

characteristics that might afford constitutional protection to the decision of its members to exclude women. We turn therefore to consider the extent to which application of the Minnesota statute to compel the Jaycees to accept women infringes the group's freedom of expressive association.

B

An individual's freedom to speak, to worship, and to petition the Government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, *e. g.*, *Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 294 (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, *e. g. Gilmore* v. *City of Montgomery*, 417 U. S., at 575; *Griswold* v. *Connecticut*, 381 U. S., at 482–485; *NAACP* v. *Button*, 371 U. S. 415, 431 (1963); *NAACP* v. *Alabama*, 357 U. S., at 462. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, *e. g.*, *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909, 932–933 (1982); *Larson* v. *Valente*, 456 U. S. 228, 244–246 (1982); *In re Primus*, 436 U. S. 412, 426 (1978); *Abood* v. *Detroit Board of Education*, 431 U. S. 209, 231 (1977).

Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, *e. g.*, *Healy* v. *James*, 408 U. S. 169, 180–184 (1972); it may attempt to require disclosure of the fact of membership in a group seeking anonymity, *e. g.*,

Brown v. *Socialist Workers '74 Campaign Committee*, 459 U. S. 87, 91–92 (1982); and it may try to interfere with the internal organization or affairs of the group, *e. g.*, *Cousins* v. *Wigoda*, 419 U. S. 477, 487–488 (1975). By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See *Abood* v. *Detroit Board of Education*, *supra*, at 234–235.

The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *E. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S., at 91–92; *Democratic Party* v. *Wisconsin*, 450 U. S., at 124; *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976) *(per curiam)*; *Cousins* v. *Wigoda*, 419 U. S., at 489; *American Party* v. *White*, 415 U. S. 767, 780–781 (1974); *NAACP* v. *Button*, 371 U. S., at 438; *Shelton* v. *Tucker*, 364 U. S. 486, 488 (1960). We are persuaded that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms.

On its face, the Minnesota Act does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria. See also *infra*, at 18–19. Nor do the Jaycees contend that the

Act has been applied in this case for the purpose of hampering the organization's ability to express its views. Instead, as the Minnesota Supreme Court explained, the Act reflects the State's strong historical commitment to eliminating discrimination and assuring its citizens equal access to publicly available goods and services. See 305 N. W. 2d, at 766–768. That goal, which is unrelated to the suppression of expression, plainly serves compelling state interests of the highest order.

The Minnesota Human Rights Act at issue here is an example of public accommodations laws that were adopted by some States beginning a decade before enactment of their federal counterpart, the Civil Rights Act of 1875, ch. 114, 48 Stat. 335. See Survey, 7 NYU Rev. L. & Soc. Change 215, 238 (1978) (hereinafter NYU Survey). Indeed, when this Court invalidated that federal statute in the *Civil Rights Cases*, 109 U. S. 3 (1883), it emphasized the fact that state laws imposed a variety of equal access obligations on public accommodations. *Id.*, at 19, 25. In response to that decision, many more States, including Minnesota, adopted statutes prohibiting racial discrimination in public accommodations. These laws provided the primary means for protecting the civil rights of historically disadvantaged groups until the Federal Government reentered the field in 1957. See NYU Survey 239; Brief for the States of California and New York as *Amicus Curiae* 1. Like many other States, Minnesota has progressively broadened the scope of its public accommodations law in the years since it was first enacted, both with respect to the number and type of covered facilities and with respect to the groups against whom discrimination is forbidden. See 305 N. W. 2d, at 766–768. In 1973, the Minnesota legislature added discrimination on the basis of sex to the types of conduct prohibited by the statute. Act of May 24, 1973, ch. 729, §3, 1973 Minn. Laws 2158, 2164.

By prohibiting gender discrimination in places of public accommodation, the Minnesota Act protects the State's citizenry from a number of serious social and personal harms. In the context of reviewing state actions under the Equal Protection Clause, this Court has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life. See, *e. g.*, *Heckler* v. *Mathews*, —— U. S. ——, —— (1984); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718, 723–726 (1982); *Frontiero* v. *Richardson*, 411 U. S. 677, 684–687 (1973) (plurality opinion). These concerns are strongly implicated with respect to gender discrimination in the allocation of publicly available goods and services. Thus, in upholding Title II of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. § 2000a, which forbids race discrimination in public accommodations, we emphasized that its "fundamental object . . . was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 250 (1964). That stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race.

Nor is the state interest in assuring equal access limited to the provision of purely tangible goods and services. See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U. S. 592, 609 (1982). A State enjoys broad authority to create rights of public access on behalf of its citizens. *Pruneyard Shopping Center* v. *Robins*, 447 U. S. 74, 81–88 (1980). Like many States and municipalities, Minnesota has adopted a functional definition of public accommodations that reaches various

forms of public, quasi-commercial conduct. See 305 N. W. 2d, at 768; Brief for National League of Cities *et al.* as *Amicus Curiae* 15–16. This expansive definition reflects a recognition of the changing nature of the American economy and of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women. See *Califano* v. *Webster*, 430 U. S. 313, 317 (1977) *(per curiam)*; *Frontiero* v. *Richardson*, *supra*, at 684–686. Thus, in explaining its conclusion that the Jaycees local chapters are "place[s] of public accommodations" within the meaning of the Act, the Minnesota court noted the various commercial programs and benefits offered to members and stated that, "[l]eadership skills are 'goods,' [and] business contacts and employment promotions are 'privileges' and 'advantages'. . . ." 305 N. W. 2d, at 772. Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests.

In applying the Act to the Jaycees, the State has advanced those interests through the least restrictive means of achieving its ends. Indeed, the Jaycees have failed to demonstrate that the Act imposes any serious burdens on the male members' freedom of expressive association. See *Buckley* v. *Valeo*, 424 U. S., at 71–74; *American Party* v. *White*, 415 U. S., at 790. To be sure, as the Court of Appeals noted, a "not insubstantial part" of the Jaycees' activities constitutes protected expression on political, economic, cultural, and social affairs. 709 F. 2d, at 1570. Over the years, the national and local levels of the organization have taken public positions on a number of diverse issues, see *id.*, at 1569–1570; Brief for Appellee 4–5, and members of the Jaycees regularly engage in a variety of civic, charitable, lobbying, fundraising and other activities worthy of constitutional protection under the First Amendment, *ibid.*, see, *e. g.*, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 632

(1980). 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. The Act requires no change in the Jaycees' creed of promoting the interests of young men, and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of its existing members. Cf. *Democratic Party* v. *Wisconsin*, 450 U. S., at 122 (recognizing the right of political parties to "protect themselves 'from intrusion by those with adverse political principles'"). Moreover, the Jaycees already invite women to share the group's views and philosophy and to participate in much of its training and community activities. Accordingly, any claim that admission of women as full voting members will impair a symbolic message conveyed by the very fact that women are not permitted to vote is attenuated at best. Cf. *Spence* v. *Washington*, 418 U. S. 405 (1974); *Griswold* v. *Connecticut*, 381 U. S., at 483.

While acknowledging that "the specific content of most of the resolutions adopted over the years by the Jaycees has nothing to do with sex," 709 F. 2d, at 1571, the Court of Appeals nonetheless entertained the hypothesis that women members might have a different view or agenda with respect to these matters so that, if they are allowed to vote, "some change in the Jaycees' philosophical cast can reasonably be expected," *ibid.* It is similarly arguable that, insofar as the Jaycees is organized to promote the views of young men whatever those views happen to be, admission of women as voting members will change the message communicated by the group's speech because of the gender-based assumptions of the audience. Neither supposition, however, is supported by the record. In claiming that women might have a different attitude about such issues as the federal budget, school prayer, voting rights, and foreign relations, see 709 F. 2d, at 1570, or that the organization's public positions would have a

different effect if the group were not "a purely young men's association," the Jaycees rely solely on unsupported generalizations about the relative interests and perspectives of men and women. See Brief for Appellees 20–22 and n. 3. Although such generalizations may or may not have a statistical basis in fact with respect to particular positions adopted by the Jaycees, we have repeatedly condemned legal decisionmaking that relies uncritically on such underlying assumptions. See, *e. g.*, *Palmore* v. *Sidoti*, —— U. S. ——, ———— (1984); *Heckler* v. *Mathews*, —— U. S., at ————. In the absence of a showing far more substantial than that attempted by the Jaycees, we decline to indulge in the sexual stereotyping that underlies appellee's contention that, by allowing women to vote, application of the Minnesota Act will change the content or impact of the organization's speech. Compare *Wengler* v. *Druggists Mutual Insurance Co.*, 446 U. S. 142, 151–152 (1980) with *Schlesinger* v. *Ballard*, 419 U. S. 498, 508 (1975).

In any event, even if enforcement of the Act causes some incidental abridgement of the Jaycees' protected speech, that effect is no greater than is necessary to accomplish the State's legitimate purposes. As we have explained, acts of invidious discrimination cause unique evils that government has a compelling interest to prevent—wholly apart from the point of view such conduct may transmit. Accordingly, like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, the actual practice of invidious discrimination by an individual or group—as distinguished from its advocacy—is entitled to no constitutional protection. *Hishon* v. *King & Spalding*, —— U. S. ——, —— (1984); *Runyon* v. *McCrary*, 427 U. S. 160, 175–176 (1976). Compare *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909 (1982) (peaceful picketing) with *id.*, at 916 (violence). In prohibiting such practices in the distribution of publicly available goods and services, the Minnesota Act therefore "responds precisely to

the substantive problem which legitimately concerns" the State and abridges no more speech or associational freedom than is necessary to accomplish that purpose. See *City Council* v. *Taxpayers for Vincent*, —— U. S. ——, —— (1984).

III

We turn finally to appellee's contentions that the Minnesota Act, as interpreted by the State's highest court, is unconstitutionally vague and overbroad. The void-for-vagueness doctrine reflects the principle that "a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Constuction Co.*, 269 U. S. 385, 391 (1925). The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review. See, *e. g.*, *Kolender* v. *Lawson*, —— U. S. ——, —— – —— (1983); *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972); *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402–404 (1966).

We have little trouble concluding that these concerns are not seriously implicated by the Minnesota Act, either on its face or as construed in this case. In deciding that the Act reaches the Jaycees, the Minnesota Supreme Court used a number of specific and objective criteria—regarding the organization's size, selectivity, commercial nature, and use of public facilities—typically employed in determining the applicability of state and federal anti-discrimination statutes to the membership policies of assertedly private clubs. See, *e. g.*, *Nesmith* v. *Young Men's Christian Ass'n*, 397 F. 2d 96

(CA4 1968); *National Organization for Women* v. *Little League Baseball, Inc.*, 127 N. J. Super. 522, 318 A. 2d 33, *aff'd mem.*, 67 N. J. 320, 338 A. 2d 198 (1974). See generally NYU Survey 223–224, 250–252. The Court of Appeals seemingly acknowledged that the Minnesota court's construction of the Act by use of these familiar standards ensures that the reach of the statute is readily ascertainable. It nevertheless concluded that the Minnesota court introduced a constitutionally fatal element of uncertainty into the statute by suggesting that the Kiwanis Club might be sufficiently "private" to be outside the scope of the Act. See 709 F. 2d, at 1577. Like the dissenting judge in the Court of Appeals, however, we read the illustrative reference to the Kiwanis Club, which the record indicates has a formal procedure for choosing members on the basis of specific and selective criteria, as simply providing a further refinement of the standards used to determine whether an organization is "public" or "private." See *id.*, at 1582 (Lay, C. J., dissenting). By offering this counter-example, the Minnesota Supreme Court's opinion provided the statute with more, rather than less, definite content.

The contrast between the Jaycees and the Kiwanis Club drawn by the Minnesota court also disposes of appellee's contention that the Act is unconstitutionally overbroad. The Jaycees argue that the statute is "susceptible of sweeping and improper application," *NAACP* v. *Button*, 371 U. S. 415, 433 (1963), because it could be used to restrict the membership decisions of wholly private groups organized for a wide variety of political, religious, cultural, or social purposes. Without considering the extent to which such groups may be entitled to constitutional protection from the operation of the Minnesota Act, we need only note that the Minnesota Supreme Court expressly rejected the contention that the Jaycees should "be viewed analogously to private organizations such as the Kiwanis International Organization." 305 N. W. 2d, at 771. The state court's articulated willingness to adopt

limiting constructions that would exclude private groups from the statute's reach, together with the commonly used and sufficiently precise standards it employed to determine that the Jaycees is not such a group, establish that the Act, as currently construed, does not create an unacceptable risk of application to a substantial amount of protected conduct. Cf. *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, 216–217 (1975); *NAACP* v. *Button*, *supra*, at 434. See *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982).

IV

The judgment of the Court of Appeals is

Reversed.

THE CHIEF JUSTICE and JUSTICE BLACKMUN took no part in the decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

OK to join

No. 83-724

Roberts v. Jaycees

Dear Lewis,

As I told you by telephone, this circulation embodies all of your suggestions. I just want again to say how much I appreciate your help. / yes

Sincerely,

Bill

Justice Powell

June 18, 1984

83-724 Roberts v. Jaycees

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 19, 1984

Re: 83-724 -

Roberts v. United States Jaycees

Dear Bill,

I shall at least concur in the result, but your opinion gives me some trouble. It seems to give with one hand and to take with the other. The thesis of the dicta in Part IIA, as well as to some extent in Part III, is that discrimination by some kinds of associations is constitutionally protected from state interference. Yet, in Part IIB you state that actual acts of discrimination have no "constitutional" protection, p. 17, lines 14-12 from the bottom, a statement at odds with Part IIA. Furthermore, you say that the right of association can be overridden by a compelling state interest and that the prevention of discrimination is such an interest. If the state holds such a trump card, what happens to the fundamental liberty interest to associate you speak of in Part IIA? The inference is that no group, however small or intimate, has an associational right to discriminate that is immune from prohibition pursuant to the state's compelling interest. I would be interested in your comments.

Sincerely yours,

Byron

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19, 1984

Re: No. 83-724 Roberts v. Jaycees

Dear Bill,

I continue to have some concerns in this case because of its implications in so many future cases. I will circulate something in the nature of a partial concurrence next week.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 22 1984

p. 17
King & Spaulding
(See my letter to W. J. B.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–724

KATHRYN R. ROBERTS, ACTING COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ET AL. *v.* UNITED STATES JAYCEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to address a conflict between a State's efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization. In the decision under review, the Court of Appeals for the Eighth Circuit concluded that, by requiring the United States Jaycees to admit women as full voting members, the Minnesota Human Rights Act violates the First and Fourteenth Amendment rights of the organization's members. We noted probable jurisdiction, —— U. S. ——, and now reverse.

I

A

The United States Jaycees (Jaycees), founded in 1920 as the Junior Chamber of Commerce, is a nonprofit membership corporation, incorporated in Missouri with national headquarters in Tulsa, Oklahoma. The objective of the Jaycees, as set out in its bylaws, is to pursue

> "such educational and charitable purposes as will promote and foster the growth and development of young men's civic organizations in the United States, designed to inculcate in the individual membership of such orga-

This change appears to be directed to BRW's concern that a compelling state interest might enable the state to interfere even with "intimate" relationships. The change makes clear that the discussion is only about economic relationships. Love

> nization a spirit of genuine Americanism and civic interest, and as a supplementary education institution to provide them with opportunity for personal development and achievement and an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and understanding among young men of all nations." Quoted in Brief for Appellee 2.

The organization's bylaws establish seven classes of membership, including individual or regular members, associate individual members, and local chapters. Regular membership is limited to young men between the ages of 18 and 35, while associate membership is available to individuals or groups ineligible for regular membership, principally women and older men. An associate member, whose dues are somewhat lower than those charged regular members, may not vote, hold local or national office, or participate in certain leadership training and awards programs. The bylaws define a local chapter as "any young men's organization of good repute existing in any community within the United States, organized for purposes similar to and consistent with those" of the national organization. App. to Juris. Statement A98. The ultimate policymaking authority of the Jaycees rests with an annual national convention, consisting of delegates from each local chapter, with a national president and board of directors. At the time of trial in August 1981, the Jaycees had approximately 295,000 members in 7,400 local chapters affiliated with 51 state organizations. There were at that time about 11,915 associate members. The national organization's Executive Vice President estimated at trial that women associate members make up about two percent of the Jaycees' total membership. Tr. 56.

New members are recruited to the Jaycees through the local chapters, although the state and national organizations are also actively involved in recruitment through a variety of promotional activities. A new regular member pays an ini-

tial fee followed by annual dues; in exchange, he is entitled to participate in all of the activities of the local, state, and national organizations. The national headquarters employs a staff to develop "program kits" for use by local chapters that are designed to enhance individual development, community development, and members' management skills. These materials include courses in public speaking and personal finances as well as community programs related to charity, sports, and public health. The national office also makes available to members a range of personal products, including travel accessories, casual wear, pins, awards, and other gifts. The programs, products, and other activities of the organization are all regularly featured in publications made available to the membership, including a magazine entitled "Future."

B

In 1974 and 1975, respectively, the Minneapolis and St. Paul chapters of the Jaycees began admitting women as regular members. Currently, the memberships and boards of directors of both chapters include a substantial proportion of women. As a result, the two chapters have been in violation of the national organization's bylaws for about 10 years. The national organization has imposed a number of sanctions on the Minneapolis and St. Paul chapters for violating the bylaws, including denying their members eligibility for state or national office or awards programs, and refusing to count their membership in computing votes at national conventions.

In December 1978, the president of the national organization advised both chapters that a motion to revoke their charters would be considered at a forthcoming meeting of the national board of directors in Tulsa. Shortly after receiving this notification, members of both chapters filed charges of discrimination with the Minnesota Department of Human Rights. The complaints alleged that the exclusion of women from full membership required by the national organization's

bylaws violated the Minnesota Human Rights Act (Act), which provides in part:

> "It is an unfair discriminatory practice:
>
> "To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex." Minn. Stat. § 363.03, subd. 3 (1982).

The term "place of public accommodation" is defined in the Act as "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public." *Id.*, § 363.01, subd. 18.

After an investigation, the Commissioner of the Minnesota Department of Human Rights found probable cause to believe that the sanctions imposed on the local chapters by the national organization violated the statute and ordered that an evidentiary hearing be held before a state hearing examiner. Before that hearing took place, however, the national organization brought suit against various state officials, appellants here, in the United States District Court for the District of Minnesota, seeking declaratory and injunctive relief to prevent enforcement of the Act. The complaint alleged that, by requiring the organization to accept women as regular members, application of the Act would violate the male members' constitutional rights of free speech and association. With the agreement of the parties, the District Court dismissed the suit without prejudice, stating that it could be renewed in the event the state administrative proceeding resulted in a ruling adverse to the Jaycees.

The proceeding before the Minnesota Human Rights Department hearing examiner then went forward and, upon its completion, the examiner filed findings of fact and conclu-

sions of law. The examiner concluded that the Jaycees organization is a "place of public accommodation" within the Act and that it had engaged in an unfair discriminatory practice by excluding women from regular membership. He ordered the national organization to cease and desist from discriminating against any member or applicant for membership on the basis of sex and from imposing sanctions on any Minnesota affiliate for admitting women. *Minnesota* v. *United States Jaycees*, No. HR–79–014–GB (Minn. Office of Hearing Examiners for the Dept. of Human Rights, October 9, 1979) (hereinafter "Report"), App. to Juris. Statement A107–A109. The Jaycees then filed a renewed complaint in the District Court, which in turn certified to the Minnesota Supreme Court the question whether the Jaycees organization is a "place of public accommodation" within the meaning of the State's Human Rights Act. See App. 32.

With the record of the administrative hearing before it, the Minnesota Supreme Court answered that question in the affirmative. *United States Jaycees* v. *McClure*, 305 N. W. 2d 764 (1981). Based on the Act's legislative history, the court determined that the statute is applicable to any "public business facility." *Id.*, at 768. It then concluded that the Jaycees organization (a) is a "business" in that it sells goods and extends privileges in exchange for annual membership dues; (b) is a "public" business in that it solicits and recruits dues-paying members based on unselective criteria; and (c) is a public business "facility" in that it conducts its activities at fixed and mobile sites within the State of Minnesota. *Id.*, at 768–774.

Subsequently, the Jaycees amended their complaint in the District Court to add a claim that the Minnesota Supreme Court's interpretation of the Act rendered it unconstitutionally vague and overbroad. The federal suit then proceeded to trial, after which the District Court entered judgment in favor of the state officials. *United States Jaycees* v. *McClure*, 534 F. Supp. 766 (Minn. 1982). On appeal, a divided

Court of Appeals for the Eighth Circuit reversed. 709 F. 2d 1560 (1983). The Court of Appeals determined that, because "the advocacy of political and public causes, selected by the membership, is a not insubstantial part of what [the Jaycees] does," the organization's right to select its members is protected by the freedom of association guaranteed by the First Amendment. *Id.*, at 1570. It further decided that application of the Minnesota statute to the Jaycees' membership policies would produce a "direct and substantial" interference with that freedom, *id.*, at 1572, because it would necessarily result in "some change in the Jaycees' philosophical cast," *id.*, at 1571, and would attach penal sanctions to those responsible for maintaining the policy, *id.*, at 1572. The court concluded that the State's interest in eradicating discrimination is not sufficiently compelling to outweigh this interference with the Jaycees' constitutional rights, because the organization is not wholly "public," *id.*, at 1571–1572, 1573, the state interest had been asserted selectively, *id.*, at 1573, and the anti-discrimination policy could be served in a number of ways less intrusive of First Amendment freedoms, *id.*, at 1573–1574.

Finally, the court held, in the alternative, that the Minnesota statute is vague as construed and applied and therefore unconstitutional under the Due Process Clause of the Fourteenth Amendment. In support of this conclusion, the court relied on a statement in the opinion of the Minnesota Supreme Court suggesting that, unlike the Jaycees, the Kiwanis Club is "private" and therefore not subject to the Act. By failing to provide any criteria that distinguish such "private" organizations from the "public accommodations" covered by the statute, the Court of Appeals reasoned, the Minnesota Supreme Court's interpretation rendered the Act unconstitutionally vague. *Id.*, at 1576–1578.

II

Our decisions have referred to constitutionally protected "freedom of association" in two distinct senses. In one line

of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

The intrinsic and instrumental features of constitutionally protected association may, of course, coincide. In particular, when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated. The Jaycees contend that this is such a case. Still, the nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case. We therefore find it useful to consider separately the effect of applying the Minnesota statute to the Jaycees on what could be called its members' freedom of intimate association and their freedom of expressive association.

A

The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State. *E. g.*, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). Without precisely identifying every consideration that may underlie this type of constitutional protection, we have noted that certain kinds of

personal bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the State. See, *e. g.*, *Zablocki* v. *Redhail*, 434 U. S. 374, 383–386 (1978); *Moore* v. *City of East Cleveland*, 431 U. S. 494, 503–504 (1977) (plurality opinion); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1973); *Griswold* v. *Connecticut*, 381 U. S. 479, 482–485 (1965); *Pierce* v. *Society of Sisters*, *supra*, at 535. See also *Gilmore* v. *City of Montgomery*, 417 U. S. 556, 575 (1974); *NAACP* v. *Alabama*, 357 U. S. 449, 460–462 (1958); *Poe* v. *Ullman*, 367 U. S. 497, 542–545 (1961) (Harlan, J., dissenting). Moreover, the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty. See, *e. g.*, *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 844 (1977); *Carey* v. *Population Services Int'l*, 431 U. S. 678, 684–686 (1977); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974); *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972); *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

The personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationships that might be entitled to this sort of constitutional protection, are those that attend the creation and sustenance of a family—marriage, *e. g.*, *Zablocki* v. *Redhail*, *supra*; childbirth, *e. g.*, *Carey* v. *Population Services Int'l*, *supra*; the raising and education of children, *e. g.*, *Smith* v. *Organization of Foster Families*, *supra*; and cohabitation with one's relatives, *e. g.*, *Moore* v. *City of East Cleveland*, *supra*. Family relationships, by their nature, involve deep

attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things, therefore, they are distinguished by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection. Accordingly, the Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees. Compare *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) with *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 93–94 (1945).

Between these poles, of course, lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State. Determining the limits of state authority over an individual's freedom to enter into a particular association therefore unavoidably entails a careful assessment of where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments. See generally *Runyon* v. *McCrary*, 427 U. S. 160, 187–189 (1976) (POWELL, J., concurring). We need not mark the potentially significant points on this terrain with any precision. We note only that factors that may be relevant include size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent. In this case, however, several features of the Jay-

cees clearly place the organization outside of the category of relationships worthy of this kind of constitutional protection.

The undisputed facts reveal that the local chapters of the Jaycees are large and basically unselective groups. At the time of the state administrative hearing, the Minneapolis chapter had approximately 430 members, while the St. Paul chapter had about 400. Report A–99, A–100. Apart from age and sex, neither the national organization nor the local chapters employs any criteria for judging applicants for membership, and new members are routinely recruited and admitted with no inquiry into their backgrounds. See I Tr. of State Administrative Hearing 124–132, 135–136, 174–176. In fact, a local officer testified that he could recall no instance in which an applicant had been denied membership on any basis other than age or sex. *Id.*, at 135. Cf. *Tillman* v. *Wheaton-Haven Recreational Ass'n*, 410 U. S. 431, 438 (1973) (organization whose only selection criteria is race has "no plan or purpose of exclusiveness" that might make it a private club exempt from federal civil rights statute); *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 236 (1969) (same); *Daniel* v. *Paul*, 395 U. S. 298, 302 (1969) (same). Furthermore, despite their inability to vote, hold office, or receive certain awards, women affiliated with the Jaycees attend various meetings, participate in selected projects, and engage in many of the organization's social functions. See Tr. 58. Indeed, numerous non-members of both genders regularly participate in a substantial portion of activities central to the decision of many members to associate with one another, including many of the organization's various community programs, awards ceremonies, and recruitment meetings. See, *e. g.*, 305 N. W. 2d, at 772; Report A102, A103.

In short, the local chapters of the Jaycees are neither small nor selective. Moreover, much of the activity central to the formation and maintenance of the association involves the participation of strangers to that relationship. Accordingly, we conclude that the Jaycees chapters lack the distinctive

characteristics that might afford constitutional protection to the decision of its members to exclude women. We turn therefore to consider the extent to which application of the Minnesota statute to compel the Jaycees to accept women infringes the group's freedom of expressive association.

B

An individual's freedom to speak, to worship, and to petition the Government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, *e. g.*, *Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 294 (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, *e. g. Gilmore* v. *City of Montgomery*, 417 U. S., at 575; *Griswold* v. *Connecticut*, 381 U. S., at 482–485; *NAACP* v. *Button*, 371 U. S. 415, 431 (1963); *NAACP* v. *Alabama*, 357 U. S., at 462. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, *e. g.*, *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909, 932–933 (1982); *Larson* v. *Valente*, 456 U. S. 228, 244–246 (1982); *In re Primus*, 436 U. S. 412, 426 (1978); *Abood* v. *Detroit Board of Education*, 431 U. S. 209, 231 (1977).

Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, *e. g.*, *Healy* v. *James*, 408 U. S. 169, 180–184 (1972); it may attempt to require disclosure of the fact of membership in a group seeking anonymity, *e. g.*,

Brown v. *Socialist Workers '74 Campaign Committee*, 459 U. S. 87, 91–92 (1982); and it may try to interfere with the internal organization or affairs of the group, *e. g.*, *Cousins* v. *Wigoda*, 419 U. S. 477, 487–488 (1975). By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See *Abood* v. *Detroit Board of Education*, *supra*, at 234–235.

The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms. *E. g.*, *Brown* v. *Socialist Workers '74 Campaign Committee*, 459 U. S., at 91–92; *Democratic Party* v. *Wisconsin*, 450 U. S., at 124; *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976) *(per curiam)*; *Cousins* v. *Wigoda*, 419 U. S., at 489; *American Party* v. *White*, 415 U. S. 767, 780–781 (1974); *NAACP* v. *Button*, 371 U. S., at 438; *Shelton* v. *Tucker*, 364 U. S. 486, 488 (1960). We are persuaded that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms.

On its face, the Minnesota Act does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria. See also *infra*, at 18–19. Nor do the Jaycees contend that the

Act has been applied in this case for the purpose of hampering the organization's ability to express its views. Instead, as the Minnesota Supreme Court explained, the Act reflects the State's strong historical commitment to eliminating discrimination and assuring its citizens equal access to publicly available goods and services. See 305 N. W. 2d, at 766–768. That goal, which is unrelated to the suppression of expression, plainly serves compelling state interests of the highest order.

The Minnesota Human Rights Act at issue here is an example of public accommodations laws that were adopted by some States beginning a decade before enactment of their federal counterpart, the Civil Rights Act of 1875, ch. 114, 48 Stat. 335. See Survey, 7 NYU Rev. L. & Soc. Change 215, 238 (1978) (hereinafter NYU Survey). Indeed, when this Court invalidated that federal statute in the *Civil Rights Cases*, 109 U. S. 3 (1883), it emphasized the fact that state laws imposed a variety of equal access obligations on public accommodations. *Id.*, at 19, 25. In response to that decision, many more States, including Minnesota, adopted statutes prohibiting racial discrimination in public accommodations. These laws provided the primary means for protecting the civil rights of historically disadvantaged groups until the Federal Government reentered the field in 1957. See NYU Survey 239; Brief for the States of California and New York as *Amicus Curiae* 1. Like many other States, Minnesota has progressively broadened the scope of its public accommodations law in the years since it was first enacted, both with respect to the number and type of covered facilities and with respect to the groups against whom discrimination is forbidden. See 305 N. W. 2d, at 766–768. In 1973, the Minnesota legislature added discrimination on the basis of sex to the types of conduct prohibited by the statute. Act of May 24, 1973, ch. 729, § 3, 1973 Minn. Laws 2158, 2164.

By prohibiting gender discrimination in places of public accommodation, the Minnesota Act protects the State's citizenry from a number of serious social and personal harms. In the context of reviewing state actions under the Equal Protection Clause, this Court has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life. See, *e. g.*, *Heckler* v. *Mathews*, —— U. S. ——, —— (1984); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718, 723–726 (1982); *Frontiero* v. *Richardson*, 411 U. S. 677, 684–687 (1973) (plurality opinion). These concerns are strongly implicated with respect to gender discrimination in the allocation of publicly available goods and services. Thus, in upholding Title II of the Civil Rights Act of 1964, 78 Stat. 243, 42 U. S. C. § 2000a, which forbids race discrimination in public accommodations, we emphasized that its "fundamental object . . . was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 250 (1964). That stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race.

Nor is the state interest in assuring equal access limited to the provision of purely tangible goods and services. See *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U. S. 592, 609 (1982). A State enjoys broad authority to create rights of public access on behalf of its citizens. *Pruneyard Shopping Center* v. *Robins*, 447 U. S. 74, 81–88 (1980). Like many States and municipalities, Minnesota has adopted a functional definition of public accommodations that reaches various

forms of public, quasi-commercial conduct. See 305 N. W. 2d, at 768; Brief for National League of Cities *et al.* as *Amicus Curiae* 15–16. This expansive definition reflects a recognition of the changing nature of the American economy and of the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women. See *Califano* v. *Webster*, 430 U. S. 313, 317 (1977) *(per curiam)*; *Frontiero* v. *Richardson*, *supra*, at 684–686. Thus, in explaining its conclusion that the Jaycees local chapters are "place[s] of public accommodations" within the meaning of the Act, the Minnesota court noted the various commercial programs and benefits offered to members and stated that, "[l]eadership skills are 'goods,' [and] business contacts and employment promotions are 'privileges' and 'advantages'. . . ." 305 N. W. 2d, at 772. Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests.

In applying the Act to the Jaycees, the State has advanced those interests through the least restrictive means of achieving its ends. Indeed, the Jaycees have failed to demonstrate that the Act imposes any serious burdens on the male members' freedom of expressive association. See *Buckley* v. *Valeo*, 424 U. S., at 71–74; *American Party* v. *White*, 415 U. S., at 790. To be sure, as the Court of Appeals noted, a "not insubstantial part" of the Jaycees' activities constitutes protected expression on political, economic, cultural, and social affairs. 709 F. 2d, at 1570. Over the years, the national and local levels of the organization have taken public positions on a number of diverse issues, see *id.*, at 1569–1570; Brief for Appellee 4–5, and members of the Jaycees regularly engage in a variety of civic, charitable, lobbying, fundraising and other activities worthy of constitutional protection under the First Amendment, *ibid.*, see, *e. g.*, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 632

(1980). 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. The Act requires no change in the Jaycees' creed of promoting the interests of young men, and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of its existing members. Cf. *Democratic Party* v. *Wisconsin*, 450 U. S., at 122 (recognizing the right of political parties to "protect themselves 'from intrusion by those with adverse political principles'"). Moreover, the Jaycees already invite women to share the group's views and philosophy and to participate in much of its training and community activities. Accordingly, any claim that admission of women as full voting members will impair a symbolic message conveyed by the very fact that women are not permitted to vote is attenuated at best. Cf. *Spence* v. *Washington*, 418 U. S. 405 (1974); *Griswold* v. *Connecticut*, 381 U. S., at 483.

While acknowledging that "the specific content of most of the resolutions adopted over the years by the Jaycees has nothing to do with sex," 709 F. 2d, at 1571, the Court of Appeals nonetheless entertained the hypothesis that women members might have a different view or agenda with respect to these matters so that, if they are allowed to vote, "some change in the Jaycees' philosophical cast can reasonably be expected," *ibid.* It is similarly arguable that, insofar as the Jaycees is organized to promote the views of young men whatever those views happen to be, admission of women as voting members will change the message communicated by the group's speech because of the gender-based assumptions of the audience. Neither supposition, however, is supported by the record. In claiming that women might have a different attitude about such issues as the federal budget, school prayer, voting rights, and foreign relations, see 709 F. 2d, at 1570, or that the organization's public positions would have a

different effect if the group were not "a purely young men's association," the Jaycees rely solely on unsupported generalizations about the relative interests and perspectives of men and women. See Brief for Appellees 20–22 and n. 3. Although such generalizations may or may not have a statistical basis in fact with respect to particular positions adopted by the Jaycees, we have repeatedly condemned legal decisionmaking that relies uncritically on such assumptions. See, *e. g.*, *Palmore* v. *Sidoti*, —— U. S. ——, ———— (1984); *Heckler* v. *Mathews*, —— U. S., at ————. In the absence of a showing far more substantial than that attempted by the Jaycees, we decline to indulge in the sexual stereotyping that underlies appellee's contention that, by allowing women to vote, application of the Minnesota Act will change the content or impact of the organization's speech. Compare *Wengler* v. *Druggists Mutual Insurance Co.*, 446 U. S. 142, 151–152 (1980) with *Schlesinger* v. *Ballard*, 419 U. S. 498, 508 (1975).

In any event, even if enforcement of the Act causes some incidental abridgement of the Jaycees' protected speech, that effect is no greater than is necessary to accomplish the State's legitimate purposes. As we have explained, acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils that government has a compelling interest to prevent—wholly apart from the point of view such conduct may transmit. Accordingly, like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, such practices are entitled to no constitutional protection. *Hishon* v. *King & Spalding*, —— U. S. ——, —— (1984); *Runyon* v. *McCrary*, 427 U. S. 160, 175–176 (1976). Compare *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 907–909 (1982) (peaceful picketing) with *id.*, at 916 (violence). In prohibiting such practices, the Minnesota Act therefore "responds precisely to the substantive problem which legitimately concerns" the State and abridges

no more speech or associational freedom than is necessary to accomplish that purpose. See *City Council* v. *Taxpayers for Vincent*, —— U. S. ——, —— (1984).

III

We turn finally to appellee's contentions that the Minnesota Act, as interpreted by the State's highest court, is unconstitutionally vague and overbroad. The void-for-vagueness doctrine reflects the principle that "a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Constuction Co.*, 269 U. S. 385, 391 (1925). The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review. See, *e. g.*, *Kolender* v. *Lawson*, —— U. S. ——, —— – —— (1983); *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972); *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402–404 (1966).

We have little trouble concluding that these concerns are not seriously implicated by the Minnesota Act, either on its face or as construed in this case. In deciding that the Act reaches the Jaycees, the Minnesota Supreme Court used a number of specific and objective criteria—regarding the organization's size, selectivity, commercial nature, and use of public facilities—typically employed in determining the applicability of state and federal anti-discrimination statutes to the membership policies of assertedly private clubs. See, *e. g.*, *Nesmith* v. *Young Men's Christian Ass'n*, 397 F. 2d 96 (CA4 1968); *National Organization for Women* v. *Little*

League Baseball, Inc., 127 N. J. Super. 522, 318 A. 2d 33, *aff'd mem.*, 67 N. J. 320, 338 A. 2d 198 (1974). See generally NYU Survey 223–224, 250–252. The Court of Appeals seemingly acknowledged that the Minnesota court's construction of the Act by use of these familiar standards ensures that the reach of the statute is readily ascertainable. It nevertheless concluded that the Minnesota court introduced a constitutionally fatal element of uncertainty into the statute by suggesting that the Kiwanis Club might be sufficiently "private" to be outside the scope of the Act. See 709 F. 2d, at 1577. Like the dissenting judge in the Court of Appeals, however, we read the illustrative reference to the Kiwanis Club, which the record indicates has a formal procedure for choosing members on the basis of specific and selective criteria, as simply providing a further refinement of the standards used to determine whether an organization is "public" or "private." See *id.*, at 1582 (Lay, C. J., dissenting). By offering this counter-example, the Minnesota Supreme Court's opinion provided the statute with more, rather than less, definite content.

The contrast between the Jaycees and the Kiwanis Club drawn by the Minnesota court also disposes of appellee's contention that the Act is unconstitutionally overbroad. The Jaycees argue that the statute is "susceptible of sweeping and improper application," *NAACP* v. *Button*, 371 U. S. 415, 433 (1963), because it could be used to restrict the membership decisions of wholly private groups organized for a wide variety of political, religious, cultural, or social purposes. Without considering the extent to which such groups may be entitled to constitutional protection from the operation of the Minnesota Act, we need only note that the Minnesota Supreme Court expressly rejected the contention that the Jaycees should "be viewed analogously to private organizations such as the Kiwanis International Organization." 305 N. W. 2d, at 771. The state court's articulated willingness to adopt limiting constructions that would exclude private groups

from the statute's reach, together with the commonly used and sufficiently precise standards it employed to determine that the Jaycees is not such a group, establish that the Act, as currently construed, does not create an unacceptable risk of application to a substantial amount of protected conduct. Cf. *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, 216–217 (1975); *NAACP* v. *Button*, *supra*, at 434. See *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982).

IV

The judgment of the Court of Appeals is

Reversed.

THE CHIEF JUSTICE and JUSTICE BLACKMUN took no part in the decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1984

Re: 83-724 -

Roberts v. United States Jaycees

Dear Bill,

I join your third draft circulated June 22.

Sincerely yours,

Byron

Justice Brennan

Copies to the Conference

June 28, 1984

MEMORANDUM TO THE CONFERENCE

Re: Roberts v. United States Jaycees
No. 83-724

I have sent to the printer two minor additions to the opinion in this case. I will add the following sentence at the end of the full paragraph on page 11: "In view of the various protected activities in which the Jaycees engage, see infra, at 15-16, that right is plainly implicated in this case." At page 15, after the second sentence of the paragraph beginning "In applying ...," I will add to the citations to Buckley and American Party the following reference: "See Hishon v. King & Spalding, ___ U.S. ___, ___ (1984) (law firm "has not shown how its ability to fulfill [protected] function[s] would be inhibited by a requirement that it consider [a woman lawyer] for partnership on her merits"); id., at ___ (POWELL, J., concurring)."

I plan no further changes in the opinion.

Sincerely,

WJB, Jr.

no objection
LFP

Joe:

Tell me if these two changes would give you folks any problems. Also, if you have any reactions to SOC's thing that you think I should know about, give me a call. Thanks, Jeff

83-724 Roberts v. United States Jaycees (Joe)

WJB for the Court 4/20/84
1st draft 6/12/84
2nd draft 6/18/84
3rd draft 6/22/84
4th draft 6/2684
Joined by JPS 6/13/84
TM 6/14/84
LFP 6/18/84
BRW 6/25/84

SOC concurring in part and concurring in the judgment
1st draft 6/29/84

WHR concurs in the judgment 6/29/84

SOC will circulate something next week 6/19/84

CJ out 6/12/84

HAB out 6/15/84