

U.S. Supreme Court

VILLAGE OF BELLE TERRE v. BORAAS, 416 U.S. 1 (1974)

416 U.S. 1

VILLAGE OF BELLE TERRE ET AL. v. BORAAS ET AL.
APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT.

No. 73-191.

Argued February 19-20, 1974.

Decided April 1, 1974.

A New York village ordinance restricted land use to one-family dwellings, defining the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit and expressly excluding from the term lodging, boarding, fraternity, or multiple-dwelling houses. After the owners of a house in the village, who had leased it to six unrelated college students, were cited for violating the ordinance, this action was brought to have the ordinance declared unconstitutional as violative of equal protection and the rights of association, travel, and privacy.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Belle Terre is a village on Long Island's north shore of about 220 homes inhabited by 700 people. Its total land area is less than one square mile. It has restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The word "family" as used in the ordinance means, "[o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family."

Appellees the Dickmans are owners of a house in the village and leased it in December 1971 for a term of 18 months to Michael Truman. Later Bruce Boraas became a colessee. Then Anne Parish moved into the house along with three others. These six are students at nearby State University at Stony Brook and none is [\[416 U.S. 1, 3\]](#) related to the other by blood, adoption, or marriage. When the village served the Dickmans with an "Order to Remedy Violations" of the ordinance, [1](#) the owners plus three tenants [2](#) thereupon brought this action under 42 U.S.C. 1983 for an injunction and a judgment declaring the ordinance unconstitutional. The District Court held the ordinance constitutional, 367 F. Supp. 136, and the Court of Appeals reversed, one judge dissenting, 476 F.2d 806. The case is here by appeal, 28 U.S.C. 1254 (2); and we noted probable jurisdiction, [414 U.S. 907](#). ***

Our decision in *Berman v. Parker*, [348 U.S. 26](#), sustained a land-use project in the District of

Columbia against a landowner's claim that the taking violated the Due Process Clause and the Just Compensation Clause of the Fifth Amendment. The essence of the argument against the law was, while taking property for ridding an area of slums was permissible, taking it "merely to develop a better balanced, more attractive community" was not, *id.*, at 31. We refused to limit the concept of public welfare that may be enhanced by zoning regulations. [3](#) We said:

"Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. [\[416 U.S. 1, 6\]](#) They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

"We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." *Id.*, at 32-33.

If the ordinance segregated one area only for one race, it would immediately be suspect under the reasoning of *Buchanan v. Warley*, [245 U.S. 60](#), where the Court invalidated a city ordinance barring a black from acquiring real property in a white residential area by reason of an 1866 Act of Congress, 14 Stat. 27, now 42 U.S.C. 1982, and an 1870 Act, 17, 16 Stat. 144, now 42 U.S.C. 1981, both enforcing the Fourteenth Amendment. [245 U.S., at 78](#) -82. See *Jones v. Mayer Co.*, [392 U.S. 409](#).

In *Seattle Trust Co. v. Roberge*, [278 U.S. 116](#), Seattle had a zoning ordinance that permitted a "philanthropic home for children or for old people" in a particular district "when the written consent shall have been obtained of the owners of two-thirds of the property within four hundred (400) feet of the proposed building." *Id.*, at 118. The Court held that provision of the ordinance unconstitutional, saying that the existing owners could "withhold consent for selfish reasons or arbitrarily and [\[416 U.S. 1, 7\]](#) may subject the trustee [owner] to their will or caprice." *Id.*, at 122. Unlike the billboard cases (e. g., *Cusack Co. v. City of Chicago*, [242 U.S. 526](#)), the Court concluded that the Seattle ordinance was invalid since the proposed home for the aged poor was not shown by its maintenance and construction "to work any injury, inconvenience or annoyance to the community, the district or any person." [278 U.S., at 122](#). ***

The present ordinance is challenged on several grounds: that it interferes with a person's right to travel; that it interferes with the right to migrate to and settle within a State; that it bars people who are uncongenial to the present residents; that it expresses the social preferences of the residents for groups that will be congenial to them; that social homogeneity is not a legitimate interest of government; that the restriction of those whom the neighbors do not like trenches on the newcomers' rights of privacy; that it is of no rightful concern to villagers whether the residents are married or unmarried; that the ordinance is antithetical to the Nation's experience, ideology, and self-perception as an open, egalitarian, and integrated society. [4](#)

We find none of these reasons in the record before us. It is not aimed at transients. Cf. *Shapiro v. Thompson*, [394 U.S. 618](#). It involves no procedural disparity inflicted on some but not on others such as was presented by *Griffin v. Illinois*, [351 U.S. 12](#). It involves no "fundamental" right guaranteed by the Constitution, such as voting, *Harper v. Virginia Board*, [383 U.S. 663](#); the right of association, *NAACP v. Alabama*, [357 U.S. 449](#); the right of access to the courts, *NAACP v. Button*, [371 U.S. 415](#); or any rights of privacy, cf. *Griswold v. Connecticut*, [[416 U.S. 1, 8](#)] [381 U.S. 479](#); *Eisenstadt v. Baird*, [405 U.S. 438, 453](#)-454. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be "reasonable, not arbitrary" (quoting *Royster Guano Co. v. Virginia*, [253 U.S. 412, 415](#)) and bears "a rational relationship to a [permissible] state objective." *Reed v. Reed*, [404 U.S. 71, 76](#).

It is said, however, that if two unmarried people can constitute a "family," there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included. [5](#) That exercise of discretion, however, is a legislative, not a judicial, function.

It is said that the Belle Terre ordinance reeks with an animosity to unmarried couples who live together. [6](#) There is no evidence to support it; and the provision of the ordinance bringing within the definition of a "family" two unmarried people belies the charge. [[416 U.S. 1, 9](#)]

The ordinance places no ban on other forms of association, for a "family" may, so far as the ordinance is concerned, entertain whomever it likes.

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker*, *supra*. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

The suggestion that the case may be moot need not detain us. A zoning ordinance usually has an impact on the value of the property which it regulates. But in spite of the fact that the precise impact of the ordinance sustained in *Euclid* on a given piece of property was not known, [272 U.S., at 397](#), the Court, considering the matter a controversy in the realm of city planning, sustained the ordinance. Here we are a step closer to the impact of the ordinance on the value of the lessor's property. He has not only lost six tenants and acquired only two in their place; it is obvious that the scale of rental values rides on what we decide today. When *Berman* reached us it was not certain whether an entire tract would be taken or only the buildings on it and a scenic easement. [348 U.S., at 36](#). But that did not make the case any the less a controversy in the constitutional sense. When Mr. Justice Holmes said for the Court in *Block v. Hirsh*, [256 U.S. 135, 155](#), "property rights may be cut down, and to that extent taken, without [[416 U.S. 1, 10](#)] pay," he stated the issue here. As is true in most zoning cases, the precise impact on value may, at the threshold of litigation over validity, not yet be known.

Reversed.

MR. JUSTICE MARSHALL, dissenting.

This case draws into question the constitutionality of a zoning ordinance of the incorporated village of Belle Terre, New York, which prohibits groups of more than two unrelated persons, as distinguished from groups consisting of any number of persons related by blood, adoption, or marriage, from occupying a residence within the confines of the township. ¹ Lessor-appellees, the two owners of a Belle Terre residence, and three unrelated student tenants challenged the ordinance on the ground that it establishes a classification between households of [416 U.S. 1, 13] related and unrelated individuals, which deprives them of equal protection of the laws. In my view, the disputed classification burdens the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments. Because the application of strict equal protection scrutiny is therefore required, I am at odds with my Brethren's conclusion that the ordinance may be sustained on a showing that it bears a rational relationship to the accomplishment of legitimate governmental objectives.

.....

I think it clear that the First Amendment provides some limitation on zoning laws. It is inconceivable to me that we would allow the exercise of the zoning power to burden First Amendment freedoms, as by ordinances that restrict occupancy to individuals adhering to particular religious, political, or scientific beliefs. Zoning officials properly concern [416 U.S. 1, 15] themselves with the uses of land - with, for example, the number and kind of dwellings to be constructed in a certain neighborhood or the number of persons who can reside in those dwellings. But zoning authorities cannot validly consider who those persons are, what they believe, or how they choose to live, whether they are Negro or white, Catholic or Jew, Republican or Democrat, married or unmarried.

My disagreement with the Court today is based upon my view that the ordinance in this case unnecessarily burdens appellees' First Amendment freedom of association and their constitutionally guaranteed right to privacy.

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The instant ordinance discriminates on the basis of just such a personal lifestyle choice as to household companions. It permits any number of persons related by blood or marriage, be it two or twenty, to live in a single household, but it limits to two the number of unrelated persons bound by profession, love, friendship, religious or political affiliation, or mere economics who can occupy a single home. Belle Terre imposes upon those who deviate from the community norm in their choice of living companions significantly greater restrictions than are applied to residential groups who are related by blood or marriage, and compose the established order within the community. ⁴ The village has, in [416 U.S. 1, 17] effect, acted to fence out those individuals whose choice of lifestyle differs from that of its current residents.

By limiting unrelated households to two person while placing no limitation on households of

related individuals, the village has embarked upon its commendable course in a constitutionally faulty vessel. Cf. *Marshall v. United States*, [414 U.S. 417, 430](#) (1974) (dissenting opinion). I would find the challenged ordinance unconstitutional. But I would not ask the village to abandon its goal of providing quiet streets, little traffic, and a pleasant and reasonably priced environment in which families might raise their children. Rather, I would commend the village to continue to pursue those purposes but by means of more carefully drawn and even-handed legislation.

I respectfully dissent.