



**ROTARY INTERNATIONAL
v.
ROTARY CLUB OF DUARTE
SUPREME COURT OF THE UNITED STATES
481 U.S. 537
May 4, 1987
[7 – 0]¹**

OPINION: Justice POWELL/REHNQUIST/BRENNAN/WHITE/MARSHALL/STEVENS/SCALIA...We must decide whether a California statute that requires California Rotary Clubs to admit women members violates the First Amendment.

Rotary International (International) is a nonprofit corporation founded in 1905, with headquarters in Evanston, Illinois. It is "an organization of business and professional men united worldwide who provide humanitarian service, encourage high ethical standards in all vocations, and help build goodwill and peace in the world." Individual members belong to a local Rotary Club...In August 1982, shortly before the trial in this case, International comprised 19,788 Rotary Clubs in 157 countries, with a total membership of about 907,750.

¹ Justices Blackmun and O'Connor did not participate.

Individuals are admitted to membership in a Rotary Club according to a "classification system." The purpose of this system is to ensure "that each Rotary Club includes a representative of every worthy and recognized business, professional, or institutional activity in the community." Each active member must work in a leadership capacity in his business or profession. The general rule is that "one active member is admitted for each classification, but he, in turn, may propose an additional active member, who must be in the same business or professional classification." Thus, each classification may be represented by two active members. In addition, "senior active" and "past service" members may represent the same classifications as active members. There is no limit to the number of clergymen, journalists, or diplomats who may be admitted to membership.

Subject to these requirements, each local Rotary Club is free to adopt its own rules and procedures for admitting new members. International has promulgated Recommended Club By-laws providing that candidates for membership will be considered by both a "classifications committee" and a "membership committee." The classifications committee determines whether the candidate's business or profession is described accurately and fits an "open" classification. The membership committee evaluates the candidate's "character, business and social standing, and general eligibility." If any member objects to the candidate's admission, the final decision is made by the club's board of directors.

Membership in Rotary Clubs is open only to men. Herbert A. Pigman, the General Secretary of Rotary International, testified that the exclusion of women results in an "aspect of fellowship ...that is enjoyed by the present male membership" and...allows Rotary to operate effectively in foreign countries with varied cultures and social mores. Although women are not admitted to membership, they are permitted to attend meetings, give speeches, and receive awards. Women relatives of Rotary members may form their own associations, and are authorized to wear the Rotary lapel pin. Young women between 14 and 28 years of age may join Interact or Rotaract, organizations sponsored by Rotary International.

In 1977 the Rotary Club of Duarte, California, admitted Donna Bogart, Mary Lou Elliott, and Rosemary Freitag to active membership. International notified the Duarte Club that admitting women members is contrary to the Rotary constitution. After an internal hearing, International's board of directors **revoked the charter of the Duarte Club** and terminated its membership in Rotary International. The Duarte Club's appeal to the International Convention was unsuccessful.

The Duarte Club and two of its women members filed a complaint in the California Superior Court for the County of Los Angeles. The complaint...sought to enjoin International from enforcing its restrictions against admitting women members, revoking the Duarte Club's charter, or compelling delivery of the charter to any representative of International [and] a declaration that appellants' actions had violated the Unruh Act.² After a bench trial, the court concluded that neither Rotary International nor the Duarte Club is a "**business establishment**" within the meaning of the Unruh Act. The court recognized that "some individual Rotarians derive sufficient business advantage from Rotary to warrant deduction of Rotarian expenses in income tax calculations, or to warrant payment of those expenses by their employers..." But it found that

² This must be a California statute.

"such business benefits are incidental to the principal purposes of the association...to promote fellowship...and...'service' activities." The court also found that Rotary clubs do not provide their members with goods, services, or facilities. On the basis of these findings and conclusions, the court entered judgment for International.

The California Court of Appeal reversed. It held that both Rotary International and the Duarte Rotary Club are business establishments subject to the provisions of the Unruh Act. For purposes of the Act, a "'business' embraces everything about which one can be employed," and an "establishment" includes "not only a fixed location...but also a permanent 'commercial force or organization' or a 'permanent settled position (as in life or business).'" The Court of Appeal identified several "businesslike attributes" of Rotary International, including its **complex structure, large staff and budget, and extensive publishing activities.** The court held that the trial court had erred in finding that the **business advantages** afforded by membership in a local Rotary Club are merely incidental. It stated that testimony by members of the Duarte Club "leaves no doubt that **business concerns are a motivating factor in joining local clubs,**" and that "business benefits are enjoyed and capitalized upon by Rotarians and their businesses or employers." The Court of Appeal rejected the trial court's finding that the Duarte Club does not provide goods, services, or facilities to its members. In particular, the court noted that members receive copies of the Rotary magazine and numerous other Rotary publications, are entitled to wear and display the Rotary emblem, and may attend conferences that teach managerial and professional techniques.

The court also held that membership in Rotary International or the Duarte Club does not give rise to a "continuous, personal, and social" relationship that "takes place more or less outside public view." The court further concluded that admitting women to the Duarte Club would not seriously interfere with the objectives of Rotary International. Finally, the court rejected appellants' argument that their policy of excluding women is protected by the First Amendment principles set out in *Roberts v. United States Jaycees* (1984). It observed that "nothing we have said prevents, or can prevent, International from adopting or attempting to enforce membership rules or restrictions outside of this state." The court ordered appellants to reinstate the Duarte Club as a member of Rotary International, and permanently enjoined them from enforcing or attempting to enforce the gender requirement against the Duarte Club.

The California Supreme Court denied appellants' petition for review...We...affirm the judgment of the Court of Appeal.

In *Roberts v. United States Jaycees* we upheld against First Amendment challenge a Minnesota statute that required the Jaycees to admit women as full voting members. *Roberts* provides the framework for analyzing appellants' constitutional claims. As we observed in *Roberts*, our cases have afforded constitutional protection to freedom of association in two distinct senses. First, the Court has held that **the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain intimate or private relationships.** Second, **the Court has upheld the freedom of individuals to associate for the purpose of engaging in protected speech or religious activities.** In many cases, government interference with one form of protected association will also burden the other form of association. In *Roberts* we determined the nature and degree of constitutional protection by considering separately the

effect of the challenged state action on individuals' **freedom of private association** and their **freedom of expressive association**. We follow the same course in this case.

The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights. Such relationships may take various forms, including the most intimate...In determining whether a particular association is sufficiently personal or private to warrant constitutional protection, we consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.

The evidence in this case indicates that the relationship among Rotary Club members is not the kind of intimate or private relation that warrants constitutional protection. The size of local Rotary Clubs ranges from fewer than 20 to more than 900. There is no upper limit on the membership of any local Rotary Club. About 10 percent of the membership of a typical club moves away or drops out during a typical year. The clubs therefore are instructed to "keep a flow of prospects coming" to make up for the attrition and gradually to enlarge the membership. The purpose of Rotary "is to produce an inclusive, not exclusive, membership, making possible the recognition of all useful local occupations, and enabling the club to be a true cross section of the business and professional life of the community." The membership undertakes a variety of service projects designed to aid the community, to raise the standards of the members' businesses and professions, and to improve international relations. Such an inclusive "fellowship for service based on diversity of interest," however beneficial to the members and to those they serve, does not suggest the kind of private or personal relationship to which we have accorded protection under the First Amendment. To be sure, membership in Rotary Clubs is not open to the general public. But each club is instructed to include in its membership "all fully qualified prospective members located within its territory," to avoid "arbitrary limits on the number of members in the club," and to "establish and maintain a membership growth pattern."

Many of the Rotary Clubs' central activities are carried on in the presence of strangers. Rotary Clubs are required to admit any member of any other Rotary Club to their meetings. Members are encouraged to invite business associates and competitors to meetings. At some Rotary Clubs, the visitors number "in the tens and twenties each week." Joint meetings with the members of other organizations, and other joint activities, are permitted. The clubs are encouraged to seek coverage of their meetings and activities in local newspapers. In sum, Rotary Clubs, rather than carrying on their activities in an atmosphere of privacy, seek to keep their "windows and doors open to the whole world." **We therefore conclude that application of the Unruh Act to local Rotary Clubs does not interfere unduly with the members' freedom of private association.**

The Court also has recognized that the right to engage in activities protected by the First Amendment implies "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts*. For this reason, "impediments to the exercise of one's right to choose one's associates can violate the right of association protected by the First Amendment..." In this case, however, **the evidence fails to demonstrate that admitting women to Rotary Clubs will affect in any significant way the existing members' ability to carry out their various purposes.**

As a matter of policy, Rotary Clubs do not take positions on "public questions," including political or international issues. To be sure, Rotary Clubs engage in a variety of commendable service activities that are protected by the First Amendment. But **the Unruh Act does not require the clubs to abandon or alter any of these activities. It does not require them to abandon their basic goals of humanitarian service, high ethical standards in all vocations, good will, and peace.** Nor does it require them to abandon their classification system or admit members who do not reflect a cross section of the community. Indeed, by opening membership to leading business and professional women in the community, Rotary Clubs are likely to obtain a more representative cross section of community leaders with a broadened capacity for service.

Even if the Unruh Act does work some slight infringement on Rotary members' right of expressive association, that infringement is justified because it serves the State's compelling interest in eliminating discrimination against women...On its face the Unruh Act, like the Minnesota public accommodations law we considered in *Roberts*, makes no distinctions on the basis of the organization's viewpoint. Moreover, public accommodations laws "plainly serve compelling state interests of the highest order." In *Roberts* we recognized that the State's compelling interest in assuring equal access to women extends to the acquisition of leadership skills and business contacts as well as tangible goods and services. The Unruh Act plainly serves this interest. **We therefore hold that application of the Unruh Act to California Rotary Clubs does not violate the right of expressive association afforded by the First Amendment...**

The judgment of the Court of Appeal of California is affirmed.