Landmarks

How Private Is a Home? The Supreme Court Says Local Zoning Rules Can Trump an Individual's Choice of Roommates: *Village of Belle Terre v. Boraas*

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In 1974, the Supreme Court — in a decision by Justice William O. Douglas — upheld the constitutionality of a zoning ordinance of the incorporated village of Belle Terre, New York, that prohibited groups of more than two unrelated persons from occupying a residence within the confines of the village. The majority opinion focused on local governments' zoning rights and the benefits to communities of zoning restrictions. Justice Thurgood Marshall dissented on the merits, finding the ordinance to be a violation of the constitutional privacy rights of unrelated individuals who wanted to rent a house in Belle Terre.

In the early 1970s, Belle Terre was a village on Long Island's north shore of about 220 homes inhabited by 700 people on a total land area of less than one square mile. The village zoning ordinance restricted

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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 was defined to mean, "[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."

Owners of a house in Belle Terre leased it in December 1971 for a term of 18 months to Michael Truman; Bruce Boraas later became a colessee. Then Anne Parish moved into the house, along with three others. These six individuals were students at the nearby State University at Stony Brook — and none was related to the other by blood, adoption, or marriage. When the village served the owners of the house with an "Order to Remedy Violations" of the ordinance, the owners and three of the tenants brought suit under federal law[1] for an injunction and a judgment declaring the ordinance unconstitutional. The district court upheld the ordinance, but the U.S. Court of Appeals for the Second Circuit reversed, with one judge dissenting. The case, *Village of Belle Terre v. Boraas*, reached the U.S. Supreme Court.[2]

ZONING DECISIONS IN THE SUPREME COURT

Justice William O. Douglas, writing for the majority, first reviewed a number of prior cases that the Supreme Court had decided that involved local zoning regulations. For example, *Euclid v. Ambler Realty Co.*[3] involved a zoning ordinance classifying land use in a given area into six categories. The appellee's tracts in *Euclid* fell under three classifications: U-2, which included two-family dwellings; U-3, which included apartments, hotels, churches, schools, private clubs, hospitals, city hall, and the like; and U-6, which included sewage disposal plants, incinerators, scrap storage, cemeteries, oil and gas storage, and so on. Heights of buildings were prescribed for each zone; also, the size of land areas required for each kind of use was specified. The land in litigation was vacant and being held for industrial development, and evidence was intro-

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duced showing that under the ordinance the land would be greatly reduced in value. The claim was that the landowner was being deprived of liberty and property without due process within the meaning of the Fourteenth Amendment.

Justice Douglas explained that the *Euclid* Court sustained the zoning ordinance under the police power of the state, saying that the line "which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions." Justice Douglas stated that the main thrust of *Euclid* in the mind of the Court was in the exclusion of industries and apartments, and with respect to that it commented on the desire to keep residential areas free of "disturbing noises"; "increased traffic"; the hazard of "moving and parked automobiles"; and "depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities."

Justice Douglas also referenced another zoning case, *Berman v. Parker*.[4] In that case, the Court sustained a land use project in the District of Columbia against a landowner's claim that the district's taking violated the Due Process Clause and the Just Compensation Clause of the Fifth Amendment. Justice Douglas stated that the essence of the argument against the law was that although taking property for ridding an area of slums was permissible, taking it "merely to develop a better balanced, more attractive community" was not. As Justice Douglas pointed out, the Court "refused to limit the concept of public welfare that may be enhanced by zoning regulations," declaring:

> Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. 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 inclu-

> sive…. 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.

Interestingly, Justice Douglas observed that if the ordinance in *Berman* had segregated one area only for one race, it would immediately have been suspect. In support of that statement, Justice Douglas cited, among other things, *Buchanan v. Warley*,[5] where the Court invalidated a city ordinance barring a black person from acquiring real property in a white residential area.

CHALLENGES TO THE BELLE TERRE ORDINANCE

Justice Douglas next turned to the Belle Terre ordinance, explaining that it was being challenged on a variety of grounds:

- That it interfered with a person's right to travel;
- That it interfered with the right to migrate to and settle within a state;
- That it barred people who were uncongenial to the village's present residents;
- That it expressed the social preferences of the residents for groups that would be congenial to them;
- That social homogeneity was not a legitimate interest of government;
- That the restriction of those whom the neighbors did not like trenched on the newcomers' rights of privacy;
- That it was of no rightful concern to villagers whether the residents were married or unmarried; and
- That the ordinance was antithetical to the country's experience, ideology, and self-perception as an open, egalitarian, and integrated society.

However, after setting forth this list, Justice Douglas simply declared that the Court found "none of these reasons in the record before us." Justice Douglas stated that the Belle Terre ordinance was "not aimed at transients." It involved "no procedural disparity inflicted on some but not on others." It involved "no 'fundamental' right guaranteed by the Constitution, such as voting,…the right of association,…the right of access to the courts,…or any rights of privacy." Rather, Justice Douglas declared, the Belle Terre ordinance dealt with economic and social legislation where legislatures had "historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary'" and had "a rational relationship to a [permissible] state objective."

Justice Douglas next referred to the argument against the Belle Terre ordinance that if two unmarried people could constitute a "family," there was no reason why three or four could not. He declared, however, that "every line drawn by a legislature leaves some out that might well have been included." That exercise of discretion was "a legislative, not a judicial, function."

Additionally, Justice Douglas examined the argument that the Belle Terre ordinance "reek[ed] with an animosity to unmarried couples who live[d] together." He found "no evidence" to support that argument, however, and, indeed, stated that the provision of the ordinance that brought within the definition of a "family" two unmarried people "belie[d] the charge." Moreover, Justice Douglas found that the ordinance placed no ban on other forms of association, so that a "family" could, so far as the ordinance was concerned, entertain whomever it liked.

Then, Justice Douglas declared, the "regimes of boarding houses, fraternity houses, and the like" presented urban problems. Justice Douglas — the well known outdoorsman — then stated that, "More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds." He added that "[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*." Justice Douglas added that the police power was "not confined to elimination of filth, stench,

and unhealthy places." Rather, it was 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 Court then reversed the Second Circuit's decision.

JUSTICE MARSHALL AND PRIVACY

Justice Marshall raised the right of privacy in the very first paragraph of his dissent. He explained that the individuals who challenged the constitutionality of the Belle Terre zoning ordinance argued that it established a classification between households of related and unrelated individuals that deprived them of equal protection of the laws. Justice Marshall then declared that, in his view, the classification "burden[ed] the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments." Because the application of strict equal protection scrutiny therefore was required, he disagreed with the majority's conclusion that the ordinance could be sustained on a showing that it had a rational relationship to the accomplishment of legitimate governmental objectives.

Justice Marshall agreed with the majority that zoning was a complex and important function of the state, adding that it might "indeed be the most essential function performed by local government" because it was one of the primary means by which local officials protected "that sometimes difficult to define concept of quality of life." Therefore, he stated, he continued to adhere to the *Euclid* principle that deference should be given to governmental judgments concerning proper land use allocation. That deference, Justice Marshall added, was a principle that was necessary for the continued development of effective zoning and land use control mechanisms. Thus, Justice Marshall stated, had the owners alone brought this suit alleging that the restrictive ordinance deprived them of their property or was an irrational legislative classification, he would have agreed that the ordinance would have to be sustained. "Our role is not and should not be to sit as a zoning board of appeals."

Justice Marshall also said that he would have agreed with the majority that local zoning authorities might properly act in furtherance of the

objectives asserted to be served by the *Belle Terre* ordinance: restricting uncontrolled growth, solving traffic problems, keeping rental costs at a reasonable level, and making the community attractive to families. He added that the police power that provided the justification for zoning was "not narrowly confined." Justice Marshall stated that it was appropriate to afford zoning authorities considerable latitude in choosing the means by which to implement such purposes — but, he said, deference did "not mean abdication." In Justice Marshall's view, the Supreme Court had an obligation to ensure that zoning ordinances, even when adopted in furtherance of such legitimate aims, did not infringe upon fundamental constitutional rights.

As Justice Marshall explained, federal courts had acted to insure that land use controls were "not used as means of confining minorities and the poor to the ghettos of our central cities." He characterized these decisions as "limited but necessary intrusions on the discretion of zoning authorities." By the same token, Justice Marshall continued, it was "clear" that the First Amendment provided "some limitation on zoning laws." He stated that it was "inconceivable" that the Court would allow the exercise of the zoning power to burden First Amendment freedoms, as by ordinances that restricted occupancy to individuals adhering to particular religious, political, or scientific beliefs. Zoning officials properly concerned 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 could not validly consider who those persons were, what they believed, or how they chose to live, whether they were Negro or white, Catholic or Jew, Republican or Democrat, married or unmarried, according to Justice Marshall.

Justice Marshall stated that his disagreement with the Court was based on his view that the Belle Terre ordinance unnecessarily burdened the students' First Amendment freedom of association and their constitutionally guaranteed right to privacy. He noted that prior Supreme Court decisions had established that the First and Fourteenth Amendments protected the freedom to choose one's associates.[6] Constitutional protection had been extended not only to modes of association that were political in the usual

sense but also to those that pertained to the social and economic benefit of the members.[7] In Justice Marshall's opinion, the selection of one's living companions involved "similar choices as to the emotional, social, or economic benefits to be derived from alternative living arrangements."

Freedom of association often was inextricably entwined with the constitutionally guaranteed right of privacy, Justice Marshall declared. He noted that the right to "establish a home" was an essential part of the liberty guaranteed by the Fourteenth Amendment,[8] and that the Constitution secured to an individual a freedom "to satisfy his intellectual and emotional needs in the privacy of his own home."[9] Justice Marshall stated that constitutionally protected privacy was, in Mr. Justice Brandeis' words, "as against the Government, the right to be let alone…the right most valued by civilized man."[10] The choice of household companions — of whether a person's "intellectual and emotional needs" were best met by living with family, friends, professional associates, or others — involved "deeply personal considerations as to the kind and quality of intimate relationships within the home." That decision, according to Justice Marshall, surely fell within the ambit of the right to privacy protected by the Constitution.[11]

The Belle Terre zoning ordinance discriminated on the basis of just such a personal lifestyle choice as to household companions, in Justice Marshall's view. It permitted any number of persons related by blood or marriage, be it two or 20, to live in a single household, but it limited to two the number of unrelated persons bound by profession, love, friendship, religious or political affiliation, or mere economics who could occupy a single home. Belle Terre imposed upon those who deviated from the community norm in their choice of living companions significantly greater restrictions than were applied to residential groups who were related by blood or marriage, and composed the established order within the community. According to Justice Marshall, the village had, in effect, acted to fence out those individuals whose choice of lifestyle differed from that of its current residents.

Justice Marshall stated that this was not a case where the Court was being asked to nullify a township's "sincere efforts to maintain its residential character by preventing the operation of rooming houses, fraterni-

ty houses, or other commercial or high-density residential uses." Unquestionably, he declared, a town was free to restrict such uses. Moreover, as a general proposition, he said he saw no constitutional infirmity in a town's limiting the density of use in residential areas by zoning regulations that did not discriminate on the basis of constitutionally suspect criteria. The Belle Terre ordinance, however, limited the density of occupancy of only those homes occupied by unrelated persons. It thus reached beyond control of the use of land or the density of population, and undertook to regulate the way people chose to associate with each other within the privacy of their own homes.

Justice Marshall stated that it was "no answer" to say, as the majority did, that associational interests were not infringed because Belle Terre residents could entertain whomever they chose. Justice Marshall said that the "choice of those who will form one's household" implicated "constitutionally protected rights."

STRICT SCRUTINY

Because Justice Marshall believed that the Belle Terre zoning ordinance created a classification that impinged upon fundamental personal rights, he stated that it could withstand constitutional scrutiny only upon a clear showing that the burden imposed was necessary to protect a compelling and substantial governmental interest. And, once it was determined that a burden had been placed upon a constitutional right, the onus of demonstrating that no less intrusive means would adequately protect the compelling state interest and that the challenged statute was sufficiently narrowly drawn, was upon the party seeking to justify the burden, Justice Marshall explained.[12]

As Justice Marshall noted, a variety of justifications had been proffered in support of the village's ordinance. It was claimed that the ordinance controlled population density, prevented noise, traffic and parking problems, and preserved the rent structure of the community and its attractiveness to families. Justice Marshall acknowledged that these all were legitimate and substantial interests of government. However, he declared, he found it clear that the means chosen to accomplish these pur-

poses were both overinclusive and underinclusive, and that the asserted goals could be as effectively achieved by means of an ordinance that did not discriminate on the basis of constitutionally protected choices of lifestyle. He noted that the ordinance imposed no restriction whatsoever on the number of persons who could live in a house, as long as they were related by marital or sanguinary bonds — presumably no matter how distant their relationship. Justice Marshall added that the ordinance also did not restrict the number of income earners who could contribute to rent in such a household, or the number of automobiles that could be maintained by its occupants. In that sense, Justice Marshall opined, the ordinance was underinclusive. On the other hand, he noted, the statute restricted the number of unrelated persons who could live in a home to no more than two. It therefore would prevent three unrelated people from occupying a dwelling even if among them they had but one income and no vehicles. While an extended family of a dozen or more might live in a small bungalow, three elderly and retired persons could not occupy the large house next door. Thus, according to Justice Marshall, the Belle Terre statute was also grossly overinclusive to accomplish its intended purposes.

Justice Marshall observed that there were about 220 residences in Belle Terre occupied by about 700 persons, making a density of just above three per household. The village, he said, was justifiably concerned with density of population and the related problems of noise, traffic, and the like but, he stated, it could deal with those problems by limiting each household to a specified number of adults, two or three perhaps, without limitation on the number of dependent children. The burden of such an ordinance "would fall equally upon all segments of the community" and such an ordinance would "surely be better tailored to the goals asserted by the village than the ordinance before us today, for it would more realistically restrict population density and growth and their attendant environmental costs." Various other statutory mechanisms also could solve Belle Terre's problems, Justice Marshall stated, listing rent control and limits on the number of vehicles per household. He noted that the village referred to the necessity of maintaining the family character of the village, but found "not a shred of evidence in the record indicating that if Belle Terre permitted a limited number of unrelated persons to live

together, the residential, familial character of the community would be fundamentally affected."

Justice Marshall concluded that by limiting unrelated households to two persons while placing no limitation on households of related individuals, the village had "embarked upon its commendable course in a constitutionally faulty vessel." Accordingly, he said that he would rule that the challenged ordinance was unconstitutional. He stated that he 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, but would commend the village to continue to pursue those purposes by means of more carefully drawn and even-handed legislation.

CONCLUSION

Over the many years since *Belle Terre* was decided, numerous other courts have analyzed the issue. Many have upheld similar ordinances,[13] although others have found that the challenged zoning rules were unconstitutional under state constitutional schemes.[14]

Two particularly interesting decisions are worthy of special emphasis. Three years after the *Belle Terre* ruling, a divided Supreme Court (with Justice Marshall joining the judgment of the Court) distinguished *Belle Terre* and ruled in *Moore v. City of East Cleveland*[15] that East Cleveland's housing ordinance, which limited occupancy of a dwelling unit to members of a single family and in this case made a crime of a grandmother's choice to live with her grandson, was unconstitutional.

Then, more recently, New York's highest court, the Court of Appeals, ruled about a decade after the Supreme Court's decision in *Belle Terre* that a single family zoning ordinance allowing any number of related persons to live together or not more than two unrelated persons who both must be 62 years of age or older violated the due process clause of the New York Constitution.[16] The New York Court's decision suggests that it would have struck down the Belle Terre zoning ordinance under the state Constitution if it had had the opportunity.

NOTES

[1] 42 U.S.C. §1983.
[2] 416 U.S. 1 (1974).
[3] 272 U.S. 365 (1926).
[4] 348 U.S. 26 (1954).
[5] 245 U.S. 60 (1917).
[6] *NAACP v. Button*, 371 U.S. 415, 430 (1963).
[7] *Id.*, at 430-431; *Brotherhood of Railroad Trainmen v. Virginia Bar*, 377 U.S. 1 (1964). *See United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971); *Mine Workers v. Illinois State Bar Assn.*, 389 U.S. 217 (1967).
[8] *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965) (Goldberg, J., concurring).
[9] *Stanley v. Georgia*, 394 U.S. 557, 565 (1969); *see Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 66-67 (1973).
[10] *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (dissenting opinion).
[11] *See Roe v. Wade*, 410 U.S. 113, 153 (1973); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Stanley v. Georgia, supra*, at 564-565; *Griswold v. Connecticut, supra*, at 483, 486; *Olmstead v. United States, supra*, at 478 (Brandeis, J., dissenting); *Moreno v. Department of Agriculture*, 345 F. Supp. 310, 315 (DC 1972), *aff'd*, 413 U.S. 528 (1973).
[12] *See Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Speiser v. Randall*, 357 U.S. 513, 525-526 (1958).
[13] *See, e.g., Jones v. Wildgen*, 320 F. Supp. 2d 1116, 1131–32 (D. Kan. 2004) (holding statute prohibiting more than three unrelated persons from renting home in single family zoning district did not violate the Equal Protection Clause of the United States Constitution); *Rademan v. City & County of Denver*, 526 P.2d 1325, 1327–28 (Colo. 1974) (holding ordinance restricting certain areas of the city to single family occupancy did not violate the Equal Protection or Due Process clauses of the Federal Constitution); *Dinan v. Bd. of Zoning Appeals*, 595 A.2d 864, 871 (Conn. 1991) (holding ordinance which allowed any number of related persons to occupy a home and up to two roomers in addition to the family of an occupant did not violate the equal protection or due process clauses of the Connecticut Constitution); *Hayward v. Gaston*, 542 A.2d 760, 770 (Del. 1988) (holding ordinance which prohibited more than four unrelated persons from living together in single family

residential zone did not violate the Equal Protection Clause of the Federal Constitution); *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007) (divided Iowa Supreme Court held that the city's zoning ordinance, which allowed an unlimited number of related persons to live together while limiting to three the number of unrelated persons in single family zones, was rationally related to the government's interest in providing quiet neighborhoods and, accordingly, did not offend the equal protection clause of either the Iowa Constitution or the United States Constitution); *State v. Champoux*, 555 N.W.2d 69, 74 (Neb. Ct. App. 1996) (holding ordinance limiting to three the number of unrelated persons who may live together did not violate the due process clause of the Nebraska Constitution or the rights of association and privacy provided by the Federal Constitution); *Town of Durham v. White Enters., Inc.*, 348 A.2d 706, 709 (N.H. 1975) (holding ordinance which restricted the number of unrelated persons who may live in different classes of dwelling units based on habitable square footage was constitutional); *City of Brookings v. Winker*, 554 N.W.2d 827, 831-32 (S.D. 1996) (holding ordinance which prohibited more than three unrelated adults to occupy a dwelling unit did not violate either equal protection or due process clauses of the South Dakota Constitution); *see also Anderson v. Provo City Corp.*, 108 P.3d 701, 710 (Utah 2005) (holding zoning ordinance which allowed property owners in some single family zoning residential zones near university campus to rent accessory apartments (located in basement or upper floors) to up to four related or unrelated individuals on condition owner resided in primary dwelling did not violate owners' constitutional right to equal protection or right to travel, and was not an invalid restraint on alienation).

[14] *See, e.g., City of Santa Barbara v. Adamson*, 610 P.2d 436, 442 (Cal. 1980) (holding ordinance limiting to five the number of unrelated people who may live in single family zones violated fundamental right to privacy under the California Constitution); *College Area Renters & Landlord Ass'n v. City of San Diego*, 50 Cal. Rptr. 2d 515, 520 (Ct. App. 1996) (holding zoning ordinance which limited the number of adult occupants of a rented one family dwelling based on square footage of bedroom areas, the number and size of bathrooms, and the amount of off-street parking violated the equal protection clause of the California Constitution because the ordinance made an irrational distinction between tenant-occupants and owner-occupants); *Charter Twp. of Delta v. Dinolfo*, 351 N.W.2d 831, 841 (Mich. 1984) (holding ordi-

nance which limited the occupation of a single family residence to two unrelated persons or any number of related persons violated the due process clause of the Michigan Constitution); *State v. Baker*, 405 A.2d 368, 369–70 (N.J. 1979) (holding zoning ordinance which allowed any number of related persons to live together in a single family home or not more than four unrelated persons violated right to privacy and due process under the New Jersey Constitution because the distinction between related and unrelated persons did not bear a substantial relationship to the effectuation of the city's goal of preserving family character of neighborhood).

[15] 431 U.S. 494 (1977).

[16] *McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240, 1243 (N.Y. 1985).