

The Burger Court Opinion Writing Database

Roberts v. United States Jaycees

468 U.S. 609 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

June 12, 1984

84 JUN 13 09:44

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

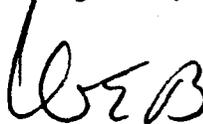
MEMORANDUM TO THE CONFERENCE:

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,



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,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 20, 1984

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,



The Chief Justice

Copies to the Conference

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

From: **Justice Brennan**

Circulated: **JUN 12 1984**

Recirculated: _____

WLB
Please join me
WLB

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-

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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,



WJB, Jr.

Justice Powell

Wg B
sent 7/10
me 6/14

as I understand this
is a draft
Wg B sent me.
check with you

changes 7-10

made by

Wg B

my

in response to
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 1984

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.

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“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-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

No. 83-724

Roberts v. Jaycees

Dear Sandra,

The enclosed circulation embodies all of the suggestions that Lewis had made in his letter to me of June 14 and he will join. Since in your letter of June 14 you said that you do not disagree with his suggestions, I hope that you will find these changes satisfactory as well.

Sincerely,



Justice O'Connor

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

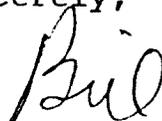
No. 83-724

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.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Powell

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 7-12, 18, 20

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 18 P1:07

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

From: Justice Brennan

Circulated: _____

Recirculated: _____ JUN 18 1984

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.

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“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-

p. 17

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 22 P 1:14

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

From: Justice Brennan

Circulated: _____

Recirculated: JUN 22 1984

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.

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17

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 27 A9:47

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

From: Justice Brennan

Circulated: _____

Recirculated: JUN 26 1984

4th 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.

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“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-

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 11, 15, 20

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

From: Justice Brennan

Circulated: _____

Recirculated: JUL 1 1984

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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

[July 3, 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.

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“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-

911

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

July 3, 1984

MEMORANDUM TO THE CONFERENCE

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

The only case held for Roberts is No. 83-1513, Mount Diablo Council of the Boy Scouts of America v. Curran.

Appellee had been a member in good standing of the Boy Scouts for five years and had attained the rank of "Eagle Scout." On his 18th birthday, he applied for a position as a "Scouter," an adult volunteer leader. Such applications are routinely approved but, in this case, appellee was turned down because appellant had learned that he was a homosexual. He filed this action in California state court, alleging that appellant's action violated Calif. Civil Code §51, the Unruh Act, which, inter alia, prohibits various forms of discrimination in "business establishments of every kind whatsoever." The trial court sustained appellant's demurrer, concluding that appellant was not an establishment covered by the Act. The trial court also dismissed a subsequent amended complaint sounding in a common law right to fair procedure.

On appeal, the Court of Appeal for the Second Appellate District reversed, concluding that, because appellant is "open to and serving the general public," it is a "business establishment" within the meaning of the Act. The court also rejected appellant's claim that such a construction of the Act infringed appellant's rights of privacy and free association. On the basis of California common law, the court also concluded that private membership organizations cannot exclude an applicant without first demonstrating that that person's conduct would harm the group. The court therefore remanded for further proceedings. Appellant's petition for rehearing was denied, as was its petition for review in the California Supreme Court.

Although, unlike the Jaycees, the Boy Scouts do not take positions on issues of public importance or the like, appellant notes that they do engage in a variety of protected activities and it therefore relies in part on cases concerning what we refer to in the Jaycees opinion as freedom of expressive association. Much of its argument, however, seeks support in cases in which we have recognized

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,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 21, 1984

Re: 83-724 -

Roberts v. United States Jaycees

Dear Bill,

Your suggested substitute language on p. 17 helps a good deal, but I would prefer that the words "publicly available" be inserted before the word "goods" in the first sentence or that the words "and other advantages" be eliminated.

I shall also be interested to see what Sandra writes.

Sincerely yours,



Justice Brennan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1984

RECEIVED
SUPREME COURT, U
JUSTICE MARSHAL

'84 JUN 26 AM

Re: 83-724 -

Roberts v. United States Jaycees

Dear Bill,

I join your third draft circulated June
22.

Sincerely yours,



Justice Brennan

Copies to the Conference

13

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,

J.M.
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,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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 Ali-bi 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,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 14, 1984

84 JUN 14 P1:10

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 LEWIS F. POWELL, JR.

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 LEWIS F. POWELL, JR.

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 LEWIS F. POWELL, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 18 P1:07

June 18, 1984

83-724 Roberts v. Jaycees

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 22, 1984

83-724 Roberts v. U. S. Jaycees

Dear Bill:

In looking at the change on p. 17 in your third draft, I was reminded of a suggestion I had intended to make.

It seems to me that the citation to Hishon v. King and Spalding is only marginally appropriate. It did not involve either "violence" or "expressive activities". Moreover, King and Spalding was here on a motion to dismiss, and there has been no decision on the merits.

It would be fairer, I think, not to include a cite that could be viewed as stigmatizing a leading law firm in which one of our best Attorneys General is a senior partner.

Sincerely,



Justice Brennan

LFP/vde

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 WILLIAM H. REHNQUIST

June 29, 1984

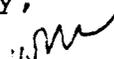
Re: 83-724 Roberts v. United States Jaycees

Dear Bill,

Would you add at the end of your opinion in this case:

"Justice Rehnquist concurs in the judgment."

Sincerely,



Justice Brennan

cc: The Conference

①

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 13 AM 3

June 13, 1984

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

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

Ms. Sandra
I have been a member of some
single sex clubs, mostly honorary.
I don't think there is a reason
for recusing myself.
Thank you
C.K.

ROBERTS v. UNITED STATES JAYCEES, No. 83-724

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join Parts I and III of the Court's opinion, which set out the facts and reject the vagueness and overbreadth challenges to the Minnesota statute. With respect to Part IIA of the Court's opinion, I agree with the Court that the Jaycees cannot claim a right of association deriving from this Court's cases concerning "marriage, procreation, contraception, family relationships, and child rearing and education." Paul v. Davis, 424 U.S. 693, 713 (1976). Those cases, "while defying categorical description," ibid., identify certain zones of privacy in which certain personal relationships or decisions are protected from government interference. Whatever the precise scope of the rights recognized in such cases, they do not encompass associational rights of a 295,000-member organization whose activities are not "private" in any meaningful sense of that term.

I part company with the Court over its First Amendment analysis in Part IIB of its opinion. I agree with the Court that application of the Minnesota law to the Jaycees does not contravene the First Amendment, but I reach that conclusion for reasons distinct from those offered by the Court. I believe the Court has adopted a test that unadvisedly casts doubt on the power of States to pursue the profoundly important goal of ensuring nondiscriminatory

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

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
SUPREME COURT,
JUSTICE MARSHA

JUN 19 11

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,



Justice Brennan

Copies to the Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 29 P1:49

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: JUN 29 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

[July —, 1984]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join Parts I and III of the Court's opinion, which set out the facts and reject the vagueness and overbreadth challenges to the Minnesota statute. With respect to Part IIA of the Court's opinion, I agree with the Court that the Jaycees cannot claim a right of association deriving from this Court's cases concerning "marriage, procreation, contraception, family relationships, and child rearing and education." *Paul v. Davis*, 424 U. S. 693, 713 (1976). Those cases, "while defying categorical description," *ibid.*, identify certain zones of privacy in which certain personal relationships or decisions are protected from government interference. Whatever the precise scope of the rights recognized in such cases, they do not encompass associational rights of a 295,000-member organization whose activities are not "private" in any meaningful sense of that term.

I part company with the Court over its First Amendment analysis in Part IIB of its opinion. I agree with the Court that application of the Minnesota law to the Jaycees does not contravene the First Amendment, but I reach that conclusion for reasons distinct from those offered by the Court. I believe the Court has adopted a test that unadvisedly casts doubt on the power of States to pursue the profoundly impor-