

10-1-1989

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Recommended Citation

Natalie Herlands, *The Right of Free Association in a Social Context: City of Dallas v. Stanglin*, 109 S. Ct. 1591 (1989), 7 U. Miami Ent. & Sports L. Rev. 131 (1989)

Available at: <http://repository.law.miami.edu/umeslr/vol7/iss1/7>

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The Right of Free Association in a Social Context

City of Dallas v. Stanglin, 109 S. Ct. 1591 (1989).

I. INTRODUCTION

The constitutional right of free association is not an absolute guarantee of unfettered association between individuals. Recently, the Supreme Court made this clear when it held in *City of Dallas v. Stanglin*¹ that the freedom of association which inheres in the first amendment does not include a "generalized right of 'social association'. . . ."²

The City of Dallas, the petitioner, had adopted an ordinance restricting admission to certain dance halls, classified as Class E dance halls,³ to persons between the ages of fourteen and eighteen.⁴ The respondent Stanglin, owner of the Twilight Skating

1. 109 S. Ct. 1591 (1989).

2. *Id.* at 1595.

3. In addition to providing for Class E dance halls, the Dallas City Code, §§ 14-1, 14-8 (1985-1986), provides for the licensing of Class A, B, C, and D dance halls. Class A, B, and C halls vary in the number of days per week dancing is permitted and require persons under 17 years of age to be accompanied by a parent to gain admission. Class D dance halls are for dance instruction. A license is not needed if a dance is held at a private residence, a governmentally-owned hall, a public or private school or university, a private club or a place owned by a religious organization. *Id.* at 1593 n.1.

4. The ordinance, Section 14-8.1 of the Dallas City Code provides:

(a) No person under the age of 14 years or over the age of 18 years may enter a Class E dance hall.

(b) A person commits an offense if he is over the age of 18 years and:

(1) enters a Class E dance hall; or

(2) for the purposes of gaining admittance into a Class E dance hall, he falsely represents himself to be:

(A) of the age from 14 through 18 years;

(B) a licensee or an employee of the dance hall;

(C) a parent or guardian of a person inside the dance hall;

(D) a governmental employee in the performance of his duties.

(c) A licensee or an employee of a Class E dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:

(1) under the age of 14 years; or

(2) over the age of 18 years.

(d) It is a defense to prosecution under Subsections (b)(1) and (c)(2) that the person is:

(1) a licensee or employee of a dance hall;

(2) a parent or guardian of a person inside the dance hall; or

(3) a governmental employee in the performance of his duties.

Rink in Dallas, Texas, had obtained a license for a Class E dance hall and operated a dance hall in an area adjacent to his skating rink. Unlike the dance hall section of his establishment, admission into the skating area was not restricted by age.⁵ Twilight did not maintain a selective admission policy and over 1,000 customers were admitted per night, most of whom were strangers to each other.⁶

Stanglin sued the City of Dallas in the District Court of Dallas County to enjoin enforcement of the age restrictions imposed by the ordinance.⁷ He contended that the ordinance impermissibly infringed upon the right of his fourteen to eighteen year old patrons' to freely associate and also violated the teenagers' due process and equal protection rights under both the United States and the Texas Constitutions.⁸ The trial court, in upholding the regulation, held that "the ordinance was rationally related to the city's interest in protecting the minors' safety and welfare."⁹

The Texas Court of Appeals, agreeing with Stanglin's position,¹⁰ struck the ordinance.¹¹ The court held that the minors' first amendment rights of association were infringed because the ordinance prohibited the teenagers from socializing with others outside of their age bracket.¹² Claiming that freedom of association includes association in a social context, the court stated that "the right to freely associate is not limited to 'political' assemblies, but includes 'those that pertain to the social, legal and economic benefit of our citizens.'"¹³ When restricting such a fundamental right, the court reasoned, the legislature must show a "compelling interest" and the restriction must be "accomplished by the least restric-

Id. at 1593 n.2.

5. *Id.* at 1592.

6. *Id.*

7. *Id.* at 1594.

8. *Id.*

9. *Id.*

10. The Texas Court of Appeals granted Stanglin standing to sue on behalf of the minors. The court based its decision on the fact that Stanglin is "among the vendors, and those in like position, whom the courts uniformly have permitted 'to resist efforts at restricting their operations by acting as advocates for the rights of third parties who seek access' to the services they provide" *Stanglin v. City of Dallas*, 744 S.W.2d 165, 167 (Tex. Ct. App. 1987) (citing *Carey v. Population Services International*, 431 U.S. 678, 683-84 (1977)). As such, Stanglin is "entitled to assert those concomitant rights of third parties that would be diluted or adversely affected should [his] constitutional challenge fail." *Id.*

11. *Id.* at 170.

12. *Id.* at 168-170.

13. *Id.* at 168 (quoting *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965)).

tive means" available.¹⁴

The Supreme Court, in an opinion delivered by Chief Justice Rehnquist, reversed.¹⁵ The Chief Justice, in resolving the critical issue, stated that the ordinance does not infringe upon any right of social association because there is no right of social association protected by the Constitution.¹⁶ He declared that while there is a right of free association implicit in the first amendment,¹⁷ this right is not absolute but only is recognized in certain limited circumstances.¹⁸ In addition, the Chief Justice determined that the ordinance did not violate the equal protection guarantees of the United States and Texas Constitutions.¹⁹

II. ANALYSIS

A. Freedom of Association

In *Roberts v. United States Jaycees*²⁰ the Supreme Court

14. *Id.*

15. *City of Dallas v. Stanglin*, 109 S. Ct. 1591 (1989).

16. *Id.* at 1595. A number of Fifth Circuit cases previously had recognized and protected the right to freely associate in a social setting. *See, e.g., Johnson v. City of Opelousas*, 658 F.2d 1065 (5th Cir. 1981) (holding juvenile curfew ordinance violative of minors' associational rights); *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980) (holding that city ordinance prohibiting minors less than seventeen years of age from entering coin-operated amusement centers unconstitutionally invades minors' freedom of social association); *Sawyer v. Sandstrom*, 615 F.2d 311 (5th Cir. 1980) (holding that county ordinance punishing mere association with an individual known to be in possession of or engaged in the use of narcotics interferes with the personal liberty of individuals to associate with whom they please).

17. *Id.* at 1594.

18. *Id.*

19. *Id.* at 1595-1597.

20. 468 U.S. 609 (1984). In *Roberts*, the United States Jaycees brought an action challenging a state statute forbidding sexual discrimination in public places. Specifically, they challenged the requirement that females be admitted to their organization. Justice Brennan, writing for the majority and disagreeing with the Jaycees, held that the male members were not entitled to a constitutionally protected right of association. *Id.* *See generally Note, Constitutional Law - Freedom of Association - Sex Discrimination - Associations and Societies - Enforcement of the Minnesota Human Rights Act to Require the United States Jaycees to Accept Women as Regular Members Does Not Violate Its Male Members' Freedom of Association, and the Act is Neither Unconstitutionally Vague Nor Overbroad*-*Roberts v. United States Jaycees*, 104 S.Ct. 3244 (1984), 53 U. CIN. L. REV. 1173 (1984) (discussing *Roberts* and its treatment of the right of free association). *Cf. New York State Club Association, Inc. v. City of New York*, 108 S.Ct. 2225 (1988) (holding that a city law prohibiting discrimination by clubs which are not "distinctly private" is constitutional and cannot be said to infringe upon the members' associational rights); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987) (holding that the application of a California statute entitling all persons, regardless of sex, to "full and equal accommodations, advantages, facilities, privileges, and services in all business establishments in the State" does not interfere with the Rotary Club members' freedom of private association).

specified the two situations where the Court has recognized that a right to freely associate must be protected in order to ensure the protection of other constitutional rights.²¹ The Court, in one line of cases, has maintained that "freedom of association receives protection as a fundamental element of personal liberty" when individuals enter into and maintain intimate relations.²² The other line of cases recognizes a right to freely associate for the purpose of engaging in the activities that the first amendment aims to protect—freedom of speech, freedom of petition, freedom of religion, and freedom of assembly.²³

Protecting freedom of association for the purpose of entering into and maintaining intimate human relationships is justified on the grounds that people should be assured that they will be afforded "a substantial measure of sanctuary from unjustified interference by the State."²⁴ Without such a freedom, the Bill of Rights would be rendered meaningless.²⁵

Consistent with a need for a constitutionally protected freedom to associate in intimate human relationships, there must be a corresponding constitutionally protected right to associate for expressive purposes. If not, the right to engage in activities protected

21. The Court in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), did not say whether there exists a freedom of social association. However, the Court previously touched on this issue in dicta in *Gilmore v. City of Montgomery*, 417 U.S. 556 (1974). In *Gilmore*, Justice Blackmun, writing for the majority and assessing an ordinance segregating the city's recreational facilities on the basis of race said: "It should be obvious that the exclusion of any person or group . . . from public facilities infringes upon the freedom of the individual to associate as he chooses." *Id.* at 575. Therefore, it is arguable that the *Gilmore* dicta suggests that the Court impliedly recognizes such a right in a social context. *Id.*

22. *Roberts*, 468 U.S. at 618.

23. *Id.* at 617-618.

24. *Id.* at 618.

25. Some relationships which may be deserving of this sort of constitutional protection are relationships which advance the creation of a family, marriage, childbirth, or cohabitation. *Roberts*, 468 U.S. at 619. Attributes which would typify these affiliations are relative smallness of the group, a high degree of selectivity, and seclusion from others. *Id.* at 620. Relationships without these characteristics, such as large business enterprises, are not entitled to avail themselves of a constitutionally protected freedom of association. *Id.* Between these two extremes, a family-type relationship and a business enterprise, are a wide spectrum of human affiliations which may deserve lesser or greater constitutional protection depending on where they are placed on the spectrum. *Id.* By characterizing relationships based on such objective criteria as size, selectivity, congeniality, and purpose, one can locate the relationship on the spectrum and can determine whether constitutional protection is mandated. *Id.* See also *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987) (holding that the relationships among Rotary Club members did not constitute the type of intimate relationships deserving of constitutional protection because the club did not limit its size; maintained a policy of producing a membership comprised of "a cross-section of the business and professional life of the community," which is an inclusive not exclusive membership; and carried out their activities in full view of the public).

by the first amendment would be a valueless or empty right.²⁶

After consideration of the recognized and protected associational rights as illustrated in *Roberts*, Chief Justice Rehnquist rejected the proffered argument that a right of association exists for the minors in attendance at the dance hall.²⁷ Patrons of the dance hall were not engaged in any form of intimate relationships.²⁸ Contrary to the position taken by the Texas Court of Appeals, Chief Justice Rehnquist determined that the patrons were not engaged in any form of expressive activity which would be protected by the first amendment.²⁹ Because the teens were not involved in an activity which would advance their political, cultural, educational, social, religious, or economic expression, the Chief Justice reasoned, their "association" cannot be deemed as falling within the realm of a constitutionally protected right.³⁰

The Court, disagreeing with the court of appeals, definitively stated that there existed no "generalized right of social association."³¹ The Court claimed that its earlier assertion in *Griswold v. Connecticut*³² that "the right to freely associate is not limited to 'political' assemblies but includes those that 'pertain to the social, legal, and economic benefit' of our citizens"³³ was incorrectly interpreted by the court of appeals as granting a right to freely associate in a social setting. Chief Justice Rehnquist, in an effort to clarify, stated that the quoted language from *Griswold* merely extends a right of expressive association "to groups organized to engage in

26. *Roberts*, 468 U.S. at 617-618. It is important to note that this right is not absolute. The state can justify a restriction on the right by showing that there is a compelling state interest, that there is no less restrictive means available, and that there is no suppression of ideas. *Id.* at 623.

27. *City of Dallas v. Stanglin*, 109 S. Ct. 1591, 1595 (1989).

28. Using the objective criteria as set forth in *Roberts*, the relationship between dance hall patrons would be characterized as an affiliation closest to the business relationship end of the spectrum. The size of the group was large (over 1,000 minors attended nightly), the patrons were not selectively admitted (other than by age and ability to pay the admittance fee), the admittance was not in furtherance of any unified goal or purpose, and among a group of strangers there was surely a lack of the requisite congeniality. *Id.* at 1595.

29. *Id.*

30. *Id.* The proposition that dancing is an expressive activity that demands constitutional protection misapprehends the Supreme Court's use of the term "expressive activity." The Court does not use the term to encompass any activity which may be expressive in nature. *Id.* In almost any human activity, one can derive some form of expression. *Id.* The Court is referring specifically to activities which further political, cultural, educational, social, religious, or economic beliefs and the dancing engaged in in the present case was not in furtherance of any of these beliefs. *Id.* On the other hand, if dancing was the medium used to express any one of the foregoing beliefs, the Court may have held differently.

31. *Id.*

32. 381 U.S. 479 (1965).

33. *City of Dallas*, 109 S. Ct. at 1595 (quoting *Griswold*, 381 U.S. at 483).

speech that does not pertain directly to politics.”³⁴

B. Rational Basis

After the Court concluded that the ordinance does not infringe upon any constitutionally protected right, its only remaining task was to determine, under the equal protection clause, whether the city had a “rational basis” for enacting the regulation.³⁵ When considering whether a challenged statute, ordinance, or regulation survives rational basis scrutiny,³⁶ the Court first must determine whether the governmental entity enacted the legislation to promote a legitimate public purpose.³⁷ If it finds that it did, the Court will assess whether the legislation is a rational means to further that legitimate end.³⁸

Stanglin, while recognizing the validity of the city’s objective of separating the minors from the corrupting influences of older teenagers, challenged the connection between the city’s regulation and that objective.³⁹ He contended that the city could have achieved its objective with alternative methods of regulation. However, contrary to his argument, the Court, when applying a tolerant “rational basis” standard, will not strictly scrutinize a regulation.⁴⁰ Instead, the Court will engage in an extremely deferential analysis, clothing the legislative action in a presumption of rationality.⁴¹ Ad-

34. *City of Dallas*, 109 S.Ct. at 1595.

35. *Id.*

36. Rational basis is the lowest form of scrutiny which a court applies when considering an equal protection challenge. See Ross, *Legislative Enforcement of Equal Protection*, 72 MINN. L. REV. 311 (1987). See generally L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 16-2 (1988).

37. See *Ginsberg v. State of New York*, 390 U.S. 629 (1968) (upholding statute criminalizing the sale of obscene materials to minors under 17 years of age as a justifiable means of promoting the state’s interest in protecting the well-being of its youth). See also *Carey v. Population Services International*, 431 U.S. 594 (1977) (holding that a New York statute prohibiting distribution of contraceptives to persons under 16 years of age was an unjustified regulation aimed at restricting minors’ promiscuous sexual activity).

38. See *City of Mesquite v. Aladdin’s Castle*, 455 U.S. 283 (1982) (considering whether a local ordinance which required the chief of police to assess whether applicants for coin-operated arcades had connections with criminals was rationally related to the city’s legitimate interest in maintaining law and order). See also *Ginsberg v. State of New York*, 390 U.S. 629 (1968) (holding that a statute prohibiting the sale of obscene materials to minors had a rational relation to the objective of safeguarding minors from harm and was therefore constitutionally valid).

39. *City of Dallas v. Stanglin*, 109 S. Ct. 1591, 1596 (1989).

40. The Court in *Dandridge v. Williams*, 397 U.S. 471 (1970), states: “It is enough that a solid foundation for the regulation can be found in the State’s legitimate interest” *Id.* at 486.

41. *Metropolitan Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70 (1930).

hering to this practice, Chief Justice Rehnquist found that the means chosen by the city to achieve its objective satisfied the "rational basis" test⁴² because restricting older teenagers' admissions into a dance hall is rationally related to the ultimate goal of preventing older individuals from negatively influencing the health, safety, and welfare of the minors.⁴³

III. CONCLUSION

In *City of Dallas v. Stanglin* the Supreme Court held that freedom of association, in a social context, is not protected by the United States Constitution. Consequently, the Court applied the most deferential form of judicial scrutiny, the rational basis test, to the Dallas ordinance—which restricted admission to class E dance halls to persons between the ages of fourteen and eighteen—and found that the ordinance was a rational means of promoting the city's legitimate purpose of protecting minors from the corrupting influence of older teenagers.

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42. *City of Dallas*, 109 S.Ct. at 1596.

43. In *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944), a state statute prohibiting minors under the age of twelve from selling magazines on the street was challenged as violative of the equal protection clause. Justice Rutledge, writing for the majority, advanced the rationale that "[t]he state's authority over children's activities is broader than over like actions of adults A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." *Id.* at 168. More recently, the Supreme Court in *Belotti v. Baird*, 443 U.S. 622 (1979), stated that "although children are generally protected by the same constitutional guarantees against governmental deprivations as are adults the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, . . . sympathy and . . . paternal attention." *Id.* at 635.

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