UNIVERSITY OF LOUISVILLE
BRANDEIS SCHOOL OF LAW

Admitted Students Day Mock Class

Dean Melanie B. Jacobs

Readings:

U.S. Dept. of Agriculture v. Moreno, 93 S. Ct. 2821 (1973)
Village of Belle Terre v. Boraas, 94 S. Ct. 1536 (1974)
Moore v. City of East Cleveland, 97 S. Ct. 1932 (1977)
Case Mapping Chart: Who Constitutes a Family?

U.S. Const. 14A § 1 provides, in part, that "… [n]o State shall make or enforce any law which shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Contact Info:

Room 205, Wyatt Hall (Brandeis School of Law)
Phone: (502) 852-6879
Email: **lawdean@louisville.edu**

The purpose of this mock class is to introduce you to law school classroom norms and expectations. During the class, we will discuss who constitutes a family using three edited United States Supreme Court decisions, included in this packet. Please read the cases and then try to answer the questions in the case mapping chart for each case. You need not submit your answers, but I encourage you to write a few notes in the chart. As a group, we will discuss the cases using the chart as a guide.

Participation is important in law school, so please be prepared and willing to participate. I'm looking forward to meeting you at Admitted Students Day!

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Admitted Students Day Mock Class

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Case Mapping Chart: Who Constitutes a Family?

Name of Case	*USDA v. Moreno*	*Belle Terre v. Boraas*	*Moore v. East Cleveland*
Plaintiff(s)			
What claim(s) did the plaintiff(s) bring and what relief do they seek?			
How is "family" defined by the applicable statute or zoning ordinance? (i.e., specific language)			
How does the Court construe the term "family?" (i.e., apply the exact language or interpret it differently)			
How does the Court address the plaintiff's conduct and status?			
What values animate the Court's opinion(s)?			

Supreme Court of the United States
UNITED STATES DEPARTMENT OF AGRICULTURE et al., Appellants,
v.
Jacinta MORENO et al.

No. 72—534.
Argued April 23, 1973.
Decided June 25, 1973.

Mr. Justice BRENNAN delivered the opinion of the Court.

This case requires us to consider the constitutionality of s 3(e) of the Food Stamp Act of 1964, 7 U.S.C. s 2012(e), as amended in 1971, 84 Stat. 2048, which, with certain exceptions, excludes from participation in the food stamp program any household containing an individual who is unrelated to any other member of the household. In practical effect, s 3(e) creates two classes of persons for food stamp purposes: one class is composed of those individuals who live in households all of whose members are related to one another, and the other class consists of those individuals who live in households containing one or more members who are unrelated to the rest. The latter class of persons is denied federal food assistance. A three-judge District Court for the District of Columbia held this classification invalid as violative of the Due Process Clause of the Fifth Amendment. We affirm.

I

The federal food stamp program was established in 1964 in an effort to alleviate hunger and malnutrition among the more needy segments of our society. Eligibility for participation in the program is determined on a household rather than an individual basis. An eligible household purchases sufficient food stamps to provide that household with a nutritionally adequate diet. The household pays for the stamps at a reduced rate based upon its size and cumulative income. The food stamps are then used to purchase food at retail stores, and the Government redeems the stamps at face value, thereby paying the difference between the actual cost of the food and the amount paid by the household for the stamps.

As initially enacted, s 3(e) defined a 'household' as 'a group of related or non-related individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common.' In January 1971, however Congress redifined the term 'household' so as to include only groups of related individuals. Pursuant to this amendment, the Secretary of Agriculture promulgated regulations rendering ineligible for participation in the program any 'household' whose members are not 'all related to each other.' FN3

FN3. Title 7 CFR s 270.2(jj) provides:

> '(jj) 'Household' means a group of persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping, or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common…

Appellees in this case consist of several groups of individuals who allege that, although they satisfy the income eligibility requirements for federal food assistance, they have nevertheless been excluded from the program solely because the persons in each group are not 'all related to each other.' Appellee Jacinta Moreno, for example is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's three children. They share common living expenses, and Mrs. Sanchez helps to care for appellee. Appellee's monthly income, derived from public assistance, is $75; Mrs.

Sanchez receives $133 per month from public assistance. The household pays $135 per month for rent, gas and electricity, of which appellee pays $50. Appellee spends $10 per month for transportation to a hospital for regular visits, and $5 per month for laundry. That leaves her $10 per month for food and other necessities. Despite her poverty, appellee has been denied federal food assistance solely because she is unrelated to the other members of her household. Moreover, although Mr. Sanchez and her three children were permitted to purchase $108 worth of food stamps per month for $18, their participation in the program will be terminated if appellee Moreno continues to live with them.

Appellee Sheilah Hejny is married and has three children. Although the Hejnys are indigent, they took a 20-year-old girl, who is unrelated to them because 'we felt she had emotional problems.' The Hejnys receive $144 worth of food stamps each month for $14. If they allow the 20-year-old girl to continue to live with them, they will be denied food stamps by reason of s 3(e).

Appellee Victoria Keppler has a daughter with an acute hearing deficiency. The daughter requires special instruction in a school for the deaf. The school is located in an area in which appellee could not ordinarily afford to live. Thus, in order to make the most of her limited resources, appellee agreed to share an apartment near the school with a woman who, like appellee, is on public assistance. Since appellee is not related to the woman, appellee's food stamps have been, and will continue to be, cut off if they continue to live together.

These and two other groups of appellees … seek[…] declaratory and injunctive relief against the enforcement of the 1971 amendment of s 3(e) and its implementing regulations. In essence, appellees contend, and the District Court held, that the 'unrelated person' provision of s 3(e) creates an irrational classification in violation of the equal protection component of the Due Process Clause of the Fifth Amendment. We agree.

II

Under traditional equal protection analysis, a legislative classification must be sustained, if the classification itself is rationally related to a legitimate governmental interest. The purposes of the Food Stamp Act were expressly set forth in the congressional 'declaration of policy':

'It is hereby declared to be the policy of Congress . . . to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.'

The challenged statutory classification (households of related persons versus households containing one or more unrelated persons) is clearly irrelevant to the stated purposes of the Act….

Thus, if it is to be sustained, the challenged classification must rationally further some legitimate governmental interest other than those specifically stated in the congressional 'declaration of policy.' Regrettably, there is little legislative history to illuminate the purposes of the 1971 amendment of s 3(e). The legislative history that does exist, however, indicates that

that amendment was intended to prevent socalled 'hippies' and 'hippie communes' from participating in the food stamp program. See H.R.Conf.Rep.No.91—1793, p. 8; 116 Cong.Rec. 44439 (1970) (Sen. Holland). The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest. As a result, '(a) purpose to discriminate against hippies cannot, in and of itself and without reference to (some independent) considerations in the public interest, justify the 1971 amendment.'

Although apparently conceding this point, the Government maintains that the challenged classification should nevertheless be upheld as rationally related to the clearly legitimate governmental interest in minimizing fraud in the administration of the food stamp program.[FN7] In essence, the Government contends that, in adopting the 1971 amendment, Congress might rationally have thought (1) that households with one or more unrelated members are more likely than 'fully related' households to contain individuals who abuse the program by fraudulently failing to report sources of income or by voluntarily remaining poor; and (2) that such households are 'relatively unstable,' thereby increasing the difficulty of detecting such abuses. But even if we were to accept as rational the Government's wholly unsubstantiated assumptions concerning the differences between 'related' and 'unrelated' households we still could not agree with the Government's conclusion that the denial of essential federal food assistance to all otherwise eligible households containing unrelated members constitutes a rational effort to deal with these concerns.

> FN7. The Government initially argued to the District Court that the challenged classification might be justified as a means to foster 'morality.' In rejecting that contention, the District Court noted that 'interpreting the amendment as an attempt to regulate morality would raise serious constitutional questions.' Indeed … the District Court observed that it was doubtful at best, whether Congress, 'in the name of morality,' could 'infringe the rights to privacy and freedom of association in the home.' Moreover, the court also pointed out that the classification established in s 3(e) was not rationally related 'to prevailing notions of morality, since it in terms disqualifies all households of unrelated individuals, without reference to whether a particular group contains both sexes.' The Government itself has now abandoned the 'morality' argument. See Brief for Appellants 9.

At the outset, it is important to note that the Food Stamp Act itself contains provisions, wholly independent of s 3(e), aimed specifically at the problems of fraud and of the voluntarily poor. For example, with certain exceptions, s 5(c) of the Act, renders ineligible for assistance any household containing 'an able-bodied adult person between the ages of eighteen and sixty-five' who fails to register for, and accept, offered employment. Similarly, s 14(b) and (c), 7 U.S.C. s 2023(b) and (c), specifically impose strict criminal penalties upon any individual who obtains or uses food stamps fraudulently. The existence of these provisions necessarily casts considerable doubt upon the proposition that the 1971 amendment could rationally have been intended to prevent those very same abuses.

Moreover, in practical effect, the challenged classification simply does not operate so as rationally to further the prevention of fraud. As previously noted, s 3(e) defines an eligible 'household' as 'a group of related individuals . . . (1) living as one economic unit (2) sharing common cooking facilities (and 3) for whom food is customarily purchased in common.' Thus, two unrelated persons living together and meeting all three of these conditions would constitute a single household ineligible for assistance. If financially

feasible, however, these same two individuals can legally avoid the 'unrelated person' exclusion simply by altering their living arrangements so as to eliminate any one of the three conditions. By so doing, they effectively create two separate 'households' both of which are eligible for assistance. Indeed, as the California Director of Social Welfare has explained:

'The 'related household' limitations will eliminate many households from eligibility in the Food Stamp Program. It is my understanding that the Congressional intent of the new regulations are specifically aimed at the 'hippies' and 'hippie communes.' Most people in this category can and will alter their living arrangements in order to remain eligible for food stamps. However, the AFDC mothers who try to raise their standard of living by sharing housing will be affected. They will not be able to utilize the altered living patterns in order to continue to be eligible without giving up their advantage of shared housing costs.'

Thus, in practical operation, the 1971 amendment excludes from participation in the food stamp program, not those persons who are 'likely to abuse the program,' but, rather, only those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility. Traditional equal protection analysis does not require that every classification be drawn with precise "mathematical nicety." But the classification here in issue is not only 'imprecise,' it is wholly without any rational basis. The judgment of the District Court holding the 'unrelated person' provision invalid under the Due Process Clause of the Fifth Amendment is therefore affirmed.

Affirmed.

Mr. Justice DOUGLAS, concurring.

… The 'unrelated' person provision of the Act creates two classes of persons for food stamp purposes: one class is composed of people who are all related to each other and all in dire need; and the other class is composed of households that have one or more persons unrelated to the others but have the same degree of need as those in the first class. The first type of household qualifies for relief, the second cannot qualify, no matter the need. It is that application of the Act which is said to violate the conception of equal protection that is implicit in the Due Process Clause of the Fifth Amendment….

This case involves desperately poor people with acute problems who, though unrelated, come together for mutual help and assistance. The choice of one's associates for social, political, race, or religious purposes is basic in our constitutional scheme. It extends to 'the associational rights of the members' of a trade union.

I suppose no one would doubt that an association of people working in the poverty field would be entitled to the same constitutional protection as those working in the racial, banking, or agricultural field. I suppose poor people holding a meeting or convention would be under the same constitutional umbrella as others. The dimensions of the 'unrelated' person problem under the Food Stamp Act are in that category. As the facts of this case show, the poor are congregating in households where they can better meet the adversities of poverty. This banding together is an expression of the right of freedom of association that is very deep in our traditions….

We deal here … with the right of association, protected by the First Amendment. People who are desperately poor but unrelated come together and join hands with the aim better to combat the crises of poverty. The need of those living together better to meet those crises is denied, while the need of households made up of relatives that is no more acute is serviced ….

The legislative history of the Act indicates that the 'unrelated' person provision of the Act was to prevent 'essentially unrelated individuals who voluntarily chose to cohabit and live off food stamps'—so-called 'hippies' or 'hippy communes'—from participating in the food stamp program. As stated in the Conference Report, the definition of household was 'designed to prohibit food stamp assistance to communal 'families' of unrelated individuals.'

The right of association, the right to invite the stranger into one's home is too basic in our constitutional regime to deal with roughshod. If there are abuses inherent in that pattern of living against which the food stamp program should be protected, the Act must be 'narrowly drawn, to meet the precise end. The method adopted and applied to these cases makes s 3(e) of the Act unconstitutional by reason of the invidious discrimination between the two classes of needy persons.

The 'unrelated' person provision of the present Act has an impact on the rights of people to associate for lawful purposes with whom they choose. When state action 'may have the effect of curtailing the freedom to associate' it 'is subject to the closest scrutiny.' The 'right of the people peaceably to assemble' guaranteed by the First Amendment covers a wide spectrum of human interests—including, as stated in 'political, economic, religious, or cultural matters.' Banding together to combat the common foe of hunger is in that category.…

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Supreme Court of the United States
VILLAGE OF BELLE TERRE et al., Appellants,
v.
Bruce BORAAS et al.

No. 73-191.
Argued Feb. 19, 20, 1974.
Decided April 1, 1974.

Mr. Justice DOUGLAS delivered the opinion of the Court.

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

Appellees, the Dickmans, are owners of a house in the village and leased it in December 1971 for a term of 18 months to Michael Truman. Later Bruce Boraas became a co-lessee. Then Anne Parish moved into the house along with three others. These six are students at nearby State University at Stony Brook and none is related to the other by blood, adoption, or marriage. When the village served the Dickmans with an 'Order to Remedy Violations' of the ordinance, the owners plus three tenants thereupon brought this action under 42 U.S.C. s 1983 for an injunction and a judgment declaring the ordinance unconstitutional. …

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

We find none of these reasons in the record before us. It is not aimed at transients. It involves no procedural disparity inflicted on some but not on others … It involves no 'fundamental' right guaranteed by the Constitution, such as voting, the right of association, the right of access to the courts, or any rights of privacy, cf. Griswold v. Connecticut and Eisenstadt v. Baird. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be "reasonable, not arbitrary" and bears 'a rational relationship to a (permissible) state objective."

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

It is said that the Belle Terre ordinance reeks with an animosity to unmarried couples who live together. There is no evidence so support it; and the provision of the ordinance bringing within the definition of a 'family' two unmarried people belies the charge….

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

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

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

Reversed.

Mr. Justice MARSHALL, dissenting.

…In my view, the disputed classification burdens the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments. Because the application of strict equal protection scrutiny is therefore required, I am at odds with my Brethren's conclusion that the ordinance may be sustained on a showing that it bears a rational relationship to the accomplishment of legitimate governmental objectives.

… My disagreement with the Court today is based upon my view that the ordinance in this case unnecessarily burdens appellees' First Amendment freedom of association and their constitutionally guaranteed right to privacy. Our decisions establish that the First and Fourteenth Amendments protect the freedom to choose one's associates. Constitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members. The selection of one's living companions involves similar choices as to the emotional, social, or economic benefits to be derived from alternative living arrangements.

The freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy. The right to 'establish a home' is an essential part of the liberty guaranteed by the Fourteenth Amendment. And the Constitution secures to an individual a freedom 'to satisfy his intellectual and emotional needs in the privacy of his own home.' Constitutionally protected privacy is, in Mr. Justice Brandeis' words, 'as against the Government, the right to be let alone . . . the right most valued by civilized man. The choice of household companions-of whether a person's 'intellectual and emotional needs' are best met by living with family, friends, professional associates, or others-involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution.

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

It is no answer to say, as does the majority that

associational interests are not infringed because Belle Terre residents may entertain whomever they choose. Only last Term Mr. Justice Douglas indicated in concurrence that he saw the right of association protected by the First Amendment as involving far more than the right to entertain visitors. He found that right infringed by a restriction on food stamp assistance, penalizing households of 'unrelated persons.' As Mr. Justice Douglas there said, freedom of association encompasses the 'right to invite the stranger into one's home' not only for 'entertainment' but to join the household as well. United States Department of Agriculture v. Moreno, 413 U.S. 528, 538-545, 93 S.Ct. 2821, 2828-2831 (1973) (concurring opinion). I am still persuaded that the choice of those who will form one's household implicates constitutionally protected rights.

A variety of justifications have been proffered in support of the village's ordinance. It is claimed that the ordinance controls population density, prevents noise, traffic and parking problems, and preserves the rent structure of the community and its attractiveness to families. As I noted earlier, these are all legitimate and substantial interests of government. But I think it clear that the means chosen to accomplish these purposes are both overinclusive and underinclusive, and that the asserted goals could be as effectively achieved by means of an ordinance that did not discriminate on the basis of constitutionally protected choices of lifestyle. The ordinance imposes no restriction whatsoever on the number of persons who may live in a house, as long as they are related by marital or sanguinary bonds-presumably no matter how distant their relationship. Nor does the ordinance restrict the number of income earners who may contribute to rent in such a household, or the number of automobiles that may be maintained by its occupants. In that sense the ordinance is underinclusive. On the other hand, the statute restricts the number of unrelated persons who may live in a home to no more than two. It would therefore prevent three unrelated people from occupying a dwelling even if among them they had but one income and no vehicles. While an extended family of a dozen or more might live in a small bungalow, three elderly and retired persons could not occupy the large manor house next door. Thus the statute is also grossly overinclusive to accomplish its intended purposes….

By limiting unrelated households to two persons while placing no limitation on households of related individuals, the village has embarked upon its commendable course in a constitutionally faulty vessel. I would find the challenged ordinance unconstitutional. But I would not ask the village to abandon its goal of providing quiet streets, little traffic, and a pleasant and reasonably priced environment in which families might raise their children. Rather, I would commend the village to continue to pursue those purposes but by means of more carefully drawn and even-handed legislation.

I respectfully dissent.

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Supreme Court of the United States
Inez MOORE, Appellant,
v.
CITY OF EAST CLEVELAND, OHIO.

No. 75-6289.
Argued Nov. 2, 1976.
Decided May 31, 1977.

Mr. Justice POWELL announced the judgment of the Court, and delivered an opinion in which Mr. Justice BRENNAN, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN joined.

East Cleveland's housing ordinance, like many throughout the country, limits occupancy of a dwelling unit to members of a single family. s 1351.02. But the ordinance contains an unusual and complicated definitional section that recognizes as a "family" only a few categories of related individuals, s 1341.08.[FN2] Because her family, living together in her home, fits none of those categories, appellant stands convicted of a criminal offense. The question in this case is whether the ordinance violates the Due Process Clause of the Fourteenth Amendment.

FN2. Section 1341.08 (1966) provides:

" 'Family' means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following:

"(a) Husband or wife of the nominal head of the household.

"(b) Unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them.

"(c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household.

"(d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household.

"(e) A family may consist of one individual."

I

Appellant, Mrs. Inez Moore, lives in her East Cleveland home together with her son, Dale Moore Sr., and her two grandsons, Dale, Jr., and John Moore, Jr. The two boys are first cousins rather than brothers; we are told that John came to live with his grandmother and with the elder and younger Dale Moores after his mother's death.

In early 1973, Mrs. Moore received a notice of violation from the city, stating that John was an "illegal occupant" and directing her to comply with the ordinance. When she failed to remove him from her home, the city filed a criminal charge. Mrs. Moore moved to dismiss, claiming that the ordinance was constitutionally invalid on its face. Her motion was overruled, and upon conviction she was sentenced to five days in jail and a $25 fine. The Ohio Court of Appeals affirmed after giving full consideration to her constitutional claims, and the Ohio Supreme Court denied review.

We noted probable jurisdiction of her appeal.

II

The city argues that our decision in Village of Belle Terre requires us to sustain the ordinance attacked here. Belle Terre, like East Cleveland, imposed limits on the types of groups that could occupy a single dwelling unit. [We] sustained the Belle Terre ordinance on the ground that it bore a rational relationship to permissible state objectives.

But one overriding factor sets this case apart from Belle Terre. The ordinance there affected only unrelated individuals. It expressly allowed all who were related by "blood, adoption, or marriage" to live together, and in sustaining the ordinance we were careful to note that it promoted "family needs" and "family values." East Cleveland, in contrast, has chosen to regulate the occupancy of its housing by slicing deeply into the family itself. This is no mere incidental result of the ordinance. On its face it selects certain categories of relatives who may live together and declares that others may not. In particular, it makes a crime of a grandmother's choice to live with her grandson in circumstances like those presented here.

When a city undertakes such intrusive regulation of the family… the usual judicial deference to the legislature is inappropriate. "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." A host of cases … have consistently acknowledged a "private realm of family life which the state cannot enter. Of course, the family is not beyond regulation. But when the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.

When thus examined, this ordinance cannot survive. The city seeks to justify it as a means of preventing overcrowding, minimizing traffic and parking congestion, and avoiding an undue financial burden on East Cleveland's school system. Although these are legitimate goals, the ordinance before us serves them marginally, at best.[FN7] For example, the ordinance permits any family consisting only of husband, wife, and unmarried children to live together, even if the family contains a half dozen licensed drivers, each with his or her own car. At the same time it forbids an adult brother and sister to share a household, even if both faithfully use public transportation. The ordinance would permit a grandmother to live with a single dependent son and children, even if his school-age children number a dozen, yet it forces Mrs. Moore to find another dwelling for her grandson John, simply because of the presence of his uncle and cousin in the same household. We need not labor the point. Section 1341.08 has but a tenuous relation to alleviation of the conditions mentioned by the city.

> FN7. It is significant that East Cleveland has another ordinance specifically addressed to the problem of overcrowding. Section 1351.03 limits population density directly, tying the maximum permissible occupancy of a dwelling to the habitable floor area. Even if John Jr., and his father both remain in Mrs. Moore's household, the family stays well within these limits.

III

The city would distinguish the cases based on Meyer and Pierce. It points out that none of them "gives grandmothers any fundamental rights with respect to grandsons," and suggests that any constitutional right to live together as a family extends only to the nuclear family essentially a couple and their dependent children.

To be sure, these cases did not expressly consider

the family relationship presented here. They were immediately concerned with freedom of choice with respect to childbearing, e. g., LaFleur, Roe v. Wade, Griswold, supra, or with the rights of parents to the custody and companionship of their own children, Stanley v. Illinois, supra, or with traditional parental authority in matters of child rearing and education. Yoder, Ginsberg, Pierce, Meyer, supra. But unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case.

Understanding those reasons requires careful attention to this Court's function under the Due Process Clause. Mr. Justice Harlan described it eloquently:

"Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint.

" . . . (T)he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment."

Substantive due process has at times been a treacherous field for this Court. There are risks when the judicial branch gives enhanced protection to certain substantive liberties without the guidance of the more specific provisions of the Bill of Rights. As the history of the Lochner era demonstrates, there is reason for concern lest the only limits to such judicial intervention become the predilections of those who happen at the time to be Members of this Court. That history counsels caution and restraint. But it does not counsel abandonment, nor does it require what the city urges here: cutting off any protection of family rights at the first convenient, if arbitrary boundary the boundary of the nuclear family.

Appropriate limits on substantive due process come not from drawing arbitrary lines but rather from careful "respect for the teachings of history (and), solid recognition of the basic values that underlie our society". Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.

Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear fam-

ily. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Over the years millions of our citizens have grown up in just such an environment, and most, surely, have profited from it. Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family. Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home. Decisions concerning child rearing, which Yoder, Meyer, Pierce and other cases have recognized as entitled to constitutional protection, long have been shared with grandparents or other relatives who occupy the same household indeed who may take on major responsibility for the rearing of the children. Especially in times of adversity, such as the death of a spouse or economic need, the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life. This is apparently what happened here.

Whether or not such a household is established because of personal tragedy, the choice of relatives in this degree of kinship to live together may not lightly be denied by the State. Pierce struck down an Oregon law requiring all children to attend the State's public schools, holding that the Constitution "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." By the same token the Constitution prevents East Cleveland from standardizing its children and its adults by forcing all to live in certain narrowly defined family patterns.

Reversed.

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