

**SUPREME COURT
OF THE UNITED STATES**

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In the Matter of:)
)
NEW YORK STATE CLUB ASSOCIATION,) No. 86-1836
INC.,)
)
Appellant,)
)
v.)
)
CITY OF NEW YORK, ET AL.)
)
)
)

Pages: 1 through 44
Place: Washington, D.C.
Date: February 23, 1988

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IN THE SUPREME COURT OF THE UNITED STATES

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 NEW YORK STATE CLUB ASSOCIATION, :
 INC., :
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 Appellant, :
 :
 v. : No. 86-1836
 :
 CITY OF NEW YORK, ET AL. :
 :
 -----X

Washington, D.C.

Tuesday, February 23, 1988

The above-entitled matter came on for oral argument
before the Supreme Court of the United States at 10:08
o'clock a.m.

APPEARANCES:

ALAN MANSFIELD, ESQ., New York, New York; on behalf of
the appellant.

PETER L. ZIMROTH, ESQ., Corporation Counsel of the City of
New York, New York, New York; on behalf of the appellees.

I N D E X

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ORAL ARGUMENT OF

PAGE

ALAN MANSFIELD, ESQ.,

on behalf of the appellant

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PETER L. ZIMROTH, ESQ.,

on behalf of the appellees

23

P R O C E E D I N G S

(10:08 A.M.)

1
2
3 CHIEF JUSTICE REHNQUIST: We will hear argument
4 first this morning in Number 86-1836, New York State Club
5 Association versus the City of New York.

6 Mr. Mansfield, you may proceed whenever you are
7 ready.

8 ORAL ARGUMENT BY ALAN MANSFIELD, ESQ.

9 ON BEHALF OF APPELLANT

10 MR. MANSFIELD: Mr. Chief Justice, and may it please
11 the Court, this case presents a classic conflict between
12 competing American values, the fundamental right of our
13 citizens to associate, elect who their friends will be in
14 places which are private social settings and the state's
15 interest in providing equal opportunities for people in places
16 which are public.

17 To foster equal opportunity, places like New York
18 City and other jurisdictions throughout the country have
19 enacted public accommodations laws. These laws in places
20 again which are truly public prohibit discrimination, but to
21 secure the personal liberties which are basic to our society
22 and which permit social clubs to exist in the first instance,
23 New York City's law, like many other jurisdictions, exempts
24 private clubs from the definition of place of public
25 accommodation.

1 This exemption strikes a fair balance between the
 2 competing values to associate on one hand and the state's
 3 interest in antidiscrimination principles on the other. Local
 4 Law 63 is an amendment to New York City's public accommodations
 5 law, and specifically to the distinctly private club exemption.
 6 Its irrebuttable presumption based on a crazy quilt three-
 7 prong test impermissibly precludes a club from demonstrating
 8 relevant factors.

9 QUESTION: Mr. Mansfield, it isn't clear to me
 10 from the opinion below of the New York Court of Appeals that
 11 that court necessarily viewed the three factors as an
 12 irrebuttable presumption. I notice that is what you are
 13 saying this morning and in your brief. Certainly your
 14 opponent in the case says that it doesn't create an
 15 irrebuttable presumption but rather a presumption that then
 16 has the effect of, I guess, shifting the burden of proof but
 17 leaving it open to the clubs to nonetheless show by any means
 18 that they are indeed private.

19 MR. MANSFIELD: The Corporation Counsel's brief
 20 in fact takes that position now for the first time. Looking
 21 at the Court of Appeals decision itself, however, I think,
 22 makes quite clear that for purposes of a club which is claiming
 23 a right to private association, that club is bound by an
 24 irrebuttable presumption.

25 The context in which the Court of Appeals was

1 writing was NYSCA's challenge under the state constitutional
2 inconsistency provision that the three prongs of Local Law 63
3 were inconsistent with the general law of the State of New
4 York. New York State has a statute which is a statewide
5 provision which is also a public accommodation statute, and
6 it has a distinctly private exemption, just like the old
7 New York City law did.

8 The Court of Appeals in the Power Squadrons case
9 had construed that exemption. NYSCA argued below that the
10 three prongs of Local Law 63, again under the state constitu-
11 tion, were inconsistent with the five prongs of Power Squadrons.

12 The Court of Appeals rejected that argument on the
13 ground that the five prongs of Power Squadrons were permissive
14 factors, and since they were permissive, then another juris-
15 diction would be free to pass consistent provisions, and the
16 Court of Appeals held that the three prongs were consistent.

17 The critical point here, though, is that or
18 purposes of determining that a club is not distinctly
19 private, a trier of fact sitting in the City Human Rights
20 Commission is entitled to look at as many factors as he
21 or she wishes. To that extent indeed it is permissive, but
22 once a club meets the three prongs, it is deemed to be not
23 entitled to the distinctly private exemption. The purpose --

24 QUESTION: In the sense of creating a presumption
25 so that it shifts the burden of proof to the club?

1 MR. MANSFIELD: It becomes irrebuttable. It is not
2 a strong presumption.

3 QUESTION: But that is exactly what your opponent
4 says is not the effect of the New York Court of Appeals
5 opinion. What are we supposed to do with that? Do you want
6 us to reinterpret state law, local law?

7 MR. MANSFIELD: I don't think that would be
8 necessary. I think the Court of Appeals decision is quite
9 clear on its face. The Court of Appeals says at Page 11A of
10 the record that once a club meets the three factors it is
11 deemed to be large and not selective enough to be entitled
12 to the freedom of association.

13 Indeed, this is the position that Corporation
14 Counsel has argued throughout both in this litigation and
15 in the enforcement proceedings which are pending in the
16 State of New York. In the reply brief I have cited a memo-
17 randum of law submitted by Corporation Counsel after the
18 Court of Appeals decision came down in which it takes the
19 very same position that seems to us to be clear from the
20 face of the record.

21 There is not an ambiguity here in state law
22 determination.

23 QUESTION: What about the ordinance itself? Does
24 it provide for -- does it permit a club to claim that even
25 though it satisfies the criteria, that its constitutional

1 rights are being violated?

2 MR. MANSFIELD: It does not, and to the contrary
3 the language of the statute could not be more clear. The
4 statute says that an institution, club, or place of
5 accommodation shall not be considered in its nature
6 distinctly private if it meets the prongs.

7 QUESTION: So the effect of the ordinance is
8 that case by case determination of constitutionality in
9 application is precluded.

10 MR. MANSFIELD: It is precluded. Once a club
11 meets the three prongs it is automatically in violation of
12 city law if it discriminates in any fashion.

13 The purpose again of the private club exemption
14 was to strike that fair balance between competing American
15 values. Local Law 63 is in fact an irrebuttable presumption
16 based on these three factors.

17 QUESTION: When you say irrebuttable presumption
18 you really mean that the law means what it says, I guess,
19 that when these three factors are present the law shall be
20 such and such.

21 MR. MANSFIELD: That is exactly correct.

22 QUESTION: And there are an awful lot of laws
23 like that.

24 MR. MANSFIELD: That's correct, Your Honor. I
25 understand that many statutes necessarily draw lines of

1 all kinds, and some will be impacted by it, some won't. The
2 point here, however, is that the analytical framework for a
3 club's exercise of its freedom of association has set forth
4 in two of the decisions of this Court, first in Roberts and
5 later in Rotary, just last term, this Court without dissent
6 set forth the proper analytical framework, and that framework
7 said that a club should be able to demonstrate and a trier of
8 fact should carefully assess all of the objective character-
9 istics which would be relevant to determine whether a club is
10 or is not private.

11 The Court went on in both of those decisions to
12 identify the kinds of factors which should be considered.
13 Those factors included the purpose of a club.

14 QUESTION: But neither of those opinions purported
15 to be drafting manuals for statutes.

16 MR. MANSFIELD: I agree, Your Honor. However, I
17 think that both of those opinions were setting forth a
18 constitutional framework. Both were considering the competing
19 values again of the freedom to associate, and when that
20 freedom to associate can attach, and the fact that a private
21 club may under some circumstances be entitled to exercise
22 that freedom to associate, that members of that club have
23 the right to choose who their friends will be free of
24 government regulation, free of government scrutiny of the
25 membership policies and operations of the club.

1 That framework is decidedly different from the tack
2 that Local Law 63 takes, whereas the Roberts and Rotary
3 rationale are solicitous of claims to the freedom of
4 association --

5 QUESTION: How did this case get started?

6 MR. MANSFIELD: This case was started in the State
7 Court in New York City. It was a --

8 QUESTION: By your client?

9 MR. MANSFIELD: By my client, the New York State
10 Club Association.

11 QUESTION: And you mounted a facial attack,
12 didn't you?

13 MR. MANSFIELD: It was a pre-enforcement
14 facial attack.

15 QUESTION: And so your claim was that the law
16 could not be constitutionally applied in any way?

17 MR. MANSFIELD: That it could not be constitu-
18 tionally applied in any case, and that it was overbroad on
19 its face, yes.

20 QUESTION: And you think overbreadth applies
21 in this context?

22 MR. MANSFIELD: I think overbreadth does apply
23 in this context because there are --

24 QUESTION: Well, this is sort of a commercial
25 regulation, isn't it?

1 MR. MANSFIELD: The provision may have intended
2 to be a commercial regulation. It may have been the
3 legislative intent to --

4 QUESTION: Well, let's assume for a moment that the
5 overbreadth analysis does not apply. Would you still win?

6 MR. MANSFIELD: I think we would win, Your Honor.

7 QUESTION: Because in any single case -- there
8 is no case you can imagine where this law could be
9 constitutionally applied?

10 MR. MANSFIELD: That's correct, because the law
11 employs a fundamentally incorrect analysis of the freedom
12 to associate, whereas the Court in Roberts and Rotary thought
13 that factors again such as selectivity in beginning and
14 maintenance of a relationship, the exclusion of others
15 from critical aspects of the relationship, that those should
16 be the factors which would determine whether a club's members
17 can decide whether they can have their own friends free
18 from government intrusion, but that is a constitutional
19 standard.

20 The irrebuttable presumption, the three prongs take
21 a decidedly different tack.

22 QUESTION: Under the JC and Roberts case is size
23 ever relevant?

24 MR. MANSFIELD: Size is relevant, and in fact,
25 Justice --

1 QUESTION: Do you think the fact that regular
2 meals are served is relevant? Ever?

3 MR. MANSFIELD: It wasn't mentioned, although we
4 believe it is a relevant factor, perhaps not the most
5 probative.

6 QUESTION: Is a relevant factor?

7 MR. MANSFIELD: A relevant factor.

8 QUESTION: Is receipt of payments on behalf
9 of nonmembers relevant?

10 MR. MANSFIELD: It, too, would be a relevant
11 factor.

12 QUESTION: Can you imagine no case in which those
13 three relevant factors would combine to result in a non-
14 private status for a club?

15 MR. MANSFIELD: Well, it is conceivable that there
16 is a class of cases in which a club, for example, like the
17 Rotaries or the JCs under any test, even if one employs a
18 fundamentally wrong premise, would have the same result,
19 that doesn't make the test any more constitutional, much
20 like in the Court's decisions in Munson and Schaumburg.
21 In Munson and Schaumburg, it is conceivable there would have
22 been those out there trying to solicit funds who were
23 engaged in fraudulent charitable activities, so the over-
24 broad law as applied to that class of individuals would have
25 the same result as if the law were more narrowly fashioned.

1 It is the same here. There are --

2 QUESTION: We are assuming no overbreadth here. I
3 mean, that's -- I thought this whole discussion was on the
4 assumption of no overbreadth principle applicable.

5 MR. MANSFIELD: The Court has used overbreadth in
6 two distinct contexts, as Justice Brockman pointed out in the
7 Munson case, both that the law is unconstitutional with
8 respect to the facts that are set forth by the plaintiff and
9 also in the classic sense of overbreadth where even if the
10 law properly regulates the conduct of plaintiff, nevertheless
11 there are others whose rights will be chilled.

12 And indeed we make the challenge to this law on
13 both grounds, but with respect to the class of clubs repre-
14 sented by the New York State Club Association, this law,
15 because again it employs, just like in Schaumburg and
16 Munson, a fundamentally misguided test, it would be unconsti-
17 tutional in every application.

18 QUESTION: If overbreadth doesn't apply here,
19 then, as Justice Kennedy points out, under any conceivable
20 circumstances a club in which these three factors are present
21 would not be subject to constitutional protection. A
22 facial attack ought to fail.

23 MR. MANSFIELD: Again, it is an irrebuttable
24 presumption. It prohibits any club, and the clubs represented
25 by the New York State Club Association, to show that there are

1 other factors.

2 QUESTION: I don't think your irrebuttable
3 presumption argument really does you much good. That just
4 may be my own opinion. It is a law setting down a standard
5 and saying if something meets this standard it is subject
6 to these rules. Like if you drive 35 miles an hour, you are
7 subject to a reckless driving charge. If you drive 75 miles
8 an hour, you are not allowed to adduce evidence that you
9 really were driving carefully.

10 Now, there is nothing wrong with a law like that,
11 is there?

12 MR. MANSFIELD: What is wrong with this particular
13 law is not that it draws lines, but that the three prongs
14 that it has chosen to look at are demonstrably different
15 from the constitutional analysis the Court set forth in
16 Roberts and Rotary. The very factors which a club would
17 want to show to demonstrate that it should be entitled to
18 practice the freedom of association, those very factors are
19 precluded by Local Law 63.

20 Once a club meets the three prongs, it cannot show
21 a trier of fact for purposes of winning the exemption that
22 it would otherwise have been -- have sought refuge under
23 Roberts and Rotary, that the kind of analysis that the Court
24 engaged in both looking at the Rotaries --

25 QUESTION: Can you imagine any club that -- where

1 any such a claim would be -- would just always fail?

2 MR. MANSFIELD: Not a club which would otherwise
3 be protected by Roberts and Rotary.

4 QUESTION: Well, I know, but you are saying that
5 every club that you can imagine would have -- this law would,
6 if it were applied, would be unconstitutional?

7 MR. MANSFIELD: I am saying that the law is
8 premised on a fundamentally misguided and wrong test, and
9 just as Your Honor's decision in Schaumburg pointed out, the
10 75 percent rule was a fundamentally misguided test. The
11 fact that the village of Schaumburg sought to eliminate fraud
12 was a bona fide --

13 QUESTION: Well, I know, but let's suppose that
14 we agreed with you they applied the wrong test, and we said,
15 well, the right test is so and so but this law is perfectly
16 constitutional under the right test. You wouldn't affirm --
17 you wouldn't reverse the judgment below, you would affirm
18 it.

19 MR. MANSFIELD: The judgment below should be
20 reversed because the test is fundamentally in error, and in
21 error with respect to the constitutional analysis that is
22 required by Roberts and Rotary. The mere fact that
23 it is --

24 QUESTION: Well, suppose we thought that applying
25 the right test, if this -- if the test below was wrong, if we

1 applied the right test, suppose we thought the ordinance
2 passed constitutional muster? We would affirm.

3 MR. MANSFIELD: If in fact the test was a right
4 test, if in fact the three prongs met all of the constitutional
5 concerns set forth in Roberts and Rotary, then in fact the
6 Court would affirm on that part of the argument. With
7 respect to the overbreadth part of the argument, on the
8 other hand, which clearly would apply here because the other
9 wing of the freedom to associate is the freedom for expressive
10 association, and of course the right of clubs to get
11 together, of political organizations to get together which are
12 clearly protected under the expressive association cases,
13 was chilled by this law.

14 If it has 400 members, if it has regular food
15 service, if it has regular receipt of income under the third
16 prong of the test then it would be forced to take in a member
17 it may not wish to have; which could very well, just the
18 admission of that member, interfere with the definition
19 and purpose of the club.

20 QUESTION: Mr. Mansfield, can I ask you a question
21 about the group that your client represents? In the NAACP
22 case on which you rely heavily, Justice Harlan points out
23 the importance of the freedom to engage in association for
24 the advancement of beliefs and ideas, which seems to me may
25 be a concept somewhat different from merely a social

1 organization that is purely social. Does the record tell
2 us how many of the members of the association are engaged
3 in the advancement of some kind of ideas of a political type
4 as opposed to merely a social organization?

5 MR. MANSFIELD: The clubs represented by NYSCA
6 are primarily those which are social clubs, clubs which are
7 organized for purposes of social intercourse and recreational
8 pursuits.

9 QUESTION: Do you think the same standard applies
10 to that kind of a first amendment claim as one -- as the
11 standard applies in the NAACP context?

12 MR. MANSFIELD: I think it is, Your Honor.

13 QUESTION: You think there is the same -- there is
14 an equal importance in protecting that kind of association?

15 MR. MANSFIELD: I think the Court has in the past
16 talked about the freedom of association protecting not only
17 the direct advancement of beliefs but in *Coats versus City*
18 of Cincinnati the Court mentioned that social expression was
19 equally protected.

20 I don't think the Court should engaged in a sliding
21 scale of protection with respect to that kind of freedom.

22 QUESTION: Isn't it a difference where some
23 people were killed, which is true in the Alabama one?

24 MR. MANSFIELD: Well, I understand that in --

25 QUESTION: Isn't there a little difference?

1 MR. MANSFIELD: I think that --

2 QUESTION: Isn't there a little difference?

3 MR. MANSFIELD: I think that the facts are very
4 much different, but I think the principle is very much the
5 same, and that the freedom of association is in fact a
6 fundamentally protected right.

7 QUESTION: Mr. Mansfield, you have to acknowledge
8 at least this difference, that where what is being defended
9 is association on the basis of furthering ideas, it doesn't
10 matter how large the organization is, it could be the American
11 Civil Liberties Union or any nationwide organization with
12 thousands of members, whereas we have made it clear that the
13 associational right that we have referred to where such
14 political or ideological purposes do not exist only applies
15 to intimate association.

16 We never talk about intimate association as far as
17 political belief is concerned, do we?

18 MR. MANSFIELD: Well, that is correct, Your Honor.
19 There are two prongs of the freedom of association. In
20 Roberts and in Rotary, both of those clubs were analyzed under
21 both prongs, the first, the right to private association, a
22 right which derives out of the liberty clause of the
23 Constitution; the second was a right of expressive association,
24 which finds its roots more directly in First Amendment cases.

25 These are two aspects of the freedom to associate.

1 QUESTION: And we give more protection to one than
2 to the other.

3 MR. MANSFIELD: Once an association, an organization
4 a couple is protected by the right of private association,
5 indeed, I believe that is given more protection than
6 expressive association. The state would not be able to enter
7 into intimate relationships which are protected by the liberty
8 clause, and I think that the analysis of Roberts and Rotary was
9 to determine whether a social club can be protected under that
10 same line of cases, the cases that began with family rights
11 involved.

12 QUESTION: Yes, but would you not agree that the
13 size factor is quite different in the political context than
14 in the intimate association context? You couldn't claim the
15 same right of intimate association for 100,000 people that you
16 could for a political group.

17 MR. MANSFIELD: Well, I think that's correct, and
18 I think certainly as Justice Brennan pointed out in Roberts,
19 relative smallness is one of the factors that should be
20 considered.

21 QUESTION: And your position is, 400 is, as a
22 matter of constitutional law, it has got to be bigger than
23 that. At what line would you say that the number would be
24 such that there would no longer be the right of intimate
25 association?

1 MR. MANSFIELD: I don't have a guideline to offer
2 the Court.

3 QUESTION: Your position is, there can be no flat
4 guideline?

5 MR. MANSFIELD: I think there shouldn't be, and
6 I think that's what Justice Brennan meant when he said
7 relative smallness, not just smallness. Indeed, the JC's local
8 that was before the Court in the Roberts case had -- were in
9 itself sufficient to defeat any constitutional right, the
10 Court would not have had to go forward in the decision. It
11 could simply have thrown the case out on the ground of 400.

12 Instead, the Court focused on relative smallness.
13 When you look at the 400 prong of Local Law 63, we can look
14 at such features, for example, as continuity of the relation-
15 ship. Is the core of the 400 the same group of people who
16 have been together for a long period of time? Who uses the
17 club on a regular basis? Is a small percentage of the total
18 membership really the percentage of people who use the club
19 day in and day out?

20 These are at least relevant factors that a trier
21 of fact should be able to take into consideration in deter-
22 mining whether the club meets the relative smallness analysis
23 of Rotary.

24 QUESTION: May I ask you if you would make the same
25 argument about the New York statute if one of the prongs

1 instead of a substantial amount of business activity said,
2 and 100 percent of the members regularly, that is, at least
3 once a week or once a month, transact some kind of business
4 in this placd.

5 MR. MANSFIELD: I think that would be a much closer
6 case, and certainly a trier --

7 QUESTION: Do you think that would also be invalid,
8 though, do you?

9 MR. MANSFIELD: If it were, again, an irrebuttable
10 presumption.

11 QUESTION: Yes.

12 MR. MANSFIELD: If it made it so that in deter-
13 mination of whether you have constitutional rights or not,
14 was not three prongs and you are out. As long as you would be
15 able to demnostrate that notwithstanding the commercial
16 aspect there are reasons qhat you might still be private.
17 Local Law 63 is a good example. The third --

18 QUESTION: Well, maybe the reason is that business-
19 men like to do business with men. Is that a sufficient
20 reason?

21 MR. MANSFIELD: That may not be, but the third prong
22 of Local Law 63 nowhere on its face requires that the
23 business activity be substantial. It doesn't even require
24 that it be significant. Under the regulations which were
25 before the Court of Appeals, indeed, it can be trivial.

1 The fact that there is trivial business that is
2 conducted at a club should certainly be a relevant feature.
3 The third prong, while it does have a business component, as
4 Justice Greenfield put in his decision denying our motion for
5 preliminary injunction, doesn't even make sense with respect
6 to furthering the purposes of the law.

7 QUESTION: Wouldn't, on trivial, if you turned it
8 on whether it was trivial or not, the business of the club
9 presentd to this Court, wouldn't you get nine different
10 points on the word "trivial" as applied to a club?

11 MR. MANSFIELD: You might very well.

12 QUESTION: So why bother with it?

13 MR. MANSFIELD: Because I believe, Your Honor, that
14 the analysis in Roberts and Rotary at bottom said that a
15 club should be able to at least try to prove before a trier
16 of fact every probative factor. If the club is --

17 QUESTION: As to whether it is 400 or 402.

18 MR. MANSFIELD: And if the 400 people are the
19 same 400 people --

20 QUESTION: Or 401.

21 MR. MANSFIELD: -- or others, and with respect
22 to the third prong --

23 QUESTION: Do you agree that the experience in
24 New York of enforcing its other civil rights law is far from
25 perfect today?

1 MR. MANSFIELD: I would agree with that, Your Honor.

2 QUESTION: So this was an effort to straighten it
3 out.

4 MR. MANSFIELD: It was an effort.

5 QUESTION: And you want to torpedo it.

6 MR. MANSFIELD: We don't challenge the legislative
7 purpose. At stake here is not the question of whether a
8 legislature can pass a law in which it seeks to provide
9 equal opportunities in places which are truly public. What
10 is wrong about this law is the means that was chosen. That
11 is what violates the Constitution. The fact that it can be
12 trivial income to a club, the fact that income could have
13 nothing to do whatsoever with the business of the members,
14 thus if it is a small club, and in order to make its real
15 estate tax payments without raising dues beyond the limits of
16 the club members, it rents its facilities out on a weekly
17 basis, rents it out to a local business to use for cocktail
18 parties, none of the club members attend that cocktail party,
19 and none of the people who are at the cocktail party have any
20 right to any aspect of the club. At least that factor should
21 be relevant to determining whether these clubs are market-
22 places.

23 The objective of the legislature is not drawn into
24 question in this litigation. If indeed the Local Law 63
25 was addressed to pointing out just marketplaces, what the

1 preamble says that the legislature was seeking to open up
2 to the public, that would be one thing, but it chose Local
3 Law 63. Local Law 63 is fundamentally in contrast to --

4 QUESTION: Well, your Court of Appeals said it is
5 not unreasonable to determine that a large club which received
6 substantial business-related income from nonmembers, that the
7 law can reach, constitutionally reach clubs like that. Now,
8 that is a construction of this ordinance, isn't it?

9 MR. MANSFIELD: I believe it is not a construction
10 of the ordinance. It is simply saying that if there is
11 substantial income and large clubs, that that would be con-
12 sistent with the Roberts analysis for determining that a club
13 is not distinctly private.

14 This particular ordinance has been construed by
15 administrative regulations. Those administrative regulations
16 issued by the City Human Rights Commission say quite clearly
17 that the receipt of nonmember income for as many weeks as
18 the year that the business -- the club is in operation is
19 sufficient to meet the term "regularly." Therefore trivial
20 income, if one member of a club of 450 on a weekly basis takes
21 one client to lunch, and deducts that payment, even though the
22 rest of the club members engaged purely in recreational or
23 social activities, even though the \$520 of 52 \$10 chits are
24 a tiny proportion of the club's revenues, the third prong
25 attaches. That is the way the regulations construe it. That

1 was before the Court of Appeals.

2 QUESTION: Well, it just isn't what the Court of
3 Appeals said.

4 MR. MANSFIELD: The Court of Appeals said that
5 large numbers and substantial business would in fact be
6 relevant factors under the Roberts rationale. The Court of
7 Appeals was simply dealing with the issue of permissive
8 factors and the kinds of things that could be looked at.
9 Again, what the Court of Appeals was not saying was that a
10 club that meets the three prongs could ever establish that
11 it is entitled to the exemption.

12 QUESTION: Well, would you say that -- I suppose
13 you would say that even if the club received what you would
14 agree is substantial income from nonmembers connected with
15 business, you would say that this law is unconstitutional
16 with respect to those clubs, I guess.

17 MR. MANSFIELD: I would say that it might be. I
18 would say that unless that club that received the
19 substantial --

20 QUESTION: Well, can you think of a club that the
21 ordinance could constitutionally be applied to?

22 MR. MANSFIELD: I can't because it is a fundamentally
23 misguided test. There is an entire class of clubs --

24 QUESTION: No matter how substantial the return
25 from nonmembers is.

1 MR. MANSFIELD: If it is substantial enough, then
2 that club would not be protected by Rotaries or Roberts in
3 the first instance. The class of clubs which are protected,
4 which is protected under the Rotaries and Roberts rationale
5 will for all purposes have their rights violated by the
6 three prongs of Local Law 63. It is very much the same as
7 in Schaumburg, where there could have been a class of
8 fraudulent solicitors, and they would be properly regulated
9 under the law, but any charity which was properly engaged in
10 First Amendment activity would have its rights violated by
11 the 75 percent rule.

12 The law is also violative of the equal protection
13 clause of the Constitution in that it improperly -- I see my
14 time is up. Thank you, Your Honor.

15 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Mansfield.

16 We will hear now from you, Mr. Zimroth.

17 ORAL ARGUMENT BY PETER L. ZIMROTH, ESQ.

18 ON BEHALF OF THE APPELLEES

19 MR. ZIMROTH: May it please the Court, if I might
20 just begin by addressing a question that Mr. Justice White
21 addressed to Mr. Mansfield in which I think you asked whether
22 or not this law precludes on a case by case application the
23 constitutionality, that is, that the court or the administra-
24 tive agency in New York is precluded somehow by this statute
25 from considering whether or not the application of the statute

1 is constitutional or not. That in fact is what Mr.
2 Mansfield means by irrebuttable presumption. He means that
3 this statute says to the state administrative agencies and
4 the state courts, you are not allowed to look at constitu-
5 tional considerations. It is really, frankly, silly. I
6 mean, you don't have to have a specific statement in the
7 statute saying this is the statute, but by the way, if it is
8 unconstitutional as applied to a particular case you shouldn't
9 apply it. I mean, every --

10 QUESTION: Well, Mr. Zimroth, is it open to a par-
11 ticular club in the City of New York faced with a challenge
12 before the Human Rights Commission to come in and offer
13 evidence that it believes demonstrates the business
14 activities are not substantial even though they would
15 technically meet the third prong of the ordinance?

16 MR. ZIMROTH: If the --

17 QUESTION: Does the club have a right --

18 MR. ZIMROTH: Absolutely.

19 QUESTION: -- to have that evidence --

20 MR. ZIMROTH: Absolutely.

21 QUESTION: -- considered?

22 MR. ZIMROTH: Absolutely, in the context of the
23 club saying that this statute is unconstitutional as applied to
24 me, to my club. Absolutely.

25 QUESTION: You can't find that provision in the

1 ordinance.

2 MR. ZIMROTH: No, you can't. You can't find it
3 in the U.S. Code most places either.

4 QUESTION: Well, I know, but you can't find it in
5 the -- as I read the Court of Appeals' opinion, it just seems
6 to say that when the three prongs are proved, that is the end
7 of the ball game.

8 MR. ZIMROTH: That is the end of the statutory
9 ball game. It is not the end of the constitutional -- how
10 could it be the end of the constitutional ball game? If the
11 statute is unconstitutional as applied to a particular club,
12 the City Human Rights Commission is bound not to apply that
13 statute to that club.

14 QUESTION: Of course, but Mr. Zimroth, if that is
15 enough to prevent a facial challenge, then there can never
16 be a facial challenge because every statute is always subject
17 to a constitutional challenge as applied.

18 MR. ZIMROTH: No, that is not correct, Your Honor.

19 QUESTION: It is not?

20 MR. ZIMROTH: No. The last part is correct. Right,
21 the last part is correct, but it does not follow that
22 because the last part is correct, that every overbreadth
23 challenge fails. The overbreadth challenge is in effect
24 saying that in most of its applications, in most of its
25 applications this law would be unconstitutional.

1 Mr. Mansfield in four years of litigation has not
2 come up with one club that it would be unconstitutional to
3 apply it to.

4 QUESTION: You are switching to overbreadth --
5 I am sorry, go ahead.

6 MR. ZIMROTH: You asked a question about
7 overbreadth. One other point. Even though it may not be
8 in the words of the statute, I don't think it needs to be in
9 the words of the statute, I will just cite an opinion by
10 Mr. Justice Rehnquist in the Commission against the Dayton
11 Christian Schools. "Even if Ohio law is such that the
12 Commission may not consider the constitutionality of the
13 statute under which it operates, it would seem an unusual
14 doctrine to say that the Commission could not construe its
15 own statutory mandate in light of the federal constitutional
16 principles. "

17 QUESTION: Yes, but that is very different, because
18 here you have construed your own statute, and if I understand
19 your argument now, you are saying, well, maybe it is uncon-
20 stitutional as to some of these clubs, but they can raise that
21 in due course. That is just too bad.

22 MR. ZIMROTH: No, I am saying that even if the
23 Court of Appeals said nothing on the subject, they would be
24 open, the club would be open to make this argument. The
25 Court of Appeals did say something and they did construe the

1 statute, and they construed it in, contrary to what Mr. Mans-
2 field said, specifically in light of his argument in the
3 Court of Appeals that this was an irrebuttable presumption.

4 QUESTION: Let me interrupt you again if I may,
5 please.

6 MR. ZIMROTH: Sure.

7 QUESTION: Do you agree that if these three prongs
8 of this test are met, I don't care whether it is irrebuttable
9 or not, assume that those are met, could they be met and
10 could a club still have a constitutional right to deny
11 membership to a minority group?

12 MR. ZIMROTH: Let me say this. I think --

13 QUESTION: It is a simple question.

14 MR. ZIMROTH: Yes, I am going to answer. I think
15 that it is -- I can't think of such a club, but I am not
16 going to stand here and say that in the fertile imagination
17 of man or woman, that you can't think of a hypothetical. For
18 example, you might have an advocacy group that meets all
19 these criteria. I haven't heard of any such advocacy group
20 in New York City. I mean, we are talking about clubs like
21 the New York Athletic Club.

22 QUESTION: Well, I can give you a hypothetical.
23 Supposing the Society of Divorced Men, who think they are
24 discriminated against in the administration of the domestic
25 relations laws, formed a group of 450 and they regularly met,

1 they had some people who paid their bills, they did some
2 business, and all the rest. Could the law be applied to them?
3 And they thought it would further their purpose to exclude
4 women from their organization.

5 MR. ZIMROTH: I think that it would be a hard case,
6 but even if I would assume, or even if you would assume that
7 in that particular application it would be unconstitutional
8 because of the particular advocacy purpose, what does that
9 have to do with this statute? This statute purports to
10 regulate after a very lengthy hearing what really is going
11 on in New York City. No one brought to the attention of either
12 a court or of a --

13 QUESTION: What is such a club supposed to do in its
14 day to day operations if they see this statute, they say we
15 understand the city is going to prosecute everybody that
16 violates it, we are in violation. Should it change?
17 Does it have a duty to change?

18 MR. ZIMROTH: No, it does not have a duty to change.
19 The burden is on the City Human Rights Commission to bring a
20 proceeding against that club. It doesn't have to do anything
21 until that entire proceeding is adjudicated both in the
22 Human Rights Commission and in the court. And if at the end
23 of that process, in which that club will say, even though
24 hypothetically my club meets the standards because we are
25 an advocacy group and we are small enough and all of the other

1 standards that we are constitutionally protected, presumably
2 either the Human Rights Commission or the state courts or
3 ultimately this Court will say it is right or it is wrong.
4 It is only after that that that club would have to change its
5 practices.

6 QUESTION: What you are really saying is that this
7 statute can be applied certainly to some clubs that come with-
8 in its definition constitutionally if perhaps it can't some
9 other clubs, and we will just have to find out as we go along.

10 MR. ZIMROTH: That is precisely right. I would
11 only amend that one way. That is, I would say that virtually
12 every club that you can imagine in the City of New York that
13 would come within this statute would be constitutional
14 application. I can't think of a real club in which it
15 wouldn't. I mean, you can think of hypothetical clubs, but
16 the City Council wasn't talking about hypothetical clubs.
17 It was talking about real clubs.

18 I mean, there are --

19 QUESTION: That certainly isn't the way the Court
20 of Appeals read the statute. Page 11A, right after the
21 citation to JCs, Part 2 of their opinion, they say, in
22 keeping with these objective and permissive factors, the law
23 in affect deems a club that is large and where much of the
24 activity central to the maintenance of the association
25 involves the participation of strangers to that relationship

1 to have lost any claimed protection of intimate association.
2 They don't give you the impression that it is going to be a
3 case by case treatment under -- once those three factors are
4 met.

5 MR. ZIMROTH: Well, I mean, they are talking about
6 permissive factors there, and also on the previous page, I
7 believe Page 9A, it says Local Law 63 does not prohibit the
8 city factfinder from considering the test of selectivity or
9 indeed any of the Power Squadron factors. I would have to
10 concede that the opinion is not crystal clear about that, but
11 this was after all a facial attack, and what the Court had
12 before it is what you have before you, a statute that has
13 criteria that is directly related to what this Court had
14 previously said in the JC case and in the Rotary case.

15 It looked at the City of New York. It had very
16 extensive hearings about the nature of these clubs that had
17 very, very substantial business operations. The president of
18 the University Club estimated that more than half of the income
19 from that fund came from nonmembers. We are talking about
20 clubs that have millions and millions of dollars of income
21 from nonmembers, clubs that actually advertise to its members
22 saying, please use this club more for business purposes.

23 QUESTION: Well, Mr. Zimroth, even if your agency
24 that enforces this law would never permit any claimed defense
25 of unconstitutionality as applied, I suppose that you wouldn't

1 necessarily lose this case. You could still say that, well,
2 there are certainly plenty of clubs to which this law could
3 be constitutionally applied and any claim, any unconstitutional
4 defense would be frivolous.

5 MR. ZIMROTH: I think that's correct. That is what
6 I am trying to say, that is, if you look at the real life
7 in New York City, it is hard to think of a real club that would
8 have a constitutional claim, that met these three standards and
9 also had a constitutional claim. Mr. Mansfield after four
10 years of litigation has not mentioned one such club. He
11 talks about it is possible that the regulation or the statute
12 would be applied in this way. It is possible in that way.
13 If you look at what the evidence was before the City Council
14 about the kind of clubs we are talking about, we are talking
15 about large men's downtown business clubs that do a substantial
16 amount of business, but by nonmembers.

17 QUESTION: Yes, but suppose we don't have all this
18 trouble that you do of imagining a club that would have a good
19 defense on a constitutional basis. Suppose that is so, and we
20 just disagree with you. What about overbreadth?

21 MR. ZIMROTH: Well, I agree with you. That is that
22 just because there exists -- the overbreadth doctrine, it
23 seems to me, said that --

24 QUESTION: Well, because if there are some clubs
25 that this law couldn't be constitutionally applied to,

1 a substantial number of them, and if overbreadth applies, I
2 suppose --

3 MR. ZIMROTH: Well, that's the point. This would
4 be --

5 QUESTION: -- this whole statute, ordinance is
6 unconstitutional on its face.

7 MR. ZIMROTH: It has to be a substantial number
8 of them. That is, in order for the overbreadth doctrine --

9 QUESTION: Well, suppose we think there are a
10 substantial number. Do you think overbreadth applies in this
11 case?

12 MR. ZIMROTH: I don't because --

13 QUESTION: Why not?

14 MR. ZIMROTH: Because --

15 QUESTION: Why not?

16 MR. ZIMROTH: -- there is not a substantial number
17 of them. Because the three prongs are directly responsive
18 to the constitutional concerns that this Court laid down in
19 Rotary and JCs. You know --

20 QUESTION: But doesn't this ordinance, at the
21 bottom line it talks about business purposes.

22 MR. ZIMROTH: That is, the money has to be received
23 in furtherance of a business purpose. That is why it is very
24 hard to imagine what kind of club that would be that
25 would --

1 QUESTION: Mr. Zimroth, you referred to the
2 University Club, I guess it was, that over half of its members
3 are engaged in business. Is that in the record?

4 MR. ZIMROTH: It is in the record before the City
5 Council.

6 QUESTION: Well, what is in the record in this law-
7 suit? Is there anything about any of these clubs?

8 MR. ZIMROTH: Virtually nothing.

9 QUESTION: Why not?

10 MR. ZIMROTH: They are the plaintiffs. I mean,
11 they refuse to put in the record anything about these 125
12 clubs. The reason is, I think, because if you actually look
13 at the club, you are going to see that you are talking about
14 big businessmen's clubs, not just some sort of hypothetical --

15 QUESTION: Do we even have a list of the members of
16 this organization?

17 MR. ZIMROTH: There is no list in the case. That
18 is correct.

19 QUESTION: Do we know how many of them are in
20 New York City?

21 MR. ZIMROTH: Excuse me?

22 QUESTION: Do we know how many of the 125 are --

23 MR. ZIMROTH: No, and you don't know how many
24 actually fall within the statute. You don't know how many --
25 you don't know the selection procedures for each one. You

1 don't know whether or not any of them have an expressive
2 purpose. We asked for this information in interrogatories.
3 They just refused to put it in.

4 QUESTION: Yes. Well, you certainly could have
5 gotten that information.

6 MR. ZIMROTH: It wasn't our burden.

7 QUESTION: Well, if you asked for it you sort of
8 assumed a little burden.

9 MR. ZIMROTH: No, we asked for it to try to prove
10 that --

11 QUESTION: Well, if you didn't get answers you
12 didn't try very hard.

13 MR. ZIMROTH: Okay, we didn't try very hard.

14 (General laughter.)

15 QUESTION: Mr. Zimroth, could I ask --

16 MR. ZIMROTH: But they are the plaintiffs in this
17 case and it seems to me if they are going to show substantial
18 overbreadth it is their burden to show that there are real
19 clubs out there that could be hurt and they haven't.

20 QUESTION: Mr. Zimroth, if there is a private
21 right of association in clubs it is not very explicitly set
22 forth in the Constitution anyway. One of the protections that
23 is quite explicit is, whatever laws you pass, the real pro-
24 tection is, it has to apply to everybody.

25 Now, this law was passed with an exclusion of

1 such groups as the Elks, the Moose, the American Legion, and
2 I gather there was some testimony that that exclusion was
3 somewhat politically necessary.

4 MR. ZIMROTH: There was no such -- there was a
5 claim made by the plaintiffs in this case.

6 QUESTION: What is the basis for that exclusion?
7 Why is that a rational exclusion? I mean, if this is a good
8 law it ought to apply to everybody.

9 MR. ZIMROTH: We had basically a ten-year history
10 of legislative findings, began in 1973, with the City Human
11 Rights Commission hearings. There was a report in '75.
12 There were hearings in '80. There were more hearings in '83.
13 The law passed in '84. What the legislature was looking at is
14 whether or not there were clubs in the City of New York that
15 really served a business function and the exclusion of women
16 and minorities really had a very negative impact on the
17 economic lives of those excluded.

18 There wasn't any evidence for that entire ten-year
19 period that that same function was relevant when you deal
20 with organizations like -- you mentioned some; I will mention
21 some others -- The Supreme Council of the Mystic Order of the
22 Veiled Prophets of the Enchanted Realm, or a local camp of
23 the Modern Woodsmen of America.

24 QUESTION: Let's take a criminal statute. Suppose
25 you have legislative hearings similar to the ones you had

1 here, and the City Council is considering an anti-bribery
2 statute, and its hearings show that by and large people who
3 make more than \$100,000 don't take bribes. They don't really
4 need it. It is not a real problem. So you pass a bribery
5 law that says it shall be unlawful to take a bribe unless you
6 make more than \$100,000 a year because there is really no
7 public need for a law. Now, do you think that satisfies the
8 equal protection clause?

9 MR. ZIMROTH: Well, I am not sure that the same
10 standards would apply if you are talking about depriving
11 people of liberty, where you are talking about a fundamental
12 right. I am just -- I mean, I don't know the answer but I do
13 see a serious distinction here.

14 QUESTION: It seems to me if there is no problem for
15 Elks or the Mystic Order or what-not, then they have nothing
16 to worry about. If they are not covered by the statute they
17 are not covered by it. What is the rational basis for
18 simply saying from the start this great and good statute is
19 not going to apply to these groups?

20 MR. ZIMROTH: The rational basis is that -- it seems
21 to me it is appropriate for the legislature after it goes to
22 a hearing to legislate about what the problem is. You know,
23 there are other -- I mean, you are talking also about
24 religious corporations that were excluded as well. You know,
25 one might at least rationally think that to get into the area

1 of religious organizations, maybe even fraternal organizations
2 that are explicitly by statute supposed to be entirely for
3 the benefit of the people, not for outsiders, that you might
4 think that that was getting closer to constitutional concerns.
5 Why do you want to force the City of New York to legislate
6 about those possibly more difficult areas when there is no
7 evidence that they presented the same problem?

8 QUESTION: To make sure the legislators are not
9 legislating against my club but not against their own clubs,
10 which is the whole purpose of the equal protection clause.

11 MR. ZIMROTH: Well, I don't know that there is any
12 evidence of that. There is one other point I wanted to say
13 about the Elks and so forth. We are talking about local
14 legislation. I have no idea what function the Elks or the
15 Moose or these various organizations may play in other cities,
16 in other settings, in rural America, and so forth.

17 The point is that in the City of New York there
18 just was no evidence that there was a problem like this, and
19 that's the answer.

20 QUESTION: They don't take bribes.

21 (General laughter.)

22 MR. ZIMROTH: We are not putting them in jail
23 either.

24 QUESTION: Counsel, could this statute have
25 excluded a group that discusses literary works?

1 MR. ZIMROTH: Could it?

2 QUESTION: A drama club. Constitutionally. You
3 can have more than 400 members but you are exempt if you
4 discuss literary works.

5 MR. ZIMROTH: I don't know the answer to that.

6 QUESTION: Well, why is the American Legion exempt?

7 MR. ZIMROTH: I said the reason the American
8 Legion is exempt is that in the City of New York there was
9 no evidence that came forth from the City Council that presented
10 the same kind of problem. Maybe it is a similar problem --

11 QUESTION: Would you speak into the microphone,
12 please, counsel?

13 MR. ZIMROTH: Maybe it is a similar problem
14 somewhere else in the country. It was not in the City of
15 New York.

16 QUESTION: We have held that labor picketing
17 cannot be exempted. It is a violation of the equal protection
18 clause. The Mosley case.

19 MR. ZIMROTH: Yes.

20 QUESTION: Speech concerns are implicated in this
21 statute, are they not?

22 MR. ZIMROTH: Only if you find that the clubs that
23 are included have a First Amendment right which merely
24 begs the question. In other words, if the clubs that are
25 included have a First Amendment right, you never have to

1 reach the equal protection argument, and if they don't, then
2 the only thing that the cases say that you are to look to is
3 the rational basis test, and I think it is a rational basis
4 that the City Council simply had ten years of history behind
5 it and it was no problem in this area.

6 QUESTION: No heightened scrutiny applies when you
7 are using speech --

8 MR. ZIMROTH: I am sorry, I am having --

9 QUESTION: No heightened scrutiny applies when you
10 are using speech classifications?

11 MR. ZIMROTH: Well, there are no speech classifica-
12 tions in this statute.

13 QUESTION: There are no First Amendment -- are
14 there First Amendment implications in this statute?

15 MR. ZIMROTH: Only if you find that the clubs that
16 are included in this statute have a First Amendment right.

17 QUESTION: Is there a First Amendment right to
18 associate?

19 MR. ZIMROTH: In some circumstances, either if the
20 association is intimate or if it has a predominantly expressive
21 purpose.

22 QUESTION: Well, the city itself found that it was
23 balancing associational rights versus other compelling needs
24 did it not?

25 MR. ZIMROTH: That is why it picked the standard of

1 400 members. That is a number not incidentally which this
2 Court characterized as large in the Rotary case. That was
3 the language of this Court. There was a local club in Rotary
4 which had, I think, 400 members, and it characterized it as
5 large. And that is why it had a standard that not only did it
6 have to be large but it had to accept on a regular basis fees
7 or other money on or behalf of nonmembers in furtherance of
8 a business purpose, not simply money for nonmembers, nonmembers
9 in furtherance of a business purpose.

10 And when you add all that together, I think it is
11 pretty hard to say that these clubs have, at least as far as
12 right of intimate expression, I mean, at last count the New
13 York Athletic Club had 10,003 members. I mean, can you imagine
14 someone getting up in here and saying, here are 10,002 of my
15 most intimate friends? It is just not a credible kind of
16 argument. So --

17 QUESTION: Is there a First Amendment right to
18 discuss business, do you suppose?

19 MR. ZIMROTH: If there is it is commercial seed
20 and it is much lesser protected. We are not prohibiting
21 people from discussing business here. I mean, that is one
22 thing that has to be said about this statute. This statute
23 doesn't prohibit small groups of people or even large groups
24 of people from getting together and excluding whomever they
25 want.

1 It says, however, that you can't do that under the
2 rationale that this club is an extension of your living room
3 and in fact have it be an extension of your business.

4 QUESTION: Unless you are a member of the American
5 Legion or the Elks.

6 MR. ZIMROTH: I don't know.

7 QUESTION: That's what the statute says, counsel.

8 MR. ZIMROTH: There is no evidence -- there is no
9 evidence in the record that that kind of thing happens in
10 those kinds of clubs in the City of New York, the point
11 being that these clubs can simply, they can get out of this
12 regulation altogether. They just have to stop taking money
13 on behalf of nonmembers in furtherance of business.

14 QUESTION: May I ask about that prong a little bit
15 so that I better understand what the ordinance means? If a
16 club member brings a client, for example, to the club and
17 buys a drink for the client once a week for 52 weeks, does
18 that make the entire club a place of public accommodation
19 even if the member bringing him is not reimbursed, but he is
20 paying for the drink for the client?

21 MR. ZIMROTH: Theoretically but not practically.

22 QUESTION: The ordinance would make that --

23 MR. ZIMROTH: No, not the ordinance, the regulation,
24 which has not been applied or tested. The ordinance simply --

25 QUESTION: The ordinance as interpreted by the

1 regulation would make that club then for all members a place
2 of public accommodation regardless of reimbursement as I
3 understand it.

4 MR. ZIMROTH: I'm sorry. Regardless of reimburse-
5 ment?

6 QUESTION: Yes.

7 MR. ZIMROTH: No, I'm sorry, then maybe you can --

8 QUESTION: If the club member buys the food or
9 beverage for the guest who happens to be a client.

10 MR. ZIMROTH: I don't think regardless of
11 reimbursement. I suppose it is possible to interpret on
12 behalf of.

13 QUESTION: It seems where it said, yes, on behalf
14 of, indirectly on behalf of, and that is what the regulation
15 looked like.

16 MR. ZIMROTH: It is possible to interpret it that
17 way. It is inconceivable to me that if we ever had a case
18 like that it would be interpreted that way, but it is
19 possible. Shall I tell you how in fact that has been
20 interpreted? I mean, it hasn't been interpreted by a court
21 yet because this is a pre-enforcement action, but we are in
22 litigation now with the Union League Club. The Union League
23 Club is required as many of these clubs are required to keep
24 tax records for functions where eight or more nonmembers
25 attend, and so we subpoenaed those records, and they show

1 close, like from one year, 1986, close to 100 separate
2 functions where you are not talking about one drink, you are
3 talking about three for 450 people. Those are counted as
4 one instance, not 450 instances, one instance, and you are
5 talking about hundreds of thousands of dollars.

6 QUESTION: Well, of course, that isn't -- we are
7 just looking at a facial challenge and the language of the
8 ordinance and the regulation, and it is a little hard to
9 know what it means.

10 MR. ZIMROTH: Well, which is really why I think a
11 facial challenge is completely inappropriate in this case. It
12 seems to me you need to have real cases with a real record
13 where you know what the club is, where you know exactly how
14 the administrative agency has interpreted the regulation and
15 how a court has applied it, and when you have that record
16 before you then you will have a real case. I don't think
17 this is a real case.

18 If there are no further questions, thank you.

19 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Zimroth.
20 The case is submitted.

21 (Whereupon, at 11:02 o'clock a.m., the case in
22 the above-entitled matter was submitted.)

23

24

25

1
2 REPORTER'S CERTIFICATE

3 DOCKET NUMBER: 86-1836
4 CASE TITLE: New York State Club Assoc v. City of New York
5 HEARING DATE: Tuesday, February 23, 1988
6 LOCATION: Washington, D.C.

7
8 I hereby certify that the proceedings and evidence
9 are contained fully and accurately on the tapes and notes
10 reported by me at the hearing in the above case before the
11 UNITED STATES SUPREME COURT.

12
13 Date: February 26, 1988

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