No. 83-724

IN THE

Supreme Court of the United States

October Term, 1983

IRENE GOMEZ-BETHKE, Commissioner, Minnesota Department of Human Rights; HUBERT H. HUMPHREY, III, Attorney General of the State of Minnesota; and GEORGE A. BECK, Hearing Examiner of the State of Minnesota,

Appellants,

against

THE UNITED STATES JAYCEES, a non-profit Missouri Corporation, on behalf of itself and its qualified members,

Appellee.

On Appeal from the United States Court of Appeals for the Eighth Circuit

AMICUS CURIAE BRIEF OF THE STATE OF NEW YORK, JOINED BY THE STATE OF CALIFORNIA IN SUPPORT OF REVERSAL

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TABLE OF CONTENTS

	PAGE
Interest of *Amici Curiae*	1
Statement of the Case	3
Summary of Argument	3
Argument	
Point I—The First Amendment Does Not Guarantee the Jaycees the Right to Discriminate Against Membership Applicants on the Basis of Sex	4
A. The Constitutional Rights of the Jaycees Are Not Abridged by Application of Minnesota's Law Barring Discrimination Based on Sex in Places of Public Accommodation	6
B. If Any Constitutional Rights of the Jaycees Are Infringed, the State Has a Compelling Interest Justifying Such Abridgement	13
Point II—The Minnesota Public Accommodations Law, as Interpreted by the Minnesota Supreme Court, Is Not Unconstitutionally Vague	16
Conclusion	19

TABLE OF AUTHORITIES

PAGE

Cases:

Batavia Lodge v. New York State Division of Human Rights, 35 N.Y. 2d 143, 359 N.Y.S. 2d 25, 316 N.E. 2d 318 (1974) 3
Boyce Motor Lines, Inc. v. United States, 342 U.S. 337 (1952) 18
Buckley v. Valeo, 424 U.S. 1 (1976) 10

Castle Hill Beach Club, Inc. v. Arbury, 2 N.Y. 2d 596, 162 N.Y.S. 2d 1, 142 N.E. 2d 186 (1957) 3
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) 17
Cornelius v. Benevolent Protective Order of Elks, 382 F. Supp. 1182 (D. Conn. 1974) 11
Cousins v. Wigoda, 419 U.S. 477 (1975) 8
Craig v. Boren, 429 U.S. 190 (1976) 14
Curran v. Mount Diablo Council of the Boy Scouts of America, 147 Cal. App. 3d 712, 195 Cal. Rptr. 325 (1983) 3

Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952) 12

Frontiero v. Richardson, 411 U.S. 677 (1973) 14

Grayned v. City of Rockford, 408 U.S. 104 (1972) 17
Griswold v. Connecticut, 381 U.S. 479 (1965) 8

Healy v. James, 408 U.S. 169 (1972) 6, 8

In re Cox, 3 Cal. 3d 205, 90 Cal. Rptr. 24, 474 P. 2d 992 (1970) 2

Konigsberg v. State Bar, 366 U.S. 36 (1961) 15

NAACP v. Alabama, 357 U.S. 449 (1958) 15
NAACP v. Button, 371 U.S. 415 (1963) 8

PAGE

Nebbia v. New York, 291 U.S. 502 (1934) 12
Norwood v. Harrison, 413 U.S. 455 (1973) 4, 7, 8

Orr v. Orr, 440 U.S. 268 (1979) 14

Parker v. Levy, 417 U.S. 733 (1974) 17, 18

Quijano v. University Federal Credit Union, 617 F. 2d 129 (5th Cir. 1980) 17

Railway Mail Ass'n v. Corsi, 326 U.S. 88 (1945) 9
Runyon v. McCrary, 427 U.S. 160 (1976) 4, 7, 8, 9

Snapp v. Puerto Rico, 458 U.S. 592 (1982) 14
Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) 4, 7, 11, 17

Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431 (1973) 4, 7, 11, 12, 17

United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217 (1967) 10
United States v. National Dairy Corp., 372 U.S. 29 (1963) 18
United States v. O'Brien, 391 U.S. 367 (1968) 15
United States v. Trustees of Fraternal Order of Eagles, 472 F. Supp. 1174 (E.D. Wis. 1979) 18
United States Jaycees v. McClure, 305 N.W. 2d 764 (Sup. Ct. Minn. 1981) .... *passim*
United States Jaycees v. McClure, 709 F. 2d 1560 (8th Cir. 1983) .... *passim*
United States Power Squadrons v. State Human Rights Appeal Bd., 59 N.Y. 2d 401, 465 N.Y.S. 2d 871, 452 N.E. 2d 1199 (1983) 3, 11, 12, 18

Williamson v. Lee Optical Co., 348 U.S. 483 (1955) 12
Winters v. New York, 333 U.S. 507 (1948) 7

PAGE

Wright v. Cork Club, 315 F. Supp. 1143 (S.D. Tex. 1970) 18
Wright v. Salisbury Club, Ltd., 632 F. 2d 309 (4th Cir. 1980) 11

Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) 18

Statutes:

FEDERAL:

42 U.S.C. § 2000a *et seq.* 5

STATE:

Cal. Stats. 1897, ch. 108, § 1, p. 137 2
New York Civil Rights Law § 40-c(2) (McKinney 1976 and Supp. 1983-1984) 14
New York Executive Law, Article 15 (McKinney 1976) § 290(3) 2, 12, 13
New York Executive Law, Article 15 (McKinney 1976) § 296(2)(a) 14
1909 N.Y. Laws, ch. 14 2
1952 N.Y. Laws, ch. 285, § 6 2
1964 N.Y. Laws, ch. 239 14
1965 N.Y. Laws, ch. 516 2
1971 N.Y. Laws, ch. 1194 2
Unruh Civil Rights Act, Cal. Civil Code § 51 (Cal. Stats. 1959, ch. 1866, § 1, p. 4424) 2

Other Authorities:

L. Tribe, *American Constitutional Law* § 12-6 at 594-598 (1978) 15
U.S. Sup. Ct. Rule 36.4 1

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AMICUS CURIAE BRIEF OF THE STATE OF NEW YORK, JOINED BY THE STATE OF CALIFORNIA

Interest of *Amici Curiae*

The State of New York, by its Attorney General, Robert Abrams, and the State of California, by its Attorney General, John K. Van de Kamp, submit this brief as *amici curiae* pursuant to Supreme Court Rule 36(4).

Amici submit that the ability of women to compete equally with men in the business, professional and civic worlds

is a value of utmost importance within their states.* The systematic exclusion of women from business, professional and community service organizations has been an historical impediment to the full participation of women in our society. The States of New York and California are firmly committed to altering this historical reality by requiring organizations which provide traditional avenues of professional advancement and community involvement to provide equal access to men and women. These organizations, such as the United States Jaycees, provide leadership training, program experience and informal networks which are frequently essential to full participation within our society and to personal and professional growth.

The States of New York and California have aggressively enforced their policies** and laws against discrim-

* New York and California have long prohibited discrimination in places of public accommodation. In 1909, discrimination in public accommodations based on race was made a misdemeanor in New York. 1909 N.Y. Laws, ch. 14. In 1952, New York made discrimination on the basis of race, color, creed or national origin in places of public accommodation an unlawful discriminatory practice. 1952 N.Y. Laws, ch. 285, § 6. Employment discrimination based on sex was made illegal in 1965. 1965 N.Y. Laws, ch. 516. In 1971, New York banned discrimination based on sex in places of public accommodation. 1971 N.Y. Laws, ch. 1194.

In California, discrimination by enterprises affected with a public interest has long been prohibited. The common law prohibition, made statutory in 1897 (Cal. Stats. 1897, ch. 108, § 1, p. 137), is now codified in the Unruh Civil Rts. Act, Civil Code § 51 (Cal. Stats. 1959, ch. 1866, § 1, p. 4420), *In re Cox*, 3 Cal. 3d 205, 212-214, 90 Cal. Rptr. 24, 27-29, 474 P. 2d 992, 995-997 (1970).

** The New York Legislature has declared that:

> [T]he state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. N.Y. Exec. Law § 290(3) (McKinney 1976).

ination in places of public accommodation, and believe it necessary to continue doing so. *See, e.g., United States Power Squadrons* v. *State Human Rights Appeal Bd.,* 59 N.Y. 2d 401, 465 N.Y.S. 2d 871, 452 N.E. 2d 1199 (1983); *Batavia Lodge* v. *New York State Division of Human Rights,* 35 N.Y. 2d 143, 359 N.Y.S. 2d 25, 316 N.E. 2d 318 (1974); *Castle Hill Beach Club, Inc.* v. *Arbury,* 2 N.Y. 2d 596, 162 N.Y.S. 2d 1, 142 N.E. 2d 186 (1957); *Curran* v. *Mount Diablo Council of the Boy Scouts of America,* 147 Cal. App. 3d 712, 731-732, 195 Cal. Rptr. 325 (1983).

The decision of the court below would severely hamper New York, California and other states in their attempts to eradicate discrimination in public accommodations. Unless the decision is reversed, places of public accommodation will be given free license to discriminate solely because they espouse some ideas, the expression of which is protected by the First Amendment. This would effectively defeat New York's and California's efforts to open public accommodations to members of both sexes, and of all races, religions and nationalities.

Statement of the Case

Amici adopt the Statement of the Case as set forth in Appellants' brief.

Summary of Argument

The United States Constitution does not affirmatively protect a public organization's discriminatory denial of equal membership opportunities to women. No First Amendment associational right attaches to such an organization merely because it expresses some limited political

or ideological positions. *Runyon* v. *McCrary,* 427 U.S. 160 (1976); *Norwood* v. *Harrison,* 413 U.S. 455 (1973). Thus, states may constitutionally prohibit such an organization from discriminating against women in its membership policies.

Assuming, *arguendo,* that the Jaycees' freedom to associate is infringed by application of Minnesota's anti-discrimination statutes, the state has a sufficiently compelling interest in ending discrimination to justify that infringement.

Finally, the statute as construed by the Minnesota Supreme Court clearly distinguishes between "public" and "private" clubs and thus is not unconstitutionally void for vagueness. *Tillman* v. *Wheaton-Haven Recreation Ass'n,* 410 U.S. 431 (1973); *Sullivan* v. *Little Hunting Park, Inc.,* 396 U.S. 229 (1969).

ARGUMENT

POINT I

The First Amendment Does Not Guarantee the Jaycees the Right to Discriminate Against Membership Applicants on the Basis of Sex.

The decision of the court below, that Minnesota's anti-discrimination laws cannot constitutionally be applied to the membership policies of the United States Jaycees, rested on the erroneous belief that the ideological and political positions taken by the Jaycees will inevitably change if women are afforded equal membership status within the organization. Although the court agreed that most of the

positions taken by the Jaycees had nothing to do with the sex of its members, the court speculated that the presence of women might cause the Jaycees to adopt different ideological and political viewpoints. The grant of affirmative constitutional protection to discriminatory membership policies of a public organization cannot, however, be based on such mere speculation.

If the decision of the court below is upheld, New York, California and other states (and the federal government*) will be unable to require all places of public accomodation to open their doors equally to men and women. The mere espousal of any political or ideological position, unrelated to the exclusionary membership policies which the state declares unlawful, will immunize organizations and accommodations from application of laws barring discrimination** in public accommodations.

This Court has applied a two-tiered analysis in cases where an unconstitutional limitation on the freedom of association is alleged. First, the Court has examined whether any associational rights have actually been infringed by the conduct in question. If the state's actions have caused no impediment to the exercise of constitutional rights, the inquiry need go no further. If, however, a constitutional right has been limited by the state's actions, the Court must then balance the extent of the interference with

* The holding of the court below would apply with equal force to organizations found not to be "private clubs" and subject to federal law barring racial discrimination in public accommodations. 42 U.S.C. § 2000a *et seq.*

** Racially-discriminatory membership policies, as well as sexually-discriminatory policies, would also be constitutionally protected if the court's opinion is affirmed.

protected rights against the state's interest in abridging such rights. *Healy* v. *James,* 408 U.S. 169, 181 (1972).

As *amici* will argue, the order of the Hearing Examiner, requiring the Jaycees to accept women as members, does not interfere with the Jaycees' rights under the First Amendment. But even if the rights asserted are of sufficient importance to warrant constitutional protection, the state's interest in this matter is so compelling as to overwhelmingly outweigh any interests of the Jaycees which might be abridged by application of Minnesota's laws against discrimination in public accommodations.

A. The Constitutional Rights of the Jaycees Are Not Abridged by Application of Minnesota's Law Barring Discrimination Based on Sex in Places of Public Accommodation.

After citing cases allegedly supporting an independent constitutional right of association, the court below assessed the Jaycees' activities and determined that "a good deal of what [they do] indisputably comes within the right of association, even as limited to association in pursuance of the specific ends of speech, writing, belief, and assembly for redress of grievances." *United States Jaycees* v. *McClure,* 709 F. 2d 1560, 1570 (8th Cir. 1983). This finding rested on the court's examination of several of the Jaycees' positions on matters of social or political concern. For example, the Jaycees' creed contains the sentiments that its members believe in "faith in God" and "free enterprise" and believe that "the brotherhood of man transcends the sovereignty of nations." *Jaycees,* 709 F. 2d at 1570. The court then reasoned that because these ideas, and others espoused by the Jaycees, represent certain ideological posi-

tions, the actions of the Jaycees in denying equal membership opportunities to women are constitutionally immune from application and enforcement of Minnesota's law against discrimination in public accommodations.

Amici assert that this holding, which represents a major departure from prior court decisions upholding the constitutionality and application of laws against discrimination,* relies on misguided interpretations of prior holdings of this Court and more accurately reflects disagreement with the finding of the Minnesota Supreme Court that the Jaycees is a "place of public accommodation" under Minnesota law. *United States Jaycees* v. *McClure,* 305 N.W. 2d 764, 774 (Sup. Ct. Minn. 1981). The decision of the Minnesota Supreme Court is authoritative on the issue. *Winters* v. *New York,* 333 U.S. 507, 514 (1948).

The cases cited by the court below do not support the proposition that mere espousal of "political" or "ideological" views confers upon a "public business facility", *United States Jaycees* v. *McClure,* 305 N.W. 2d 764, 768 (Sup. Ct. Minn. 1981), a constitutional immunity from application of state anti-discrimination laws.** The cases cited represent deliberate, case-by-case determinations that constitutional rights were infringed by state actions affecting the exercise

* *Runyon* v. *McCrary,* 427 U.S. 160, 176 (1976); *Tillman* v. *Wheaton-Haven Recreation Ass'n,* 410 U.S. 431, 438 (1973); *Norwood* v. *Harrison,* 413 U.S. 455, 469-70 (1973); *Sullivan* v. *Little Hunting Park, Inc.,* 396 U.S. 229, 236 (1969).

** Although Minnesota's statute does not expressly provide a statutory exemption for private clubs, "private associations and organizations—for example those that are selective in membership", are unaffected by Minnesota law. *United States Jaycees* v. *McClure,* 305 N.W. 2d at 768.

of pure First Amendment rights.* They do not create a general "associational" right to be enjoyed by businesses, or by non-private organizations which espouse certain limited "ideological" views, particularly when the substantive content of the views expressed is unrelated to the discrimination which the state seeks to ban.

This Court and lower courts have consistently refused to provide *acts* of discrimination, as opposed to *mere speech,* with constitutional protection. In *Runyon* v. *McCrary,* 427 U.S. 160 (1976), this Court held that a nursery school's refusal to admit black children violated 42 U.S.C. § 1981, and stated:

> [I]t may be assumed that parents have a First Amendment right to send their children to educational institutions that promote the belief that racial segregation is desirable, and that the children have an equal right to attend such institutions. But it does not follow that the *practice* of excluding racial minorities from such institutions is also protected by the same principle. As the Court stated in *Norwood* v. *Harrison,* 413 U.S. 455, "the Constitution . . . places no value on discrimination," *id.,* at 469, and while "[i]nvidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment . . . it has never been accorded affirmative constitutional protections." 427 U.S. at 176, *quoting Norwood* v. *Harrison,* 413 U.S. 455, 469-70 (1973) (emphasis in original).

* *Healy* v. *James,* 408 U.S. 169 (1972) (holding unconstitutional a blanket bar on recognition of college SDS chapter without evidence of individualized inquiry into chapter's views on disruption); *Cousins* v. *Wigoda,* 419 U.S. 447 (1975) (upholding right to join *political* party of one's choice); *NAACP* v. *Button,* 371 U.S. 415, 431 (1963) (Virginia could not ban NAACP attorneys from "soliciting" cases because constitution protected right to associate for purposes of litigation to attack racial discrimination); *Griswold* v. *Connecticut,* 381 U.S. 479 (1965) (right of privacy includes right to choose whether to bear children).

The court below distinguished *Runyon* on the grounds that it involved a school available to the public, and not a "private social organization." *Jaycees,* 709 F. 2d at 1575. That distinction, however, simply reflected the court's disagreement with the binding holding of the Minnesota Supreme Court that the Jaycees are *not* a private social organization, but a "public business facility." *United States Jaycees* v. *McClure,* 305 N.W. 2d at 771. Further, the court below cited to potential changes in the Jaycees "dogma" that might result if women became equal members, but in *Runyon* this Court approved the Court of Appeals' finding that there was "no showing that discontinuance of [the] discriminatory admission practices would inhibit in any way the teaching in these schools of any ideas or dogma." 427 U.S. 176, *citing* 515 F. 2d at 1087. If the admission of black children to an all-white nursery school would not affect the espousal of racist principles, it is even less likely in this case that the admission of women members would alter the sex-neutral ideology of the Jaycees.

In *Railway Mail Ass'n* v. *Corsi,* 326 U.S. 88 (1945), this Court rejected the claims of the Railway Mail Association, a labor organization which refused to admit black members because of their race, that its constitutional rights were abridged by a New York law barring racial discrimination by labor organizations:

> "Certainly the insistence by individuals on their private prejudices as to race, color or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of a State to extend the area of non-discrimination beyond that which the Constitution itself enacts." 326 U.S. at 98 (*Frankfurter,* J., concurring).

The cases cited by the court below in support of its extension of the constitutional right of association to the discriminatory membership policies of a public enterprise were based on a showing that the First Amendment activities at stake (*e.g.,* speech, assembly, petition for redress of grievances) were encumbered or restricted by the prohibition or regulation which was challenged as unconstitutional. For example, in *Buckley* v. *Valeo,* 424 U.S. 1 (1976) (per curiam), the court struck down federal laws limiting expenditures "relative to a clearly identified candidate." 424 U.S. at 13 (citations omitted). In declaring part of the law unconstitutional, the Court stated that the monetary limitation "precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association." 424 U.S. at 22.

Similarly, in *United Mine Workers* v. *Illinois State Bar Ass'n,* 389 U.S. 217, 218-220 (1967), this Court held that Illinois could not bar the Mine Workers from retaining an attorney to represent its members in Workers' Compensation claims. In so doing, the Court found that the Mine Workers associational rights included the right to provide attorneys to "assist its members in the assertion of their legal rights" since such assertion was intimately connected to their rights of speech, assembly and petition for redress of grievances. *United Mine Workers,* 389 U.S. at 221-22.

The record in this case is devoid of any evidence of a nexus between the membership policies of the Jaycees and the content of the "political" or "ideological" views it espouses. *Jaycees,* 709 F. 2d at 1571. As the court below recognized, most of the views expressed by the Jaycees bear

no relation to the sex of the believer. *Jaycees,* 709 F. 2d at 1571. The support of school prayer, a balanced budget or economic development of Alaska are gender-neutral political opinions which are apparently held with equal strength by the women who are currently associate Jaycees members and by the male members of the Jaycees. There is nothing in the record to support the belief that if the Jaycees admit women as full members, it will become supportive of different political or ideological positions.

If merely supporting such gender-neutral ideas such as "faith in God", "free enterprise", or "brotherhood of man" empowered an entity to maintain discriminatory membership policies because the entity's views "might" change if the policies were not discriminatory, *no* organization would have to comply with anti-discrimination laws. An organization would need only to state its belief in the "brotherhood of man" or the rights of "free men" to immunize itself from the application of such laws.

The constitutional right to discriminate—if it exists at all—is extinguished once an organization is found to be "not private." *See Tillman* v. *Wheaton-Haven Recreation Ass'n,* 410 U.S. 431, 438 (1973); *Sullivan* v. *Little Hunting Park, Inc.,* 396 U.S. 229, 236 (1969); *Wright* v. *Salisbury Club, Ltd.,* 632 F. 2d 309 (4th Cir. 1980); *Cornelius* v. *Benevolent Protective Order of Elks,* 382 F. Supp. 1182, 1202 (D. Conn. 1974); *United States Power Squadrons* v. *State Human Rights Appeal Bd.,* 59 N.Y. 2d 401, 411, 465 N.Y.S. 2d 871, 877-878, 452 N.E. 2d 1199, 1205-1206 (1983). Here, the United States Jaycees sells memberships to men without any selectivity. *United States Jaycees* v. *McClure,* 305 N.W. 2d at 771. The organization's emphasis

is on sales and solicitation of memberships to any and all men, promising them the "advantages" that arise from membership in the Jaycees, including leadership training. 305 N.W. 2d at 779. No membership applicant in Minnesota has ever been rejected. 305 N.W. 2d at 771. The very essence of a "private club"—selectivity in membership—is thus entirely absent. *Tillman* v. *Wheaton-Haven Recreation Ass'n,* 410 U.S. 431 (1973); *United States Power Squadrons* v. *State Human Rights Appeal Bd.,* 59 N.Y. 2d 401, 465 N.Y.S. 2d 871, 452 N.E. 2d 1199 (1983).

Because no constitutional right is infringed here, the state need only show that its statute bears a rational basis to its undeniably legitimate interest in promoting equality in public accommodations. *Nebbia* v. *New York,* 291 U.S. 502, 537 (1934); *Day-Brite Lighting, Inc.* v. *Missouri,* 342 U.S. 421 (1952); *Williamson* v. *Lee Optical Co.,* 348 U.S. 483 (1955).* The methods the state has employed to advance its interests in this case are not unreasonable, arbitrary or capricious since they do not restrict, control or determine the Jaycees' activities, but only require that such activities be open to women and men equally. In addition, the means chosen by the Hearing Examiner—enjoining the Jaycees from denying women equal membership status—has a reasonable and substantial relation to the state's articulated interests in assuring equal opportunities for its female citizens. Under the terms of the Hearing Examiner's order, the Jaycees can continue to devote its energies to the development of young men and their interests, as expressed in its Bylaws.

* New York's statute barring discrimination based on sex in places of public accommodation is explicitly an exercise of its police power, and is intended to protect the health and safety of the public. N.Y. Exec. Law § 290(3) (McKinney 1976).

In sum, the Jaycees possess no constitutional protection for their discriminatory membership policies, because their right to espouse their views is not restricted by a requirement that they admit women to full membership.

B. If Any Constitutional Rights of the Jaycees Are Infringed, the State Has a Compelling Interest Justifying Such Abridgement.

Assuming, *arguendo,* that the Jaycees' associational rights are in some manner infringed by application of the Minnesota anti-discrimination laws, that infringement is justified by Minnesota's compelling interest in providing equal opportunity to men and women.

While agreeing that the state's interest in this case—preventing discrimination in public accommodations on the basis of sex "is 'compelling' in the general sense of that word," *Jaycees,* 709 F. 2d at 1572 (citation omitted), the court below held Minnesota's interest was not sufficiently compelling to justify the degree of interference it imposed on the Jaycees. *Jaycees,* 709 F. 2d at 1576.

The court below greatly undervalued the extent of the state's interest in this case. There is no question that states have a "compelling interest in eradicating second-class citizenship in places of public accommodation." *Jaycees,* 709 F. 2d at 1581 (*Lay,* Chief J., dissenting). The New York Legislature, for example, has found:

> "The failure to provide equal opportunity . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state

and its inhabitants." N.Y. Exec. Law § 290(3) (McKinney 1976).

The interest of Minnesota, New York and California in enacting and aggressively enforcing their Human Rights Laws is based on a social value which is of utmost importance*—allowing female citizens full and equal access to places of accommodation which are open to the public in order to provide women the opportunity to enhance their development as members of the community and to promote equality in general. As this Court recognized in upholding Puerto Rico's *parens patriae* standing against growers alleged to have discriminated against Puerto Ricans based on their origin:

> Just as we have long recognized that a State's interest in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests, we recognize a similar state interest in securing residents from the harmful effects of discrimination. This Court has had too much experience with the political, social, and moral damage of discrimination not to recognize that a State has a substantial interest in assuring its residents that it will act to protect them from these evils. *Snapp* v. *Puerto Rico,* 458 U.S. 592, 609 (1982).

See also Orr v. *Orr,* 440 U.S. 268, 279-281 (1979); *Craig* v. *Boren,* 429 U.S. 190, 198-199 (1976); *Frontiero* v. *Richardson,* 411 U.S. 677, 686 (1973).

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* In 1964, New York deemed freedom from discrimination in employment based on sex to be a civil right. 1964 N.Y. Laws, ch. 239. New York law now prohibits *any* discrimination in civil rights based on sex, N.Y. Civ. Rts. Law § 40-c(2) (McKinney 1976 and Supp. 1983-1984), and makes discrimination based on sex in places of public accommodation an unlawful discriminatory practice. N.Y. Exec. Law § 296(2)(a) (McKinney 1976).

There is hardly a more important area of state concern than furtherance of the opportunities of all citizens to participate in educational, business and civic associations. As noted by the Minnesota Supreme Court, the Jaycees provide exactly such opportunities. "Those holding individual memberships and who become officers in the organization thereby receive *enhanced leadership experience* and enjoy the enhanced privileges and advantages of making contact with others, often *business contacts.*" *United States Jaycees* v. *McClure*, 305 N.W. 2d at 769 (emphasis added). Those women who are currently associate members of the Jaycees are unable to benefit, either personally or professionally, from the significant leadership roles which male members can attain, since they cannot vote on issues or in elections, cannot hold any office and cannot receive any awards in recognition of their work.

In assessing the state's interest when its actions have interfered with First Amendment freedoms, this Court has looked to the *intent* of the state statute to determine if the state's interest is "suppression of free expression". *United States* v. *O'Brien,* 391 U.S. 367, 377 (1968); L. Tribe, *American Constitutional Law* § 12-6, at 594-598 (1978). Here, the state's interest in requiring equal membership opportunities is neither abridgement of any "pure" First Amendment rights, nor deterrence of association. *See Konigsberg* v. *State Bar,* 366 U.S. 36, 52 (1961); *United States Jaycees* v. *McClure,* 305 N.W. 2d at 765; *NAACP* v. *Alabama,* 357 U.S 449 (1958). The state merely seeks to give women the same rights as men to participate in a "public business." *United States Jaycees* v. *McClure,* 305 N.W. 2d at 769.

The less intrusive methods suggested by the court below, *Jaycees,* 709 F. 2d at 1573-1574, would only be less effective

means of accomplishing the state's compelling goal of assuring women equal access to places of public accommodation.

The Minnesota fair employment agency's directive that the Jaycees admit women to full membership is the only effective means of advancing the state's compelling interest in providing equal access to public accommodations to members of both sexes.

In sum, if the Jaycees' associational rights are infringed by application of Minnesota's anti-discrimination laws, that infringement is justified by the state's paramount interest in assuring equal opportunity to women and men.

POINT II

The Minnesota Public Accommodations Law, as Interpreted by the Minnesota Supreme Court, Is Not Unconstitutionally Vague.

The Eighth Circuit ruled that the Minnesota public accommodations statute, as interpreted by the Minnesota Supreme Court, is unconstitutionally vague because the state court failed to provide "any discernible standard by which to distinguish 'public' [organizations] from 'private' [ones]." *Jaycees,* 709 F. 2d 1560 at 1577. Ignoring the Minnesota court's analysis of the public/private distinction, the court below instead focused on the state court's statement that the Jaycees was not analogous "to private organizations such as the Kiwanis International Organization." *United States Jaycees* v. *McClure,* 305 N.W. 2d 764 at 771.

The court below took this dictum regarding the Kiwanis and transformed it into a holding that the organization is private. But the Minnesota court did not so hold. The

Kiwanis was not before the state court and the record concerning the organization was clearly not adequate to reach any conclusion on the Kiwanis' public/private status.*

Where specific standards are provided to guide the application and enforcement of a statute, the statute cannot be found to be void for vagueness. *Grayned* v. *City of Rockford,* 408 U.S. 104, 108 (1972). In its decision, the Minnesota Supreme Court employed a clear and specific standard to distinguish between public and private organizations. The court found that the Jaycees is a public organization because it "encourages continuous recruitment, discourages the use of any selection criteria" and does not limit the size of its membership. 305 N.W. 2d 764 at 771.**

The standard adopted by the Minnesota court, which is based on the exclusivity and selectivity of the organizations' membership practices, is completely consistent with the standards used by this Court and lower federal courts to distinguish between public and private organizations in applying public accommodation and other civil rights statutes. *See, e.g., Tillman* v. *Wheaton-Haven Recreation Ass'n,* 410 U.S. 431 (1973) (42 U.S.C. §§ 1981, 1982); *Sullivan* v. *Little Hunting Park, Inc.,* 396 U.S. 229 (1969) (42 U.S.C. §§ 1981, 1982); *Quijano* v. *University Federal*

* The limited information in the record about the Kiwanis organization suggests, however, that because of the Kiwanis' restrictions on membership, under the clearly defined standards enunciated by the Minnesota Supreme Court, Kiwanis might well be considered private. The Jaycees have no comparable restrictions. *Jaycees,* 709 F. 2d 1560 at 1582 (*Lay,* Chief J., dissenting).

** As this Court has recognized, an authoritative construction of a statute by a court can make words which might otherwise be vague sufficiently specific to avoid any constitutional infirmity. *Parker* v. *Levy,* 417 U.S. 733, 752 (1974); *Chaplinsky* v. *New Hampshire,* 315 U.S. 568, 571 (1942).

Credit Union, 617 F.2d 129 (5th Cir. 1980) (Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(b)(2)); *Wright* v. *Cork Club,* 315 F. Supp. 1143 (S.D. Tex. 1970) (Title II, 42 U.S.C. § 2000a(e)); *United States* v. *Trustees of Fraternal Order of Eagles,* 472 F. Supp. 1174 (E.D. Wis. 1979) (Title II, 42 U.S.C. § 2000a(e)).

The New York Court of Appeals recently employed the same standard to repudiate the contention of the United States Power Squadrons, an all male organization, that it is a private club and therefore exempt from coverage under the New York public accommodations law.

The court stated:

> "The essence of a private club is selectivity in its membership. It must have a 'plan or purpose of exclusiveness.' Organizations which routinely accept applicants and place no subjective limits on the number of persons eligible for membership are not private clubs." *United States Power Squadrons* v. *State Human Rights Appeal Bd.,* 59 N.Y. 2d 401, 412, 465 N.Y.S. 2d 871, 876, 452 N.E. 2d 1199, 1204 (1983) (citations omitted).

This Court has stated repeatedly that a statute is not rendered void for vagueness merely because there may be marginal cases in which the standard may be difficult to apply. *United States* v. *National Dairy Corp.,* 372 U.S. 29 (1963); *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337 (1952). Thus, the speculative concern of the court below about the status of the Kiwanis Organization cannot provide the basis for a holding that the Minnesota public accommodations law is unconstitutionally vague.*

* In the absence of any First Amendment violation, Point I, *supra,* the organization lacks standing to assert a claim that the statute is void for vagueness as applied to the Kiwanis. *Young* v. *American Mini Theatres, Inc.,* 427 U.S. 50, 61-63 (1976); *Parker* v. *Levy,* 417 U.S. 733, 756 (1974).

The Jaycees do not present a marginal or problematic case. The organization exercises virtually no selectivity in its membership policy, other than unlawful sex discrimination, as is amply demonstrated by the organization's inability to cite a single instance in which a male was rejected for membership. *Jaycees,* 305 N.W. 2d 764, 771. The Minnesota public accommodations law is clearly applicable to the Jaycees.

The Minnesota Supreme Court properly adopted and applied to the Jaycees a widely accepted, specific standard to distinguish between public and private organizations. The standard was not rendered vague by the court's reference, in dictum, to another, entirely different organization not before the court.

Conclusion

For the Foregoing Reasons, the Decision of the Court of Appeals Should Be Reversed.

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