AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era—Democratic Rights/Free Speech

**New York ex rel. Bryant v. Zimmerman, 278 U.S. 63** (1928)

*In 1923, the state of New York adopted a law making it a misdemeanor for anyone to attend a meeting of or to join a membership organization that was required by law to submit various documents, including a roster of its membership, to the state. Any organization with more than twenty members that required its members to take an oath, but excluding labor unions and benevolent orders, was required to comply with the law. The “Walker Law” was specifically designed to target the Ku Klux Klan, a violent secret society that was growing in influence in New York on a platform of opposition to blacks, Catholics, Jews, and immigrants and support for Prohibition and required its members to pledge an oath to defending “white supremacy.”*

*George C. Bryant, a leader of the KKK chapter in Buffalo, New York, sought to get around the law by registering the Klan as a benevolent society. The plan failed, and Bryant was charged with violating the Walker act. He was convicted, and that conviction was affirmed by the state appellate courts. The U.S. Supreme Court affirmed the state courts in an 8-1 decision (with one justice dissenting on procedural grounds). The Court considered whether the mandatory release of membership lists of organizations operating within a state was a violation of the liberty of individuals or whether the different treatment of different organizations was a violation of equal protection, and in both instances the Court held that the state’s actions were reasonable and justifiable given what was known about the KKK.*

*By the time the case was resolved in the U.S. Supreme Court, and Bryant was eventually made to pay a $100 fine for violating the Walker Law, the KKK was in retreat in Buffalo and elsewhere. Its members were publicly exposed, initially as a result of a burglary of its headquarters, and subjected to a campaign of private and legal harassment that led most of its members to disavow and abandon the group.*

JUSTICE VAN DEVANTER delivered the opinion of the Court.

. . . .

There are various privileges and immunities which under our dual system of government belong to citizens of the United States solely by reason of such citizenship. It is against their abridgement by state laws that the privilege and immunity clause in the Fourteenth Amendment is directed. But no such privilege or immunity is in question here. If to be and remain a member of a secret, oath-bound association within a State be a privilege arising out of citizenship at all, it is an incident of state rather than United States citizenship; and such protection as is thrown about it by the Constitution is in no wise affected by its possessor being a citizen of the United States. Thus there is no basis here for invoking the privilege and immunity clause.

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 in § 53 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 the 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. . . .

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 — all named in another statute which provides for their incorporation and requires the names of their officers as elected from time to time to be reported to the secretary of state.

The principle to be applied in determining whether a particular discrimination or classification offends against the equal protection clause is shown in the following excerpts from some of our decisions. *Patsone v. Pennsylvania* (1914); *Radice v. New York* (1924). . . .

The courts below recognized the principle shown in the cases just cited and 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 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.

. . . .

*Affirmed*.

JUSTICE McREYNOLDS, dissenting.

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

. . . .