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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: CITY OF DALLAS, ET AL., Petitioners V. CHARLES
M. STANGLIN, INDIVIDUALLY, AND dba TWILIGHT
SKATING RINK

CASE NO: 87-1848

PLACE: WASHINGTON, D.C.

DATE: March 1, 1989

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 CITY OF DALLAS, et al., :
4 Petitioners :
5 v. : No. 87-1848
6 CHARLES M. STANGLIN, INDIVIDUALLY, :
7 AND dba TWILIGHT SKATING RINK :

8 -----x
9 Washington, D.C.

10 Wednesday, March 1, 1989

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 1:47 o'clock p.m.

14 APPEARANCES:

15 CRAIG LEE HOPKINS, ESQ., Assistant City Attorney, Dallas,
16 Texas; on behalf of the Petitioners.

17 DANIEL J. SHEEHAN, JR., ESQ., Dallas, Texas; on behalf of
18 the Respondent.

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1 P R O C E E D I N G S

2 (1:47 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 87-1848, the City of Dallas v. Charles M.
5 Stanglin.

6 Mr. Hopkins?

7 ORAL ARGUMENT OF CRAIG LEE HOPKINS

8 ON BEHALF OF THE PETITIONERS

9 MR. HOPKINS: Mr. Chief Justice, and may it
10 please the Court.

11 Does the City infringe a minor's right of
12 association by allowing dance halls to operate in the
13 City of Dallas and admit those ages 14 to 18 only?

14 I will address that there is no
15 constitutionally protected right of association in a
16 dance hall; that it would be unwise to expand
17 constitutional protection to include such a right; and
18 that even assuming there is some right implicated by the
19 ordinance that is challenged, the City does not infringe
20 that right by the ordinance challenged. And in any
21 case, the City has a rational and even compelling
22 interest in regulating dance halls for the protection of
23 minors.

24 QUESTION: Well, now, do you say that the
25 First Amendment doesn't protect any right of social

1 association?

2 MR. HCPKINS: Yes.

3 QUESTION: Okay.

4 MR. HOPKINS: We place reliance on the Roberts
5 precedent not only because it is the most recent
6 analysis of associational freedoms, but also because it
7 is reasonable. This Court in that precedent without
8 dissent tied associational freedom to the Bill of Rights
9 and found protection first for intimate relations
10 central to the concept of personal liberty.

11 The -- all of us as American citizens enjoy a
12 high degree of personal liberty, but we do not enjoy the
13 personal autonomy alleged by Respondents in this case.
14 We do not enjoy the autonomy in all things that may
15 serve us as recreation.

16 QUESTION: Well, do you think the City could
17 adopt an ordinance telling all 14-year olds that they
18 may not under any circumstances in their lives have any
19 association with people over 18?

20 MR. HOPKINS: No, I think that would be going
21 much too far.

22 QUESTION: Then there is a right of social
23 association.

24 MR. HOPKINS: No, there's not a
25 constitutionally protected right of association. Of

1 course, minors as -- as all of us, have personal
2 liberty, but there is nothing in the Constitution which
3 would guarantee purely recreational association.

4 I think for a city to make such a blanket
5 prohibition would be similar perhaps to the D.C. City
6 --City Council submitting to the mayor the curfew
7 ordinance. I think that may not be a constitutional
8 infringement, but I think -- as far as social
9 association, but I think it raises equal protection
10 problems and -- and other sorts of constitutional --

11 QUESTION: You don't think equal protection is
12 a constitutional principle?

13 MR. HOPKINS: It is a constitutional
14 principle. What I mean to say is that ordinance would
15 probably not infringe the alleged constitutional
16 protection of social association. But it would
17 implicate other constitutional protections. And for
18 that reason, I think that your hypothetical and perhaps
19 others would be going too far.

20 Dance halls do not exhibit the characteristics
21 of intimate associations that this Court has protected
22 in the past. They are primarily large gatherings. Mr.
23 Stanglin's testimony in the district court was that it
24 was not unusual for there to be 800 to 1,000 persons in
25 his establishment. They are not selective in who they

1 admit to the dance hall, and I think it's reasonable to
2 think that of 800 or 1,000 teenagers, a large percentage
3 are going to be strangers to each other. And I think it
4 is not reasonable to compare such a setting or such an
5 atmosphere with, for example, the marital bedroom.

6 This Court has also recognized constitutional
7 protection in the area of expressive association, in
8 other words, gathering to exercise rights guaranteed by
9 the First Amendment, such things as freedom of speech,
10 religious beliefs and to petition the government.
11 However, the dance hall that is involved in this case is
12 not an association at all in the sense of being an
13 organization with a collective identity.

14 Patrons do not gather at a dance hall
15 primarily to exercise their right of free speech or to
16 petition the government, nor do they primarily go there
17 to exercise religious beliefs. So, although minors do
18 enjoy personal liberty to some extent, they do not have
19 this autonomy that Respondents allege in whatever serves
20 them as recreation.

21 I think it would be unwise to give credence to
22 Respondent's suggestion of social associational rights
23 because it would chill the efforts of state and local
24 governments to create age-appropriate categories for the
25 use of municipal facilities or what have you.

1 QUESTION: I take it some part of your
2 argument, Mr. Hopkins, depends on the fact that the
3 plaintiffs are minors. You would find it a more
4 difficult ordinance to justify if it regulated adults
5 under 35.

6 MR. HOPKINS: Yes, Your Honor. A primary
7 tenet of my argument is the fact of their minority
8 because I believe that the First Amendment assumes the
9 capacity to exercise independent judgment, and minors
10 cannot be assumed to have met that prerequisite to
11 exercise First Amendment rights.

12 QUESTION: But, Mr. Hopkins, I'm a little --

13 MR. HOPKINS: I think it's --

14 QUESTION: May I interrupt? I'm just a little
15 puzzled.

16 I thought your first point is that there's
17 just no constitutional right at stake here anyway.

18 MR. HOPKINS: Correct.

19 QUESTION: Well, why would -- what would the
20 constitutional right be at stake if it was a 30 to
21 35-year ordinance instead of a 14 to 18?

22 MR. HOPKINS: My position is there is no right
23 for them either.

24 QUESTION: So, that would be the same case
25 then.

1 MR. HOPKINS: Correct.

2 QUESTION: So, then why are you arguing about
3 young people?

4 MR. HOPKINS: Well, assuming that you might
5 find some associational right --

6 QUESTION: I see.

7 MR. HOPKINS: -- their minority is just an
8 added -- the fact of minority is the compelling interest
9 should you decide to apply that strict a scrutiny to the
10 City's ordinance.

11 As I was saying, if the City of Dallas'
12 ordinance is invalid based on its regulation of minors,
13 what then of the City's ability to regulate, for
14 example, campgrounds or swimming pools, as amicus have
15 suggested, purely on the basis of age?

16 QUESTION: Well, don't you -- don't you think
17 that dancing is some form of expression?

18 MR. HOPKINS: In a very broad sense,
19 everything we do is -- is a form of expression.

20 QUESTION: Well, do you think you'd have the
21 same reaction if this ordinance prevented people between
22 the age of 14 and 18 from taking ballet lessons?

23 MR. HOPKINS: I don't think that it would
24 infringe a constitutionally protected right.

25 QUESTION: How about music lessons?

1 MR. HOPKINS: There again unless it is -- I
2 don't think the Constitution would be implicated in that
3 case.

4 QUESTION: How about singing lessons?

5 MR. HOPKINS: Same thing.

6 QUESTION: Speaking?

7 MR. HOPKINS: It depends on what kind of
8 speaking. I think you are getting closer toward what
9 might be wrapped up in the exercise of freedom of
10 speech. Perhaps they're taking a speech class that
11 centers on a particular issue. I don't know. But I
12 think you're getting closer to it.

13 QUESTION: Let me give you a hypothetical.
14 Supposing a 15 or 16-year old person was taking dancing
15 lessons from a person over 21 and became quite expert,
16 and wanted to show his or her classmates and friends how
17 expert he or she was, and wanted to give kind of a
18 demonstration of it. And the only place that it could
19 be done is in a dance hall like this, or the only place
20 that would happen to be available. You wouldn't think
21 they would have -- there would be any constitutional
22 interest whatsoever respecting that.

23 MR. HOPKINS: No, I don't believe our
24 ordinance would infringe any assumed right because it
25 doesn't ban the dancing. It doesn't ban the

1 demonstrations.

2 QUESTION: It bans dancing with that
3 particular partner.

4 MR. HOPKINS: It doesn't even ban dancing with
5 an older person because there are exceptions to the
6 ordinance. For example, dances at schools are
7 completely exempt from the ordinance. A school does not
8 have to obtain a dance hall license.

9 QUESTION: Oh, right. But at least it bans
10 them in this dance hall.

11 MR. HOPKINS: Correct.

12 QUESTION: Yes.

13 QUESTION: But you don't have to give that
14 answer anyway because you don't think there's any
15 constitutional right involved at all.

16 MR. HOPKINS: Correct.

17 QUESTION: So, you don't have to distinguish
18 these cases.

19 MR. HOPKINS: No, I don't.

20 QUESTION: And you don't have to worry about
21 picnics and swimming pools and any -- because there's no
22 constitutional right at all.

23 MR. HOPKINS: Correct.

24 QUESTION: All right.

25 QUESTION: No associational right. You're

1 making your case harder than it has to be.

2 MR. HOPKINS: Well, I assume he means --

3 QUESTION: I assume -- I assume that the state
4 would have to have a reason to -- to prevent people over
5 -- over 18 and under 35 from going to dance halls. They
6 just couldn't -- right? I mean, there are some
7 provisions of the Equal Protection Clause, for example.

8 MR. HOPKINS: Correct, correct.

9 QUESTION: You're saying that there may be
10 reasons why these things are invalid, but they're not
11 invalid because of any -- any infringement upon
12 associational rights.

13 MR. HOPKINS: Correct.

14 To take that and -- and expand on it, the City
15 in this case has found such a basis for -- for coming to
16 the conclusion that the ordinance is needed. We don't
17 feel that it is -- that it has implicated any
18 constitutional right, but we do feel we're justified in
19 doing it nonetheless, even if you assumed some right.

20 QUESTION: You mean you don't have to justify
21 it at all?

22 MR. HOPKINS: I'm saying that in this
23 particular case, the -- the part of the ordinance that
24 is challenged does not bring into question any
25 constitutional provision.

1 QUESTION: Well, that means you don't have to
2 give a reason.

3 MR. HOPKINS: Correct. And on the -- as far
4 as the ordinance being challenged.

5 QUESTION: And the -- the reason you don't
6 have to give a reason is because young people don't have
7 any constitutional rights. Is that your position?

8 MR. HOPKINS: No, that's not my position.

9 QUESTION: It's kind of close, though, isn't
10 it?

11 (Laughter.)

12 MR. HOPKINS: Well, they have constitutional
13 rights. And in the associational context, they have
14 associational rights for intimate relations, which are
15 not implicated here, and they have constitutional rights
16 to associate for expressive purposes in engaging in
17 their First Amendment rights of free speech, et cetera,
18 which is not implicated here.

19 QUESTION: But any time you classify, you
20 --you may raise questions under the Equal Protection
21 Clause, may you not?

22 MR. HOPKINS: It could be raised. It has not
23 been asserted at this level.

24 QUESTION: Is any young person a party to this
25 suit?

1 MR. HOPKINS: No.

2 QUESTION: Just -- just the proprietor of the
3 combination skating rink and dance hall.

4 MR. HOPKINS: Correct.

5 QUESTION: Is he in a position to assert there
6 the young people's constitutional right?

7 MR. HOPKINS: We have not challenged their
8 standing in this Court. I think it's at least arguable
9 under some of this Court's decisions that they do have
10 standing because of his economic injury that he alleged
11 in the district court.

12 QUESTION: You challenged it below, didn't you?

13 MR. HOPKINS: I don't believe we've ever
14 challenged his standing.

15 QUESTION: I see. I see. All right.

16 But the court addressed it.

17 MR. HOPKINS: Yes, I believe the court of
18 appeals addressed --

19 QUESTION: Well, does the Texas Court of Civil
20 Appeals have a standing requirement similar to those of
21 Federal courts?

22 MR. HOPKINS: Yes, I'm sure they have a
23 standing requirement. And I believe the court of
24 appeals said that because of his economic injury, he
25 does have an injury caused by this particular ordinance

1 and thus is -- was appropriate in challenging it himself.

2 The court --

3 QUESTION: Has he demonstrated it, economic
4 injury?

5 MR. HOPKINS: He testified in the district
6 court. The record reveals that he felt like the
7 ordinance would restrict who he could admit and that it
8 would cut his business and -- and the -- and the
9 uncertainty of that type of business was such that it is
10 very easy to go out of business with just a swing of the
11 mood of the patrons to go patronize another
12 establishment.

13 QUESTION: Even though there were 800 to 1,000
14 youngsters --

15 MR. HOPKINS: Correct.

16 QUESTION: -- there. How large?

17 MR. HOPKINS: Yes.

18 QUESTION: Can it -- can it take 5,000?

19 MR. HOPKINS: I don't think it would hold that
20 many. I think the testimony in the district court was
21 that he would have anywhere from three to 1,000, but
22 that it was not unusual for there to be two -- 200 to
23 800 to 1,000 on big nights.

24 QUESTION: Did -- was this ordinance a
25 replacement of a previous regulation that was more

1 restrictive?

2 MR. HOPKINS: No. It is an expansion of an
3 existing ordinance. Before the challenged ordinance
4 went into effect, minors could not go to an adult dance
5 hall without their parent or guardian.

6 QUESTION: So, this ordinance actually was
7 more generous to the owner than the --

8 MR. HOPKINS: That's our position, yes.

9 QUESTION: -- the previous ordinance.

10 MR. HOPKINS: Because after it goes into
11 effect, minors still cannot go to the adult dance halls
12 without their parent or guardian, but they now also have
13 what we call the Class E dance hall which is just for
14 the 14 to 18-year olds. So, the practical effect of the
15 ordinance challenged is that it's an expansion of their
16 associational abilities. They have more places they can
17 go.

18 As amicus characterized it, it's -- it's more
19 or less a safe harbor for them in the dancing context.

20 QUESTION: If this is Class E, you must have
21 all kinds of classes in Dallas.

22 MR. HOPKINS: Basically -- or very generally
23 speaking, Classes A, B and C differ -- are all adult
24 dance halls and differ as to the number of days per week
25 that dancing is allowed. Class D dance halls or dance

1 -- are dance instruction halls. And then the Class E is
2 the teen dance halls.

3 QUESTION: And is Class E -- is the Class E
4 the only kind of dance hall a minor can go to?

5 MR. HOPKINS: No, he can go to -- he can go to
6 a dance instruction hall without restriction.

7 QUESTION: How --

8 MR. HOPKINS: He can go to adult dance halls
9 A, B or C with their parent or guardian.

10 QUESTION: Well, this operator is the one who
11 got himself into the E category. He could have been an
12 A, B or C, couldn't he?

13 MR. HOPKINS: He also held a Class B license
14 at the same time he held a Class E license. The problem
15 with having both of them, obviously, resulted in the
16 fact that he couldn't allow in people over 18 if he was
17 going to allow in the younger people without their
18 parents.

19 QUESTION: Right.

20 MR. HOPKINS: So, yes, in -- in some degree it
21 was of his own volition.

22 QUESTION: Are they all open on Sunday in
23 Dallas?

24 MR. HOPKINS: Pardon?

25 QUESTION: Are they all open on Sunday in

1 Dallas?

2 MR. HOPKINS: I believe they are.

3 The court of appeals suggested that the City's
4 ordinance was overbroad, but I believe that analysis is
5 flawed for several reasons.

6 First of all, there is no substantial
7 interference with a protected right. As I began, I
8 mentioned that our position is there is no
9 constitutional right to associate in a dance hall. But
10 even if you were to assume such a right, the ordinance
11 challenged expands that right and not -- it does not
12 constrict it.

13 Even if you assumed that facts were
14 appropriate to consider an overbreadth argument, I think
15 the ordinance clearly withstands that scrutiny because
16 it is a very narrow response to a specific request of
17 the community to create a dance hall opportunity for the
18 kids without the requirement that the parents go along
19 with them. It regulates only that one type of
20 business. And the exceptions keep the City out of the
21 constitutional issues because we have exempted schools
22 and churches, government facilities and the like from
23 having to obtain a dance hall license.

24 QUESTION: Mr. Hopkins, in your brief at some
25 place I think you suggest that in any event this is a

1 reasonable time, place and manner regulation.

2 MR. HOPKINS: Yes, Your Honor, I believe that
3 it is. It can be characterized as such because all we
4 do --

5 QUESTION: Have you found any of our cases
6 applying reasonable time, place and manner regulations
7 to a so-called right of association?

8 MR. HOPKINS: No. We would rely primarily on
9 the Roberts and Rotary Club decisions most recently.

10 The other -- another reason why an overbreadth
11 argument would be inappropriate here, as I mentioned,
12 was because the citizens specifically petitioned the
13 government for this response. In fact, Mr. Stanglin
14 himself approached city council members and asked that
15 there be a place such as a Class E dance hall. And --

16 QUESTION: Overbreadth just applies if there's
17 a First Amendment category and if there isn't any First
18 Amendment protected interest --

19 MR. HOPKINS: Correct.

20 QUESTION: Mr. Hopkins, both Roberts and
21 Rotary recognized a constitutional right of association.

22 MR. HOPKINS: Correct.

23 QUESTION: And I don't quite understand. Why
24 do you rely on those decisions?

25 MR. HOPKINS: We rely on those cases because

1 they recognized --

2 QUESTION: Not to support your argument that
3 there's no constitutional right of association in dance
4 halls. Is that right? You don't rely on them for that.

5 MR. HOPKINS: We rely on them because they
6 outline which types of association that receive
7 constitutional protection.

8 QUESTION: Yes, I remember.

9 MR. HOPKINS: Okay.

10 The -- the court of appeals also suggested and
11 Respondents suggest that there are other ways to
12 accomplish the City's objectives, police enforcement of
13 other statutes, for example. I would concede that there
14 are additional ways of combatting the problem of
15 juvenile crime and the influence that older people can
16 have on them to turn to drug abuse and alcohol abuse and
17 the like, but I will not concede that there's a less
18 intrusive way of achieving this result in the dance hall
19 context because the police department have -- are
20 working on the problem outside the dance hall, but not
21 inside.

22 The punishment that the court of appeals
23 suggests does not work until there's a victim. And it
24 assumes that a perpetrator is caught and that there is
25 some deterrent effect.

1 And supervision is not appropriate in this
2 case because the parents have said they don't want to
3 have to go. That's the first problem.

4 The second problem is if there's 1,000
5 teenagers in this establishment, how are you going to
6 effectively prohibit or prevent the undue influence from
7 reaching them before it's too late.

8 Thus, consistent with this Court's analysis in
9 the City of Renton case, the City of Dallas is attacking
10 the juvenile crime problem this one step at a time, and
11 they're doing it in the least intrusive way that they
12 can in this dance hall context.

13 I think to expand constitutional protection
14 beyond its already defined limits in this area would be
15 unwise because it would chill the efforts of the
16 governments across the entire spectrum of
17 age-appropriate categories to effectively protect people
18 on account of their minority.

19 I'd like to reserve the rest of my time for
20 rebuttal.

21 QUESTION: Thank you, Mr. Hopkins.

22 Mr. Sheehan, we'll hear now from you.

23 ORAL ARGUMENT OF DANIEL J. SHEEHAN, JR.

24 ON BEHALF OF RESPONDENT

25 MR. SHEEHAN: Mr. Chief Justice, may it please

1 the Court.

2 I had prepared remarks intended to demonstrate
3 to the Court that the City seeks here to say that there
4 is no constitutional right of association for minors.
5 After Mr. Hopkins' remarks that you have just heard, I
6 don't think it's necessary for me to -- to deliver that.

7 We are asking the Court to protect the right
8 of the people to associate together even if the purpose
9 is entirely social and even if the purpose may seem
10 trivial to many.

11 To say that there is no constitutional right
12 at all to associate in the type of context presented in
13 this case is to say that the state is immune in this
14 area and may do anything that it chooses to do even if
15 that act is arbitrary and irrational.

16 QUESTION: Well, there's a constitutional
17 right to walk down the street too, but that doesn't mean
18 that every -- every state statute that interferes with
19 my walking down the street is subject to strict
20 scrutiny. I mean, you have some constitutional
21 protection; that is, it can't be taken away without
22 reason. It has to be taken away on an equal basis with
23 other people.

24 I -- I don't understand the state here to be
25 arguing that there is no constitutional right. They're

1 Just saying that this is not -- this is not the sort of
2 association that is governed by -- by our cases saying
3 that the First Amendment attaches to it. That's not the
4 same thing as saying there's no -- no -- no
5 constitutional protection for it.

6 MR. SHEEHAN: With due respect, Justice
7 Scalia, I believe they are arguing that there is no
8 constitutional protection and they're not restrained
9 even by a rational basis test.

10 QUESTION: I thought -- I thought they agreed
11 that they were subject at least to equal protection
12 scrutiny, that you couldn't single out one class of
13 people arbitrarily and say you can't go to the dance
14 hall, but everybody else can. I thought their argument
15 was that there's no First Amendment protection for it.

16 MR. SHEEHAN: Mr. Chief Justice, I heard that
17 statement made this afternoon and the concession that
18 they would be restrained by equal protection
19 considerations. But --

20 QUESTION: That's not really a concession.
21 Everybody is -- every governmental action is restrained
22 by equal protection considerations.

23 MR. SHEEHAN: I agree, and I also agree that
24 every governmental action is restrained by the need to
25 have some rational basis.

1 I think the City's position, at least as I'm
2 reading it in the brief, is not that there is no -- is
3 not that they need not only demonstrate no compelling
4 interest, but that they need not demonstrate even a
5 rational basis. I'll read from the reply brief of the
6 Petitioner.

7 QUESTION: Well, we'd also like to hear your
8 -- you know, I think the -- probably the Petitioners'
9 position is -- we can assume is fairly clear -- have
10 from the Petitioner, so to speak. I am sure we would
11 like to hear your -- your position too.

12 Do you think this is subject to something more
13 than rational basis scrutiny, this sort of an ordinance?

14 MR. SHEEHAN: I think that the -- yes, I do.

15 In --

16 QUESTION: Why?

17 MR. SHEEHAN: -- many instances, the type of
18 association that I am addressing is entitled to a
19 compelling state interest standard, is required to be
20 more than the rational basis standard.

21 QUESTION: The right to --

22 QUESTION: (Inaudible). Excuse me.

23 QUESTION: The right to go to a dance hall?

24 MR. SHEEHAN: The right to dance together with
25 persons of your choosing.

1 QUESTION: well, they have ample opportunity
2 to do that in school, in private clubs, at a home, every
3 place, just not a Class E dance hall. Isn't that right?

4 MR. SHEEHAN: It is, Justice O'Connor, but I
5 don't think that that's the appropriate analysis. For
6 example --

7 QUESTION: Well, that certainly is a factor
8 for the analysis. They have ample opportunity to dance.
9 Whose associational rights are you here
10 advocating?

11 MR. SHEEHAN: The associational of everyone,
12 not just minors because I don't regard this as strictly
13 a minor's associational rights case.

14 QUESTION: So, who do you think you're
15 representing? The right of everybody to go to the Class
16 E dance hall?

17 MR. SHEEHAN: Yes.

18 QUESTION: Uh-hum.

19 MR. SHEEHAN: I can't go to a Class E dance
20 hall. It isn't a minor's constitutional rights case.
21 The purpose of the statute is protect the minors. But
22 the prohibition extends to everyone, and in that sense
23 it's different than the cases that deal with minors and
24 minors alone.

25 But to say that they can dance elsewhere is

1 simply, with due respect, I don't believe the proper
2 analysis. In the Roberts v. Jaycees case, for example,
3 the argument could have been made by the Jaycees that
4 the -- that the Minnesota anti-discrimination statute
5 really didn't impose that much restriction on their
6 liberties because, first of all, there were plenty of
7 organizations that those women could join other than the
8 Jaycees. And, secondly, how many women are truly going
9 to be interested in joining an organization whose avowed
10 purpose is a promotion of young men's civic organization?

11 QUESTION: Well, but of course the Court has
12 applied a higher level of scrutiny to gender
13 discrimination and racial discrimination. That's not
14 involved here, is it?

15 MR. SHEEHAN: No, it's not.

16 QUESTION: Mr. Sheehan, are you arguing for a
17 strict scrutiny standard or rational justification?

18 MR. SHEEHAN: Justice Brennan, I'm -- I'm
19 arguing for the same type of standard that I believe was
20 established in the majority opinion that you authored in
21 Roberts and -- for intimate associations where you said
22 there are two poles. One is the family. The other end
23 of the extreme may be measured by large business
24 enterprises. At the family end it's entitled to
25 probably the highest protection the Constitution

1 allows. Whereas where the relationship is much more
2 attenuated at the large business enterprise end, it's
3 not expressly stated what standard will apply, but it's
4 certainly not going to be the compelling state interest
5 one.

6 QUESTION: And you classify this with the
7 family, intimate association?

8 MR. SHEEHAN: No, sir, not necessarily. I --
9 I classify social associations as being subject to being
10 evaluated on that same type of spectrum. There may be
11 some social associations whose purpose is to enjoy
12 together ballet, as Justice White asked about. And that
13 is such a clear cultural and expressive type of
14 activity, that any attempt to restrict that may well be
15 subject to the strict scrutiny test, whereas the ability
16 to go into --

17 QUESTION: What about a law prohibiting the
18 scalping of ballet tickets by the state? Would that be
19 subject to strict scrutiny?

20 MR. SHEEHAN: No, I don't believe it would be.
21 I would not subject that to the strict scrutiny test
22 because it doesn't infringe on anyone's right to
23 participate in the association.

24 QUESTION: Are you defending the -- the
25 decision and the opinion below?

1 MR. SHEEHAN: Yes.

2 QUESTION: That was a strict -- It was a
3 strict scrutiny case, wasn't it?

4 MR. SHEEHAN: It -- it's not 100 percent clear
5 to me. But, yes, I think it is although when they get
6 to the age restriction, the court gets to -- the age
7 restriction appears to be evaluated with that standard,
8 whereas the standard dealing with the hours is -- the
9 --the court makes a comment --

10 QUESTION: Well, they sustained that.

11 MR. SHEEHAN: And on the basis that it's a
12 minimal intrusion on the associational rights.

13 Therefore --

14 QUESTION: But on the age, it's the least
15 restrictive means, isn't it?

16 MR. SHEEHAN: Yes.

17 QUESTION: Strict scrutiny.

18 MR. SHEEHAN: Yes.

19 QUESTION: Now, do you defend that?

20 MR. SHEEHAN: I don't -- I do not defend that
21 entirely. I do not defend that across the board.

22 QUESTION: Well, not across the board, but how
23 about in this case?

24 MR. SHEEHAN: All right. In this case, I
25 would defend it on the basis of dance being an

1 expressive activity. And the reason I say that is
2 this.

3 What has been singled out here for legislation
4 by the City of Dallas is the ability of people to dance
5 together. They are free to do other things together. I
6 believe that that is a legislative disapproval of the
7 activity of dancing which has a centuries-old history of
8 being an expressive activity.

9 QUESTION: What about a law in a state which
10 prohibited sodomy prohibiting men from dancing with one
11 another? Would you say that was subject to strict
12 scrutiny?

13 MR. SHEEHAN: Yes, I would for the reason that
14 dancing is -- is an expressive activity and, again, in
15 the context of the ordinance. All I have before me now
16 is this ordinance and the reasons for its enactment.

17 QUESTION: Have we said that dancing is an
18 expressive activity in -- in -- in this context? I
19 mean, you know, when you're talking about a -- a go-go
20 dancer at a club or a ballet dancer at a -- at a -- at a
21 theatrical production, yes, I can understand your saying
22 that's expressive. But the foxtrot? I never knew that
23 -- I mean, it -- if that's expressive activity, walking
24 down the street is an expressive activity.

25 Doesn't expression convey you're trying to

1 convey to somebody else, if not an idea, at least a
2 feeling or something like that? You don't dance to
3 express something to somebody else. You dance to have
4 fun unless you're a ballet dancer or a go-go dancer,
5 maybe a few others.

6 MR. SHEEHAN: Well, to answer your first
7 question, no, you haven't said that.

8 I'm not sure I agree with your analysis of
9 dancing itself. If I am dancing strictly for a
10 recreational purpose and it has its expressive elements,
11 the fact that I don't have any particular audience does
12 not impact the fact that it is a form of expression and
13 it's mine.

14 QUESTION: Is that -- so, if I'm playing a
15 cello in a -- in a -- in a closed room, I am -- I am
16 engaging in expressive activity. There's nobody there.

17 MR. SHEEHAN: Yes. You don't have
18 associational problems.

19 QUESTION: No, I don't think I have expressive
20 problems either.

21 (Laughter.)

22 QUESTION: Maybe that's why he's playing in a
23 closed room.

24 (Laughter.)

25 QUESTION: Some dancing looks like athletic

1 activities too. Throw them up and throw them around.

2 (Laughter.)

3 MR. SHEEHAN: Well, that's true, Justice
4 Marshall.

5 In any event, the significance, to get back to
6 the point -- and -- and I do believe this point has been
7 made -- that there is no constitutional right even in
8 establishing the spectrum that Justice Brennan mentions,
9 that the far end of that spectrum -- he does say at one
10 end you have the compelling state interest, strict
11 scrutiny highest standard, and at the other end you have
12 no constitutional rights.

13 Justice O'Connor in the expressive association
14 aspect in the concurring opinion establishes a similar
15 type of scale for expressive conduct. One end of the
16 scale would be the commercial enterprise, and the other
17 being the surely expressive purpose of an organization.

18 That same type of a scale -- and if I'm
19 understanding Justice O'Connor's opinion correctly -- at
20 the most expressive, pure expressive, end of that scale,
21 the highest constitutional protection is accorded.
22 Whereas at the business enterprise end of it, the
23 commercial enterprise, if that's predominantly what's at
24 stake, then only a rational basis is necessary to
25 further ordinance or legislation to pass muster.

1 And I am saying that I believe a social
2 association can be analyzed in that same manner. And to
3 take the issue before us now, dance, presents the
4 opportunity to consider what has been thought of as a
5 cultural event and presents then the argument that a
6 compelling state interest should be applied because it
7 is an expressive activity. But many things can be
8 imagined that would not fall into that category that you
9 could not seriously argue are expressive, but you can't
10 argue either that unless the state has some reason for
11 denying you the right to do something, that they should
12 be allowed to do so.

13 The -- one problem here is that this case
14 presents something that's entirely different than was
15 presented in Roberts. Roberts dealt with the
16 traditional classical type of organization with the
17 Jaycees. Rotary Club did the same thing. The analysis
18 in Roberts -- Justice Brennan made the statement, our
19 decisions have recognized two types of association, and
20 he went on to categorize the two types. That is a
21 completely accurate statement. There had been no
22 previous decision that really dealt in any sense with a
23 right of social association.

24 The right that we advocate in this case can be
25 dealt with within the existing parameters of Roberts

1 either on the intimate or on the expressive end by
2 falling within the scale, or the Court could choose to
3 recognize a third category that was simply not presented
4 in Roberts and therefore isn't addressed in Roberts.
5 And it --

6 QUESTION: Mr. Sheehan, could the -- could the
7 City repeal the ordinance?

8 MR. SHEEHAN: Did they repeal it?

9 QUESTION: Could they repeal it?

10 MR. SHEEHAN: I'm certain they could repeal it.

11 QUESTION: And what happens to this
12 constitutional right?

13 MR. SHEEHAN: Are you raising a question of
14 mootness?

15 QUESTION: No, no, no. I'm just saying your
16 -- your client no longer -- I mean, the people would --
17 If you repealed the ordinance entirely, they couldn't go
18 to any other dance halls than they go to now.

19 MR. SHEEHAN: Well, see, Justice Stevens, I
20 disagree with Mr. Hopkins' comments in that respect for
21 this reason. He has made the statement that actually
22 the City's granting this license and having this
23 ordinance has expanded the associational freedom of
24 minors. To me that is a very different view of freedom
25 than the one that I have.

1 If the marketplace will sustain an
2 organization that is clean and well-guarded and well-run
3 and does not serve alcoholic beverages and plays music
4 so kids can come and dance, just as they can go to a
5 roller rink or to a swimming pool, I don't think it
6 would be constitutional for the City to come and shut
7 them down just because there's no license or permit that
8 has been issued.

9 QUESTION: Well, then you're that they -- they
10 could not constitutionally repeal this ordinance because
11 this -- this provision that authorizes this kind of 14
12 to 18 dance halls. If they just took that out of the
13 code, you would say that would violate the Constitution.

14 MR. SHEEHAN: I may not be understanding your
15 point, but what I'm saying is if the City did repeal it,
16 I don't think that they could come in and argue that
17 because there's no ordinance permitting 14 to 18-year
18 olds to dance, therefore, they cannot. If there is no --

19 QUESTION: In other words, you see a
20 constitutional right to operate without a license if
21 they don't authorize dance halls without a license.

22 MR. SHEEHAN: Unless the City can -- can prove
23 a rational basis for prohibiting them from operating
24 that type of establishment, that's right.

25 QUESTION: Well, the rational basis is that

1 they think there is some potential social harm from
2 allowing 14-year olds to dance with 25-year olds.

3 MR. SHEEHAN: But I believe they have --

4 QUESTION: It's not totally irrational, is it?

5 MR. SHEEHAN: I believe they have to
6 demonstrate that that is the case. There has to be some
7 evidence. They can't simply believe that that's so and
8 legislate in accordance with the present city council
9 members' current beliefs. If in fact there's a rational
10 basis, by definition it should be subject to being
11 articulated. And there ought to be some method that
12 somebody can be shown that here is the problem and here
13 is the objective manifestation of the problem.

14 QUESTION: What about -- what about
15 prohibiting minors from going into places that serve
16 alcoholic liquors, nightclubs? What do they have to
17 do? Do they have to allow it for two years so they can
18 show a track record of -- of harm?

19 MR. SHEEHAN: I think that the rational basis
20 for that type of prohibition can be established ab
21 initio.

22 QUESTION: Well, I think it can here too. You
23 need a lab test for all these things? I mean, the --
24 the harm is self-evident. Why --

25 MR. SHEEHAN: Well --

1 QUESTION: You have to have a -- use white
2 rats or somebody to prove it scientifically.

3 MR. SHEEHAN: I'm afraid I find myself
4 disagreeing with you again, Justice Scalia.

5 QUESTION: Well, I think so.

6 MR. SHEEHAN: It -- it is not to me
7 self-evident.

8 Consider the fact situation. This
9 establishment is a roller rink. There is no restriction
10 on the age of the people who come into the roller rink.
11 The same music is played for the dance aspect and the
12 roller skating, the same lighting, the same security
13 personnel, the same adult supervision, the same physical
14 premises. There is a set of pylons on the floor. On
15 one side of the pylons, they allow dancing; on the other
16 side, they allow skating. On the skating side, there is
17 no age limitation.

18 Now, if the problem is that older teenagers
19 corrupt younger teenagers, there is absolutely nothing
20 to show that that occurs only in the context of a dance
21 and doesn't occur in the context of roller skating. And
22 that's the record we have here.

23 QUESTION: (Inaudible) I don't know if that's
24 crystal clear. Certainly dancing is thought of as a
25 more intimate thing than -- than roller skating, isn't

1 it?

2 MR. SHEEHAN: I would think of it that way.

3 QUESTION: And maybe the City says we just
4 don't want 25-year olds, not older teenagers, but
5 25-year olds dancing with 14-year olds. I think they
6 could say that and say we don't have to extend our
7 concerns for what happens there to roller skating.

8 MR. SHEEHAN: But they do have to say why they
9 have a concern.

10 QUESTION: Don't you think there's some
11 legislative -- is there a legislative finding here or
12 not?

13 MR. SHEEHAN: There's nothing in the record,
14 Justice White, that supports it at all. There's no --

15 QUESTION: Well, what if the ordinance started
16 out and said we, believing that so and so? Would you
17 say that -- that -- that a court ought to sit around and
18 review that?

19 MR. SHEEHAN: I'm not sure I understand the
20 question.

21 QUESTION: Well, a lot of statutes start off
22 and they have some findings in it or state what the
23 purpose is. Do you think the court ought to --
24 shouldn't the court at least be careful to -- about
25 disagreeing with a legislative finding about the real

1 world?

2 MR. SHEEHAN: I agree that the court should be
3 careful about challenging a legislative finding. But
4 the problem with this particular legislative finding --
5 and it may be because of the -- the roller
6 skating/dancing together in one premises that makes that
7 particularly hard to analyze in this case.

8 QUESTION: Yes.

9 MR. SHEEHAN: But I wouldn't give it -- I
10 wouldn't give it that great of deference. This is not
11 what I call a self-proving statute. One does not sit
12 down and read this statute and say, oh, yes, I see. I
13 understand such as the Minnesota self -- the statute
14 against discrimination. Well, one can read that statute
15 and understand immediately.

16 QUESTION: Well, there's a lot -- a lot of
17 places and a lot of people who don't believe in dancing
18 at all, don't believe in having their children dance at
19 all with old people or young people or anybody else.
20 And so, I -- it isn't strange that people would want to
21 limit the opportunity for their children to dance --

22 MR. SHEEHAN: No, sir.

23 QUESTION: -- or be very careful about whom
24 they dance with.

25 MR. SHEEHAN: It's not, but it's not a

1 legislative function. That's a parental function. And
2 the problem that you raise actually gets to the problem
3 of cities misusing their ability to legislate for the
4 good of the people.

5 There is, in fact, a religious prejudice
6 against dancing, and it's somewhat prevalent in Texas.
7 And perhaps that's the reason we have this statute. And
8 if it is, then it's not grounded in a concern for what's
9 going to happen to young children dancing with older
10 people. It's grounded in a method of advocating my
11 religious position that I think all dance is wrong, so
12 I'm going to do what I can to stop it.

13 QUESTION: But no one here is prevented from
14 dancing or from going to the dance hall.

15 MR. SHEEHAN: But they're prevented from
16 --they --

17 QUESTION: Prevented from dancing with
18 --youngsters are prevented from dancing with older
19 people.

20 MR. SHEEHAN: That's -- that's right. They're
21 prevented from choosing their associations.

22 QUESTION: But, Mr. Sheehan --

23 QUESTION: Statutory rape law does that.

24 MR. SHEEHAN: Yes, it does. And there's a
25 very rational basis for it.

1 QUESTION: Why is that so much clearer than
2 this?

3 MR. SHEEHAN: Well, a statutory rape,
4 obviously, involves something that -- well, not
5 necessarily occurs against someone's will, but you have
6 a --

7 QUESTION: By definition it doesn't occur
8 against someone's will.

9 MR. SHEEHAN: You have a crime that has been
10 committed, and --

11 QUESTION: Only because the legislatures have
12 said it's a crime.

13 MR. SHEEHAN: Well, but the point is is that
14 teens and older teens and adults and younger teens are
15 free to associate with each other within certain
16 restraints and that's one of them. They're not allowed
17 to have sexual intercourse with someone that's not of
18 age.

19 QUESTION: Well, why not say this is another
20 one of those restraints?

21 MR. SHEEHAN: I don't think it has the same
22 consequence?

23 QUESTION: Yes, but you earlier said there was
24 no indication in the record of the reason for the
25 ordinance. But as -- It's -- the lower court's opinion

1 quotes this Ray Couch, an urban planner, who explained
2 his understanding of the purpose.

3 MR. SHEEHAN: Ray Couch is a -- has been with
4 the City of Dallas for 15 years and his position is in
5 land use planning. He is a zoning individual on the
6 City staff. He did not articulate any reason why this
7 statute makes any sense. He simply said that in his 15
8 years with experience he thinks this is a bad use of the
9 land in -- in essence.

10 QUESTION: Well, the court quotes him as
11 saying older kids, whom the ordinance prohibits from
12 entering these dance halls, can access drugs and
13 alcohol, and they have more mature sexual attitudes,
14 more liberal sexual attitudes in general, and we're
15 concerned about mixing up these older individuals with
16 youngsters that have not fully matured. Now, maybe he's
17 kind of extreme. But is -- is that totally irrational?

18 MR. SHEEHAN: It's -- It's totally unfounded
19 is what it is. In reading the entire record, those
20 statements are -- are absolutely unsupported by any --
21 he has never even been there.

22 QUESTION: Well, but I don't know why one has
23 to be there to have that concern. Maybe the concern is
24 somewhat extreme, but -- but why do you have to go to a
25 dance hall to have concern?

1 MR. SHEEHAN: I agree that you don't have to
2 to have the concern, but you have to in order to know if
3 the concern is real. And that's what has happened
4 here. In fact, In Roberts it -- Justice Brennan makes
5 the point that we are not going to -- to deal with
6 presumptions and presume the ill-effects that you would
7 argue will occur. In that case the Jaycees were arguing
8 certain ill-effects, and they were unable to demonstrate
9 them in the record. And the majority opinion said we do
10 not make constitutional --

11 QUESTION: But the Jaycees were on the other
12 side of the fence from you. The Jaycees were arguing
13 that the law -- ordinance was unconstitutional.

14 MR. SHEEHAN: But the principle remains the
15 same that you cannot take a presumption and -- a
16 presumption from the record. If it isn't established,
17 then it isn't there. You can't presume that, well,
18 that's probably right. And I don't know what it takes
19 to establish it, but I know it isn't in the record
20 that's before this Court.

21 QUESTION: I assume that the logical -- the
22 logical consequence of your position is is not only that
23 the Class E restriction here is no good, but also that
24 the -- the prior law before they adopted this preventing
25 minors from going into the Class A, B or C dance halls

1 was also bad. You can't -- you can't say dance halls,
2 but no minors admitted. Right?

3 MR. SHEEHAN: I would not argue --

4 QUESTION: You must be 18.

5 MR. SHEEHAN: I would not argue under the
6 Class A, B, C. I would not argue that a restriction
7 that prevents minor from entering a dance hall that
8 serves alcoholic beverages or has topless dancers is
9 unconstitutional as applied to minors. I would argue
10 that if the Twilight Skating Rink opened up, even in
11 absence of having a Class E dance hall license, and they
12 had a -- a well-lit, secure facility for the sole
13 enjoyable recreational purpose of having dance, and the
14 City said, no, 13 to 17-year olds cannot go in there for
15 any reason, that that would be an unconstitutional
16 restraint on their liberty.

17 QUESTION: What about eight-year olds?

18 MR. SHEEHAN: Same thing.

19 QUESTION: Same thing.

20 MR. SHEEHAN: We -- we --

21 QUESTION: Six-year olds?

22 MR. SHEEHAN: We have to give some recognition
23 to the role of parents in this process. A six-year old
24 is not -- or an eight-year old is not unsupervised. And
25 if that parent believes that it's a fun activity and

1 there are other children there -- there are a lot of
2 people who believe that younger children's exposure to
3 older children is positive, that they're positive role
4 models and it's a beneficial relationship.

5 In any event, the point that -- that I -- that
6 I want to be sure is made is that certainly some
7 constitutional protection is -- is involved here. The
8 difficulty in finding the appropriate category within
9 the parameters of Roberts should not mean that this
10 social association should not be recognized. And that's
11 what the City is saying. It isn't expressive as -- as
12 Roberts has defined it. It isn't intimate as Roberts
13 has defined it. Ergo, it isn't a constitutional right.

14 The -- the City does have an interest in
15 protecting their young, but they -- the statute has to
16 have some nexus. The protection has to show that in
17 some means it accomplishes that.

18 Now, these -- there's no showing here, first
19 of all, that this ordinance is going to accomplish
20 anything in my opinion other than presumptions. Well,
21 that probably isn't good that these people can be with
22 older people. And there's no showing that the
23 association is detrimental.

24 The trial court who ruled in favor of the City
25 made these findings. The City has not articulated a

1 precise basis for distinguishing between skating and
2 dancing. The City's argument that the noise levels are
3 higher, the traffic control is a problem, greater
4 neighborhood disruption, more alcohol and drug abuse
5 have no real factual support. Nevertheless, the trial
6 court said, its witnesses experienced in law enforcement
7 and urban planning insist that a distinction exists.

8 And it is my belief that if you rely upon
9 that, and if that evidence is good enough, then the
10 rational basis test is a fiction because the government
11 can always put somebody on the stand and say I'm
12 experienced in zoning law, and I don't think these kids
13 should be allowed with older kids. And I can't tell you
14 why. I just -- I just think there's a difference. And
15 that's all we have here. And it is on that basis that
16 the trial court ruled in favor of the City. That
17 discards the rational basis test entirely.

18 In conclusion, I would like to say that if
19 there is no rational basis for this ordinance, then it
20 must surely be unconstitutional. If there is no reason,
21 then the government has no basis upon which to legislate.

22 There is a quotation that I've noticed in
23 several cases I've read and I'm unable to attribute it
24 to the particular case. I think it was in a case
25 decided by this Court in 1891 that I think is

1 appropriate here. "The makers of our Constitution
2 conferred as against the government the right to be let
3 alone, the most comprehensive of rights and the right
4 most valued by civilized man." And I believe that no
5 less a right is at stake in this case than that right.

6 Thank you.

7 QUESTION: Thank you, Mr. Sheehan.

8 Mr. Hopkins, do you have rebuttal? You have
9 10 minutes remaining.

10 REBUTTAL ARGUMENT OF CRAIG LEE HOPKINS

11 MR. HOPKINS: Thank you, Mr. Chief Justice.

12 To pick up on -- on his quote about being as
13 against the Federal Government I think is appropriate in
14 this case because if this is expressive association, as
15 he claims, clearly as he has just stated, the intent of
16 the constitutional Framers was to protect their
17 expression as against the Federal Government. And
18 clearly they are not gathering at this dance hall to
19 express the way they dance as opposed to the way the
20 Federal Government might like to have them do it. I
21 think that's the difference.

22 He also attacks what he claims is a lack of a
23 good record to support the rational basis, even assuming
24 you get to that determination. However, the testimony
25 in the district court of his client indicates that it is

1 not unusual for there to be unwanted sexual overtures at
2 his establishment, this being just for your reference at
3 pages 22 and 46 in -- In the statement of facts.

4 There's also testimony from his client that
5 alcohol does slip into his establishment despite his
6 rules against it, that there's rowdiness in his
7 establishment despite his rules against it, and that
8 there are drugs in his establishment despite his
9 attempts to keep them out. I don't think there is this
10 void in the record that he claims.

11 The police department -- several police
12 officers who are charged with enforcing these types of
13 regulations testified in the district court that on the
14 one hand, all other things being equal, if they were
15 called to a dance hall on a disturbance, they would
16 expect the mood of the patrons to be much more
17 aggressive than if they were approaching, for example, a
18 movie theater. And the police testified that they've
19 attributed an increase in the crime rate in certain
20 neighborhoods to the fact that there is a dance hall in
21 the neighborhood. So, the record --

22 QUESTION: Yes, but Mr. Hopkins, does that
23 testimony show that these drugs and alcohol and sexual
24 overtures were all by people over 18?

25 MR. HOPKINS: The record is -- admittedly the

1 record is silent as to ages.

2 QUESTION: And I assume they wouldn't have let
3 them in in the first place, so they must presumably have
4 been by people under that age. And it seems to me that
5 --

6 MR. HOPKINS: Well, the problem in this --

7 QUESTION: -- that tends to undercut your
8 position.

9 MR. HOPKINS: Well, no, because the problem in
10 this case is that his client had both a Class B and a
11 Class E license, and apparently was in the practice of
12 letting in people of all ages. Whether or not that was
13 legal at a particular time, I don't know.

14 QUESTION: But the record does not show, does
15 it, that this -- these -- these practices were by older
16 people.

17 MR. HOPKINS: That's correct. The record does
18 not show that, but the record does show that the people
19 who consulted on this issue recognized the fact that
20 older people do have greater access to illicit drugs and
21 alcohol.

22 QUESTION: They recognized the fact or they
23 made the assumption?

24 MR. HOPKINS: (Inaudible).

25 QUESTION: See, in a lot of schools, as I

1 understand it, people who are 16 or 17 have access to
2 the same sort of undesirable materials.

3 MR. HOPKINS: I would admit that -- that
4 people of tender years do have access. I think it's
5 reasonable to make the statement that older people have
6 greater access, however. Although the record is silent
7 on the particular age of the perpetrators, I think it's
8 reasonable to make that connection.

9 QUESTION: Yes, but now you're going back to
10 assumptions when you are just going to start out and
11 explain that the record answered these questions. I'm
12 not sure the record does answer them. That's all I'm
13 suggesting.

14 MR. HOPKINS: Well --

15 QUESTION: If you go back to what we all know,
16 well, then you don't need to refer us to the record.

17 MR. HOPKINS: Correct. I -- I think to some
18 degree the -- the issues of facts involved in the
19 district court were judicially recognized. But the
20 record was not void of a discussion of those facts and a
21 presentation of those facts to the district court.

22 Respondent also makes the statement that we've
23 singled out the dance hall as opposed to the skating
24 that goes on in the same building. The City did not
25 create a City v. Mr. Stangi ordinance. We responded

1 directly to the -- the request of the citizens solely on
2 the issue of dance halls. The fact that he has an
3 unusual establishment was -- was not a factor in
4 arriving at the ordinance.

5 QUESTION: Does the record tell us how many of
6 these -- what are they -- Class E dance halls are
7 licensed in Dallas?

8 MR. HOPKINS: No, the record does not tell us.
9 A recent inquiry revealed that of the 500 dance halls in
10 the City at this point, there's only one or two licenses
11 in effect, but no one is actually doing it because, like
12 I say, at this point we are enjoined from enforcing that
13 part of the ordinance. I believe at the time the suit
14 arose, there were only one or two such dance halls in
15 existence.

16 QUESTION: Well, then the combination dance
17 hall and skating rink is characteristic of these
18 establishments.

19 MR. HOPKINS: On sheer numbers, yes. I think
20 in general the --

21 QUESTION: Did you say there were 500 dance
22 halls in Dallas?

23 MR. HOPKINS: On a recent inquiry to the
24 police department in charge of the licensing, he said
25 that of all the categories, there were approximately 500

1 now in -- licenses in effect.

2 QUESTION: My. Do they do anything else in
3 Dallas besides --

4 (Laughter.)

5 QUESTION: That's somewhat inconsistent with
6 the notion that your religious views are so strong in
7 that community that you don't allow any dancing.

8 MR. HOPKINS: We allow dancing. We allow
9 dancing of all ages and -- and we allow dancing under
10 certain circumstances with any age person.

11 QUESTION: Anyway, you -- you may be moving in
12 on -- on roller skating rinks next. You just haven't
13 gotten around to them. Right?

14 MR. HOPKINS: Well, we're certainly --

15 QUESTION: One step at a time. We have cases
16 that say that's okay. You don't have to --

17 MR. HOPKINS: We're certainly not --

18 QUESTION: -- eliminate all the evils at once.
19 Right?

20 MR. HOPKINS: We're certainly not conceding
21 that we have no right to move in on the skating rinks.

22 QUESTION: You haven't conceded much today.

23 (Laughter.)

24 MR. HOPKINS: The -- the Respondent also makes
25 the statement that we might be infringing on a parental

1 function. However, on these facts it's -- it's clearly
2 not the fact because, as I mentioned earlier, it's the
3 parents that came to us and contributed in the community
4 meetings and said we don't want to have to go with them.
5 We want you to create a place they can go and dance
6 where we don't have to be with them. So, I think
7 clearly the parents have expressed that they -- you
8 know, they want to be able to tell their kids where they
9 ought to be able to go, certainly. But I think on these
10 facts, we have the opposite. They want a safe harbor
11 for them to go and dance.

12 Respondent also mentioned that we are
13 somewhere on a scale and that there should -- we should
14 have to prove some type of rational basis because we --
15 we may be at one end of the scale, but we still have to
16 prove something. But I don't agree with that. I think
17 that although --

18 QUESTION: (Inaudible) the Equal Protection
19 Clause would have some play in this case.

20 MR. HOPKINS: We agree that there are, you
21 know, probably several constitutional provisions that
22 are applicable to government actions.

23 QUESTION: Well, suppose equal protection.
24 Suppose this ordinance is challenged and your -- you've
25 classified an age group and you must at least have a

1 rational basis for it. Don't you have to have?

2 MR. HOPKINS: Assuming that that's an
3 appropriate analysis. As to the equal protection
4 argument, I think we meet that scrutiny because they
5 have --

6 QUESTION: But you would have to have -- you
7 would have to have a rational basis at least.

8 MR. HOPKINS: On an equal protection
9 challenge. However, in this case we don't have an equal
10 protection challenge. And the First Amendment does not
11 grant this right that they claim. And that's what
12 they've -- they've sued under is the First Amendment.

13 I think the Roberts analysis is very complete
14 and very reasonable in defining maybe not the very
15 boundaries, but at least --

16 QUESTION: I thought they were -- I thought
17 they were also relying on the other branch of Roberts,
18 the social intimate relationship.

19 MR. HOPKINS: In their brief they argue --

20 QUESTION: which is --

21 MR. HOPKINS: -- that it was intimate. I
22 understand today that they are not arguing that it's
23 intimate, and that if it is, it's -- it's not comparable
24 to, as Chief Justice Rehnquist put it, the statutory
25 rape type intimate association. I think that analogy

1 was very appropriate because there is something that's
2 an activity that is wholly consensual, but it's illegal
3 strictly on the basis of age and in an attempt to
4 protect minors. I thought -- so, I would agree with the
5 Chief Justice's analogy there.

6 Thank you very much.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
8 Hopkins.

9 The case is submitted.

10 (Whereupon, at 2:47 o'clock p.m., the case in
11 the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:
No. 87-1848 - CITY OF DALLAS, ET AL., Petitioners V. CHARLES M. STANGLIN,

INDIVIDUALLY, AND dba TWILIGHT SKATING RINK

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Judy Freilicher
(REPORTER)

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