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,

vs.

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

BRIEF FOR THE STATES OF CALIFORNIA AND NEW YORK As Amici Curiae In Support of Appellants' Jurisdictional Statement

JOHN K. VAN DE KAMP
Attorney General of the
State of California
ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
MARIAN M. JOHNSTON
Deputy Attorney General
Counsel of Record
6000 State Building
350 McAllister Street
San Francisco, California 94102
Telephone: (415) 557-3991
Counsel for Amicus Curiae
State of California

November 28, 1983

(List of Additional Counsel on Inside Cover)

ROBERT ABRAMS
Attorney General of the
State of New York

ROSEMARIE RHODES
Bureau Chief,
Civil Rights Bureau
Assistant Attorney General

SHELLEY B. MAYER
Assistant Attorney General

2 World Trade Center
New York, New York 10047

Counsel for Amicus Curiae
State of New York

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INTEREST OF AMICI CURIAE

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

Within the federal system, states have long played an essential role in requiring nondiscrimination by private enterprises affected with a public interest. In California, this common law doctrine first received statutory recognition in 1897 (Cal. Stats. 1897, ch. 108, §1, p. 137), and is now codified in the Unruh Civil Rights Act, Cal. Civil Code § 51 (Cal. Stats. 1959, ch. 1866, §1, p. 4424). *In re Cox,* 3 Cal. 3d 205, 212-214 [90 Cal. Rptr. 24] (1970). Many states, including *amici,* enacted statutes forbidding discrimination by public accommodations in response to the holding in the *Civil Rights Cases,* 109 U. S. 3 (1883), that the federal government had no power to prohibit such private discrimination.[1] *Bob-Lo Excursion Co. v. Michigan,* 333 U. S. 28, 33 (1948); Horowitz, *The 1959 California Equal Rights In "Business Establishments" Statute—A Problem In Statutory Application,* 33 So. Cal. L. Rev. 260, 277 (1960).

Amici's public accommodations statutes have recently been held applicable to organizations which offer membership to the general public but exclude a class of persons on a basis prohibited by law. *Curran v. Mount Diablo Council of the Boy Scouts of America,* 147 Cal. App. 3d 712, 731-732 [195 Cal. Rptr. 325] (1983); *United States Power Squadrons v. State Human Rights Appeal Board,* 59 N. Y. 2d 401 [465 N. Y. S. 2d 871] (1983).

The decision below by the Court of Appeals jeopardizes the ability of *amici* and other states to enforce

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[1]New York's prohibition of discrimination in public accommodations has been in effect for nearly 75 years and is now codified in N. Y. Exec. Law § 296(2) (McKinney 1982).

their public accommodations statutes as to membership organizations generally open to the public. *Amici* have a direct and substantial interest in preserving their statutes, and therefore assert herein an interest as *amici curiae* in obtaining a reversal of the decision below.

STATEMENT OF THE CASE

Appellants are the officials of the State of Minnesota charged with enforcing that state's public accommodations statute, and appellee United States Jaycees (Jaycees) is a nationwide civic organization which excludes women as regular members.

After an administrative decision in Minnesota determined that Jaycees' membership policy violated Minnesota's public accommodations statute, the Jaycees initiated the instant proceeding by filing an action in federal district court, alleging that the state administrative decision violated the Jaycees' constitutional rights.

The district court requested a determination from the Minnesota Supreme Court as to whether Jaycees was subject to the state's public accommodations statute, and the Minnesota Supreme Court answered in the affirmative. *United States Jaycees v. McClure,* 305 N. W. 2d 764, 765 (Minn. 1981).

Thereafter, the district court rejected Jaycees' claim that its associational rights had been unconstitutionally abridged by the application of the public accommodations statute or that the statute was overbroad or void for vagueness. *United States Jaycees v. McClure,* 534 F. Supp. 766, 774 (D. Minn. 1982).

The Court of Appeals reversed, holding that Minnesota's public accommodations statute unconstitutionally interfered with the Jaycees' right of association and was

void for vagueness. *United States Jaycees v. McClure*, 509 F. 2d 1560, 1578 (8th Cir. 1983).

Appellants filed a timely notice of appeal and jurisdictional statement, invoking this Court's jurisdiction pursuant to 28 U. S. C. § 1254(2). For a further description of the parties herein, the opinions below, statement of the case, and jurisdiction, California adopts Appellants' jurisdictional statement.

SUMMARY OF ARGUMENT

Invidious discrimination against an entire class of persons solely on the basis of race, sex or other immutable characteristics, is not affirmatively protected by the Constitution. Freedom of association in furtherance of First Amendment interests is, of course, protected in many circumstances, but the right to associate does not include the right to discriminate when a group is otherwise open to the public.

The right of privacy may include a right to discriminate within one's home and intimate associations, but the right of privacy offers no protection to a membership group which is not truly private or selective and which only excludes applicants on a discriminatory basis.

Assuming, *arguendo,* any constitutional rights are abridged when a state requires nondiscriminatory membership policies for groups generally open to the public, the state's interest in promoting equal opportunity far outweighs any interference which may occur. Discrimination by public membership groups offends a national policy against discrimination, and harms both the individual who is denied membership and society as a whole.

A distinction between organizations generally open to the public and those which are truly private avoids

any constitutional difficulties in regulating discriminatory membership policies. A statute prohibiting discrimination may be construed so as not to apply to truly private groups, and such public/private distinction is based upon well established criteria and is not unconstitutionally vague.

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ARGUMENT

I. The regulation of the discriminatory practices of a group generally open to the public does not offend any constitutional guarantees.

Minnesota, California, and other states, as well as the federal government, have determined that the public's interest in eliminating discrimination is sufficient to proscribe exclusionary practices of organizations which offer membership to the general public yet exclude an entire class of persons solely on a prohibited basis. The court below held, however, that "the law's interference with an organization's choice of its own members . . . [is] invalid under the First and Fourteenth Amendments." 709 F. 2d at 1578-79. In so holding, the court below created a constitutionally protected right to discriminate which is totally unsupportable. While the right to associate in furtherance of First Amendment rights and the right to privacy are both well-established, these constitutional guarantees do not include any right to discriminate once a group opens its doors to the general public.

Freedom of association has, of course, been recognized as worthy of constitutional protection in numerous contexts.[2] However, the constitutional guarantees en-

[2]The right to associate in order to advocate beliefs or ideas is protected. *Anderson v. Celebrezze*, — U. S. —, [103 S. Ct. 1564, 1569] (1983); *Buckley v. Valeo*, 424 U. S. 1, 15 (1976);

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compassing the right to associate in furtherance of First Amendment rights have never included a constitutionally protected right to exclude an entire class of persons from a group otherwise open to the public, merely because of the race, sex or other immutable characteristics of that class. To the contrary, this Court has stated that such discrimination is not worthy of constitutional protection.

In *Norwood v. Harrison,* 413 U. S. 455 (1973), affirming the enjoining of a state program to loan textbooks to segregated schools, this Court rejected the claim that segregated private schools were entitled to any constitutional protection, saying:

> "[A]lthough the Constitution does not proscribe private bias, it places no value on discrimination as it does on the values inherent in the Free Exercise Clause. Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections." 413 U. S. at 469-70.

Similarly, in *Runyon v. McCrary,* 427 U. S. 160, 176 (1976), holding that 42 U. S. C. § 1981 prohibits private schools from denying admission on the basis of race, this Court quoted the language cited above in *Norwood v. Harrison* and distinguished between the protected First Amendment right to advocate segregated schools, and the asserted right to exclude students on the basis of race, rejecting the latter. The Court further noted that the

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and *Healy v. James,* 408 U. S. 169, 181 (1972). The right to associate to seek legal redress is protected. *United Mine Workers v. Illinois State Bar Assn.,* 389 U. S. 217, 221-22 (1967); and *NAACP v. Button,* 371 U. S. 415, 430 (1963). And the right to maintain privacy in association in order to preserve the free exercise of First Amendment rights is protected. *Brown v. Socialist Workers,* — U. S. —, [103 S. Ct. 416, 423] (1982); and *NAACP v. Alabama,* 357 U. S. 449, 460 (1958).

discontinuance of the discriminatory admission practice was not shown to inhibit the exercise of protected advocacy rights. *See also Railway Mail Assn. v. Corsi*, 326 U. S. 88, 93-94 (1945) (labor organizations have no right to discriminate).

While language taken out of context from some cases may allude to a general right to discriminate in one's associations, these cases actually concern the right of privacy, and in no way establish any right to discriminate for groups generally open to the public. For example, *Griswold v. Connecticut*, 381 U. S. 479 (1965) established a right of marital privacy, and the discussion therein of protected forms of association must be read in light of the Court's description of "a relationship lying within the zone of privacy." 381 U. S. at 485. Similarly, Mr. Justice Goldberg's concurring opinion in *Bell v. Maryland*, 378 U. S. 226 (1964) also concerns rights of personal privacy, describing "the constitutional protection extended to *privacy* and *private* association." 378 U. S. at 313. Likewise, Mr. Justice Douglas, in his often quoted dissent in *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 179 (1972),[3] described a "zone of privacy" with which the government may not interfere, and explained that this zone only extends to individuals or clubs described as "purely private." 407 U. S. at 179-80.[4]

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[3]The majority holding in *Moose Lodge*, was, of course, that insufficient state action existed to subject a private club's discriminatory practices to the requirements of the Equal Protection Clause. *See also Junior Chamber of Commerce v. United States Jaycees*, 495 F. 2d 883, 887 (10th Cir. 1974), *cert. denied* 419 U. S. 1026; *Junior Chamber of Commerce v. Missouri State Jaycees*, 508 F. 2d 1031, 1033 (8th Cir. 1975); and *New York City Jaycees, Inc. v. United States Jaycees*, 512 F. 2d 856, 860 (2d Cir. 1975). These cases are irrelevant to the instant action.

[4]In a subsequent decision, the same club was, in fact, held to be subject to Pennsylvania's public accommodations statute

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Where membership organizations are not "purely private" or exclusive in the selection of membership, but merely exclude an entire class of persons, these illusory selection procedures have been found to be unworthy of constitutional protection by both federal and state courts. In *Grove City College v. Bell,* 687 F. 2d 684 (3rd Cir. 1982), *cert. granted* — U. S. — [103 S. Ct. 1181] (1983), in a decision upholding the applicability of Title IX of the Education Act of 1972, 20 U. S. C. § 1681, to sex discrimination in federally financed education programs, the court rejected the claim that first amendment associational rights were being infringed, saying:

> "[T]he first amendment does not provide private individuals or institutions the right to engage in discrimination." 687 F. 2d at 702.

Other federal laws regulating discrimination by public accommodations have also been held applicable to the discriminatory membership policies of allegedly private clubs which are, in fact, open to the public and only restrict membership on a prohibited basis.[5] *See, e.g., Tillman v. Wheaton-Haven Recreational Assn. Inc.,* 410 U. S. 431, 438 (1973) (exclusionary policies of all-white club held unlawful because club had no plan or purpose of exclusiveness), and *Sullivan v. Little Hunting Park, Inc.,* 396 U. S. 229, 236 (1969) (exclusionary policies also held

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because it was open to any Caucasian. *Commonwealth of Pennsylvania v. Loyal Order of Moose, Lodge No. 107,* 448 Pa. 451 [294 A. 2d 594, 598] (1972), appeal dismissed for want of a substantial federal question, 409 U. S. 1052 (1972).

[5]While discrimination on the basis of sex is not prohibited by these federal laws, the fact that such statutes may be applied without offending any constitutional right to associate makes cases decided under these statutes relevant to the instant action. *See* Title II of the Civil Rights Act of 1964, as amended, 42 U. S. C. §§ 2000a *et seq.,* and 42 U. S. C. §§ 1981 and 1982.

unlawful, "there being no selective element other than race.")

As lower federal court decisions confirm, membership groups such as Jaycees which generally admit all applicants, excluding members only on an unlawful basis, are subject to these federal statutes. While the federal public accommodations statute, Title II of the Civil Rights Act of 1964, as amended, 42 U. S. C. §§ 2000a *et seq.*, expressly exempts from coverage any "private club or other establishment not in fact open to the public", 42 U. S. C. § 2000a(e), groups which are not truly private enjoy neither statutory nor constitutional protection for discriminatory membership practices. *See, e.g., Wright v. Salisbury Club, Ltd.*, 632 F. 2d 309, 311 n. 6 (4th Cir. 1980) ("No proposed constitutional right of privacy could protect clubs which are not truly private. . . ."); *Olzman v. Lake Hills Swim Club, Inc.*, 495 F. 2d 1333, 1336 (2d Cir. 1974); *Smith v. Young Men's Christian Assn.*, 462 F. 2d 634, 648 (5th Cir. 1972); *Stout v. Young Men's Christian Assn.*, 404 F. 2d 687, 688 (5th Cir. 1968); *Nesmith v. Young Men's Christian Assn.*, 397 F. 2d 96, 101-102 (4th Cir. 1968); *United States v. Trustees of F.O.E.*, 472 F. Supp. 1174, 1175-76 (E. D. Wis. 1979); *United States v. Slidell Youth Football Assn.*, 387 F. Supp. 474, 485 (E. D. La. 1974); and *Wright v. Cork Club*, 315 F. Supp. 1143, 1151 (S. D. Tex. 1970).

Decisions under state public accommodations law have similarly distinguished between truly private clubs and those generally open to the public. For example, in *Curran v. Mount Diablo Council of the Boy Scouts of America*, the court rejected the claim that the "governing principle" found in the Douglas dissent in *Moose Lodge* precluded the application of California's Unruh Civil Rights Act to the Boy Scouts, saying:

> "Taking this principle literally as 'governing' would afford protection to the most flagrant form of discrimination under the canopy of the right of free association. The answer is, of course, that those with a common interest may associate exclusively with whom they please *only* if it is the kind of association which was intended to be embraced within the protection afforded by the rights of privacy and free association. . . .
>
> "Accordingly, these constitutional provisions only restrain the Legislature from enacting antidiscrimination laws where *strictly* private clubs or institutions are affected." 147 Cal. App. 3d 730-731.

Similarly, in *United States Power Squadrons v. State Human Rights Appeal Board,* 59 N. Y. 2d 401 [465 N. Y. S. 2d 871] (1983), the New York Court of Appeals rejected the argument that women could be excluded from a club which extended membership to all males who completed a basic course, saying:

> "While private discrimination may be characterized as a form of freedom of association recognized under the [first] amendment, 'the constitution places no value on it' and petitioners are not entitled to affirmative protection to further their discriminatory practices (*Norwood v. Harrison,* 413 U. S. 455, 470, 93 S. Ct. 2804, 2813 (37 L. Ed. 2d 723). . . . Though nominally private, they are not exempt from the provisions of the Human Rights Law if they are not in fact private except for purposes of discrimination. . . ." 59 N. Y. 2d at 414-15.

Other states have similarly applied their public accommodations statutes to eliminate membership discrimination by groups generally open to the public. For example, in *National Organization for Women v. Little League Baseball, Inc.,* 127 N. J. Super. 552 [318 A. 2d 33] (1974), *aff'd.* 67 N. J. 320 [338 A. 2d 198], a membership organization for boys was required to admit girls, pursuant to

New Jersey's public accommodations law. As the court stated:

> "Little League is a *public* accommodation because the invitation is open to children in the community at large, with no restriction (other than sex) whatever." 318 A. 2d at 37-38.

In that case, as in the instant case, the male-only membership criteria was sought to be justified by references to the group's purposeful promotion of a specific ideology. This defense was rejected because there was no relationship between the goals of the group and the male-only membership restriction. As the court stated:

> "Little League also points to the vaunted aims of the organization, mentioned in its federal charter, of development in children of 'qualities of citizenship, sportsmanship, and manhood,' and it implies these objectives will be impaired, in the case of the boys, by admission of girls to the activity. We are quite unable to understand how these conclusions are arrived at. Moreover, assuming 'manhood,' in the sense of the charter, means basically maturity of character, just as does 'womanhood,' we fail to discern how and why little girls are not as appropriate prospects for learning citizenship and sportsmanship, and developing character, as are boys." *Id.*, 318 A. 2d at 39.

See also Clover Hill Swimming Club v. Goldsboro, 47 N. J. 25 [219 A. 2d 161, 166] (1966) ("[I]n the selection of . . . members there can be no discrimination because of race."); and *Whispering Hills Country Club v. Kentucky,* 475 S. W. 2d 645 (Ct. App. Ky., 1972) (affirming order that club cease refusing to admit members because of race).[6]

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[6]A few states have held that their public accommodations statutes do not cover discriminatory membership practices of clubs generally open to the public, but these decisions have been based upon interpretations of state statutes, and do not hold that such discriminatory practices are entitled to any con-

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In sum, the conclusion of the court below that constitutional rights are infringed by a law prohibiting discriminatory membership policies in a club generally open to the public is wholly unsupportable. Private discrimination is not entitled to constitutional protection as an exercise of the right of association, and the application of Minnesota's public accommodations statute to the Jaycees offends no constitutional guarantees.

II. A state's interest in eliminating discrimination by groups generally open to the public is direct, substantial and compelling.

Assuming any constitutional rights are interfered with by a state's prohibition of discriminatory membership practices, the validity of the state's action can only be determined after the state's interest is balanced against the nature and degree of the intrusion. As described in *Anderson v. Celebrezze,* 103 S. Ct. at 1570, the analytical process the court is to employ is to identify, evaluate and weigh the countervailing interests.

Minnesota's public interest in enacting and preserving its public accommodations statute was set forth in its Supreme Court's opinion, which reviewed the history and public policy of the statute. California's Unruh Civil Rights Act is based upon a similar belief that discrimination is contrary to public policy. *Burks v. Poppy Construction Co.,* 57 Cal. 2d 463, 471 [20 Cal. Rptr. 609] (1962); and *Winchell v. English,* 62 Cal. App. 3d 125, 128 [133 Cal. Rptr. 20] (1976). Other states and the federal government have similarly determined that groups which

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stitutional protection. *See, e.g. United States Jaycees v. Richardet,* 666 P. 2d 1008, 1012 (Alaska, 1983); *United States Jaycees v. Bloomfield,* 434 A. 2d 1379, 1381 (D. C. App., 1981); and *Schwenk v. Boy Scouts of America,* 275 Or. 327 [551 P. 2d 465, 469 n. 5] (1976).

are not strictly private should not be permitted to engage in discriminatory practices. It can scarcely be gainsaid that discrimination is contrary to the basic values of our society. *Bob Jones University v. United States,* — U. S. — [103 S. Ct. 2017, 2030] (1983).

Discrimination by membership organizations generally open to the public has been criticized in numerous commentaries as one of the final doors barring the equal opportunity of all persons to develop their talents and thus benefit society.

> "Because prestigious clubs exert an enormous influence on our country's commercial and political life, the national commitment to equality of opportunity must override asserted interests in privacy and association." Burns, *The Exclusion of Women from Influential Men's Clubs: The Inner Sanctum and the Myth of Full Equality,* 18 Harv. C. R.—C. L. L. Rev. 321, 324 (1983).

As the same writer concluded,

> "[W]hen a private club, whose members are highly influential in government, business and the professions, flatly denies membership to an entire class of persons . . . our nation ultimately suffers. Denying women the right to associate in this context inhibits their professional advancement, and, in turn, restricts their contribution to society." *Id.,* at 407.

See also Goodwin, *Challenging the Private Club: Sex Discrimination Plaintiffs Barred at the Door,* 13 Sw. U. L. Rev. 237, 271 (1982); and Hollingsworth, *Sex Discrimination in Private Clubs,* 29 Hastings L. J. 417, 442 (1977).

Given the substantial detriment discriminatory membership policies cause both to the excluded group and to society as a whole, the elimination of such discrimination is certainly a compelling state interest. This is particu-

larly true of civic organizations such as the Jaycees, an organization of over 300,000 members, whose avowed purpose is "to inculcate in the individual membership . . . a spirit of genuine Americanism and civic interest, . . . " 709 F. 2d at 1562.

Measured against this substantial concern for equal opportunity for all, the Jaycees' interest in maintaining its male-only membership appears insignificant. While some of Jaycees' activities certainly are protected under the First Amendment, there is absolutely no showing that the male-only policy is necessary for, or even related to the pursuit of these interests. As the court below determined, "there is no evidence in this record that any particular man who wanted to be a member has ever been rejected." 709 F. 2d at 1571. Since male applicants are not screened to select those whose beliefs and ideals are compatible with the Jaycees, and all women are excluded even though they may share Jaycees' concerns, the exclusionary policy in no way advances the Jaycees' First Amendment activities.

On balance, the state's concern for promoting equal opportunity for all persons, for the benefit of both the individual and society as a whole, vastly outweighs any legitimate interest of the Jaycees in maintaining a discriminatory membership policy.

III. The distinction between truly private clubs and those open to the general public is sufficiently specific to avoid unconstitutional vagueness.

In interpreting Minnesota's public accommodations statute, the Minnesota Supreme Court distinguished between public and private groups, and held that groups

without a restricted or selective membership are subject to the statute, while groups which are truly selective in membership are not. 305 N. W. 2d at 770-71. The court below held that this public/private distinction was "void for vagueness because it supplies no ascertainable standard for the inclusion of some groups as 'public' and the exclusion of others as 'private.'" 709 F. 2d at 1578. This holding ignores the long line of cases relied upon by the Minnesota Supreme Court which support its interpretation and which similarly distinguish between public and private groups according to the selectivity of the membership policy.

In *Tillman v. Wheaton-Haven Recreational Assn., Inc.,* and *Sullivan v. Little Hunting Park, Inc.,* the Supreme Court read a public/private distinction into 42 U. S. C. §§ 1981 and 1982. In *Sullivan,* the Court ruled that an allegedly private club was not truly private. As the Court explained,

> "There was no plan or purpose of exclusiveness. It is open to every white person within the geographic area, there being no selective element other than race." 396 U. S. at 236.

Similarly, in *Tillman,* a club was held not to be a truly private association since there was no actual selection except on the basis of race, despite formal approval requirements. 410 U. S. at 438. *See also Wright v. Salisbury Club, Ltd.,* 632 F. 2d at 312-13, where the court held that a club was not truly private because it did not follow a selective membership policy, it actively solicited members, and it served commercial interests.

As discussed above, the federal public accommodations statute includes a specific exemption for "a private

club or other establishment not in fact open to the public," 42 U. S. C. § 2000a(e), and cases interpreting this section have further developed the criteria adopted by the Minnesota Supreme Court to distinguish between public and private clubs. For example, in *Nesmith v. Young Men's Christian Assn.*, 397 F. 2d at 101-102, the court stated:

> "In determining whether an establishment is in fact a private club, there is no single test. A number of variables must be examined in the light of the Act's clear purpose of protecting only 'the genuine privacy of private clubs * * * whose membership is genuinely selective'. . . . The YMCA, with no limits on its membership and with no standards for admissibility, is simply too obviously unselective in its membership policies to be adjudicated a private club."

Similar criteria as to the size and selectivity of membership were described in *Olzman v. Lake Hills Swim Club, Inc.*, 495 F. 2d at 1336; *United States v. Trustees of F. O. E.*, 472 F. Supp. at 1175-76; *United States v. Slidell Youth Football Assn.*, 387 F. Supp. at 485; and *Wright v. Cork Club*, 315 F. Supp. at 1151-52.

The public/private distinction was also read into California's Unruh Civil Rights Act in *Curran v. Mount Diablo Council of Boy Scouts*, 147 Cal. App. 3d at 731, where the court, explaining it was interpreting the Act so as to avoid constitutional difficulties, said:

> "[C]onstitutional provisions only restrain the Legislature from enacting antidiscrimination laws where *strictly* private clubs or institutions are affected. . . . [¶] To avoid the unconstitutional infirmity argued by defendant, criteria have been established to determine, in the context of the Unruh Act and similar statutes, whether a group is private or public. . . ."

The Minnesota Supreme Court, like the California court in *Curran,* read into the state statute an exemption for clubs which are truly selective and private. This construction fully satisfies the need for specificity and avoids any constitutional difficulties which might be raised by a law which attempted to interfere with valid privacy rights.

The interpretation given the Minnesota statute by its Supreme Court negates any claim that the statute is void for vagueness. As described in *Buckley v. Valeo,* 434 U. S. at 77-78:

> "Where the constitutional requirement of definiteness is at stake, . . . [courts] have the further obligation to construe the statute, if that can be done consistent with the legislature's purpose, to avoid the shoals of vagueness. *United States v. Harriss, supra,* [(1954) 347 U. S. 612] at 618; *United States v. Rumely,* [(1953)] 345 U. S. [41], at 45."

The Minnesota Supreme Court has construed its statute to avoid constitutional difficulties, and has read into its statute a public/private distinction identical to that previously read into 42 U. S. C. §§ 1981 and 1982 and written into the federal public accommodations statute when applied to membership organizations. The statute, as construed, is not unconstitutionally vague.

CONCLUSION

The Constitution does not protect invidious discrimination by organizations generally open to the public. To the contrary, such discrimination offends public policy, as it denies equal opportunity to the excluded individuals and deprives society of the services of these individuals.

Federal law and the laws of many states already prohibit discrimination by membership organizations which are not truly private, and, before the decision below, such laws have never been held to interfere with constitutional guarantees, so long as a distinction is made between public and private groups.

The decision of the Court of Appeals should be reversed either summarily or after full hearing before this Court, so that it will not impede efforts to eliminate discrimination.

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General of the
State of California

ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General

MARIAN M. JOHNSTON
Deputy Attorney General

Counsel for Amicus Curiae
State of California