"The right of membership in the association ..., like most other personal rights, must yield to the rightful exertion of the police power."

New York ex rel. Bryant v. Zimmerman

278 U.S. 63, 49 S.Ct. 61, 73 L.Ed. 184 (1928).

With certain exceptions for labor unions and benevolent associations, New York required every incorporated and unincorporated society of more than twenty members that imposed an oath as a condition of membership to file with the secretary of state a copy of its constitution, by-laws, and oath, as well as an annual list of officers and members. Any person who became or remained a member of an association that failed to comply with the registration provisions committed a misdemeanor. The Ku Klux Klan did not register, and George W. Bryant, a Klansman from Buffalo, was convicted and sent to jail. Later he sought habeas corpus from a state judge, alleging that he had been prosecuted under an unconstitutional statute. He lost at all three levels of state courts and obtained a writ of error from the U.S. Supreme Court.

Mr. Justice **VAN DEVANTER** delivered the opinion of the Court. ...

The relator's contention under the due process clause is that the statute deprives him of liberty in that it prevents him from exercising his right of membership in the association. But his liberty in this regard, like most other personal rights, must yield to the rightful exertion of the police power. There can be no doubt that under that power the State may prescribe and apply to associations having an oath-bound membership any reasonable regulation calculated to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare. The requirement ... that each association shall file with the secretary of state a sworn copy of its constitution, oath of membership, etc., with a list of members and officers is such a regulation. It proceeds on the two-fold theory that the State within whose territory and under whose protection the association exists is entitled to be informed of its nature and purpose, of whom it is composed and by whom its activities are conducted, and that requiring this information to be supplied for the public files will operate as an effective or substantial deterrent from violations of public and private right to which the association might be tempted if such a disclosure were not required. The requirement is not arbitrary or oppressive, but reasonable and likely to be of real effect. Of course, power to require the disclosure includes authority to prevent individual members of an association which has failed to comply from attending meetings or retaining membership with knowledge of its default. We conclude that the due process clause is not violated.

The main contention made under the equal protection clause is that the statute discriminates against the Knights of the Ku Klux Klan and other associations in that it excepts from its requirements several associations having oath-bound membership, such as labor unions, the Masonic fraternity, the Independent Order of Odd Fellows, the Grand Army of the Republic and the Knights of Columbus. ...

The courts below ... reached the conclusion that the classification was justified by a

difference between the two classes of associations shown by experience, and that the difference consisted (a) in a manifest tendency on the part of one class to make the secrecy surrounding its purposes and membership a cloak for acts and conduct inimical to personal rights and public welfare, and (b) in the absence of such a tendency on the part of the other class. In pointing out this difference one of the courts said of the Ku Klux Klan, the principal association in the included class: "It is a matter of common knowledge that this organization functions largely at night, its members disguised by hoods and gowns and doing things calculated to strike terror into the minds of the people"; and later said of the other class: "These organizations and their purposes are well known, many of them having been in existence for many years. Many of them are oath-bound and secret. But we hear no complaints against them regarding violation of the peace or interfering with the rights of others."...

We assume that the legislature had before it such information as was readily available, including the published report of a hearing before a committee of the House of Representatives of the 57th Congress relating to the formation, purposes and activities of the Ku Klux Klan. If so, it was advised—putting aside controverted evidence—that the order was a revival of the Ku Klux Klan of an earlier time with additional features borrowed from the Know Nothing and the A.P.A. orders of other periods; that its membership was limited to native born, gentile, protestant whites; that in part of its constitution and printed creed it proclaimed the widest freedom for all and full adherence to the Constitution of the United States, in another exacted of its members an oath to shield and preserve "white supremacy," and in still another declared any person actively opposing its principles to be "a dangerous ingredient in the body politic of our country and an enemy to the weal of our national commonwealth"; that it was conducting a crusade against Catholics, Jews and Negroes and stimulating hurtful religious and race prejudices; that it was striving for political power and assuming a sort of guardianship over the administration of local, state and national affairs; and that at times it was taking into its own hands the punishment of what some of its members conceived to be crimes.

We think it plain that the action of the courts below in holding that there was a real and substantial basis for the distinction made between the two sets of associations or orders was right and should not be disturbed. ...

Judgment affirmed.

Separate opinion of Mr. Justice **McREYNOLDS.**

... I think we have no jurisdiction of this writ of error and that it should be dismissed. ...

Editors' Notes

(1) The date of this case is 1928. Only three years earlier, Gitlow v. New York had for the first time held that the Fourteenth Amendment applied the First Amendment to the states. One year earlier, Whitney v. California (reprinted above, p. 651) had assumed without discussion that the Due Process Clause incorporated not only rights of free speech and assembly but also association. Like the opinion in *Whitney,* Van Devanter's opinion here took a general liberty of association for granted, though it is difficult to know how broad he thought that right.

The meaning and scope of a constitutional right to associate later became more central—and controversial—in constitutional interpretation. See espec. NAACP v. Alabama (1958), the next case.

(2) **Query:** Given the Court's greater solicitude for freedom of association as well as the hate speech case, R.A.V. v. St. Paul (1992; reprinted above, p. 686), and lower courts' refusals to enjoin Nazis from marching in Skokie to intimidate Jewish survivors of the Holocaust, would the Court now sustain a regulation like the one in *Zimmerman*? What response can one give to the claim that, if the state must be neutral among contending political views, it must allow the same freedom to those who preach hate as to those who preach the message of the Preamble and the Fourteenth Amendment?