MOORE *v.* CITY OF EAST CLEVELAND, OHIO

SUPREME COURT OF THE UNITED STATES
431 U.S. 494
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. But the ordinance contains an unusual and complicated definitional section that recognizes as a "family" only a few categories of related individuals. 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.

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.,

The city argues that our decision in *Village of Belle Terre*v. *Boraas,* 416 U.S. 1 (1974), 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. Applying the constitutional standard announced in this Court's leading land-use case, *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365 (1926), 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, neither *Belle Terre* nor *Euclid* governs; 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, tracing their lineage to Meyer v. Nebraska, 262 U.S. 390(1923), and *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925), 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. 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.

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, or with the rights of parents to the custody and companionship of their own children, or with traditional parental authority in matters of child rearing and education. 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 family. 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 on 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." 268 U.S., at 535. 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.

MR. JUSTICE STEVENS, concurring in the judgment.

In my judgment the critical question presented by this case is whether East Cleveland's housing ordinance is a permissible restriction on appellant's right to use her own property as she sees fit....

The holding in *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365, that a city could use its police power, not just to abate a specific use of property which proved offensive, but also to create and implement a comprehensive plan for the use of land in the community, vastly diminished the rights of individual property owners. It did not, however, totally extinguish those rights. On the contrary, that case expressly recognized that the broad zoning power must be exercised within constitutional limits....

Of course, a community has other legitimate concerns in zoning an area for single-family use including prevention of overcrowding in residences and prevention of traffic congestion. A community which attacks these problems by restricting the composition of a household is using a means not reasonably related to the ends it seeks to achieve. To prevent overcrowding, a community can certainly place a limit on the number of occupants in a household, either in absolute terms or in relation to the available floor space. Indeed, the city of East Cleveland had on its books an ordinance requiring a minimum amount of floor space per occupant in every dwelling. Similarly, traffic congestion can be reduced by prohibiting on-

street parking. To attack these problems through use of a restrictive definition of family is, as one court noted, like "[burning] the house to roast the pig." More narrowly, a limitation on *which* of the owner's grandchildren may reside with her obviously has no relevance to these problems.
....

The city has failed totally to explain the need for a rule which would allow a homeowner to have two grandchildren live with her if they are brothers, but not if they are cousins. Since this ordinance has not been shown to have any "substantial relation to the public health, safety, morals, or general welfare" of the city of East Cleveland, and since it cuts so deeply into a fundamental right normally associated with the ownership of residential property - that of an owner to decide who may reside on his or her property - it must fall under the limited standard of review of zoning decisions which this Court preserved in Euclid and Nectow. Under that standard, East Cleveland's unprecedented ordinance constitutes a taking of property without due process and without just compensation.

Dissenters BURGER, C. J., STEWART, J., REHNQUIST, J., and WHITE, J.
It is unnecessary for me to reach the difficult constitutional issue this case presents. Appellant's deliberate refusal to use a plainly adequate administrative remedy provided by the city should foreclose her from pressing in this Court any constitutional objections to the city's zoning ordinance.
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After appellant's receipt of the notice of violation, her lawyers made no effort to apply to the Board for a variance to exempt her from the restrictions of the ordinance, even though her situation appears on its face to present precisely the kind of "practical difficulties and unnecessary hardships" the variance procedure was intended to accommodate. Appellant's counsel does not claim appellant was unaware of the right to go to the Board and seek a variance, or that any attempt was made to secure relief by an application to the Board. Indeed, appellant's counsel makes no claim that the failure to seek a variance was due to anything other than a deliberate decision to forgo the administrative process in favor of a judicial forum.
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The Belle Terre decision thus disposes of the appellant's contentions to the extent they focus not on her blood relationships with her sons and grandsons but on more general notions about the "privacy of the home." Her suggestion that every person has a constitutional right permanently to share his residence with whomever he pleases, and that such choices are "beyond the province of legitimate governmental intrusion," amounts to the same argument that was made and found unpersuasive in Belle Terre. ...

To suggest that the biological fact of common ancestry necessarily gives related persons constitutional rights of association superior to those of unrelated persons is to misunderstand the nature of the associational freedoms that the Constitution has been understood to protect. ....

Viewed in the light of these principles, I do not think East Cleveland's definition of "family" offends the Constitution. The city has undisputed power to ordain single-family residential occupancy. Village of Belle Terre v. Boraas, supra; Euclid v. Ambler Realty Co., 272 U.S. 365 . And that power plainly carries with it the power to say what a "family" is.
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Had it been our task to legislate, we [431 U.S. 494, 551] might have approached the problem in a different manner than did the drafters of this ordinance; but I have no trouble in concluding that the normal goals of zoning regulation are present here and that the ordinance serves these goals by limiting, in identifiable circumstances, the number of people who can occupy a single household. The ordinance does not violate the Due Process Clause.

Adapted from

http://law2.umkc.edu/faculty/projects/FTrials/conlaw/moore.html