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## DOCUMENT A

No one blamed Sarge, of course, for rejecting joint custody and thereby breaking up our family. Not consciously, anyhow. In fact, back then, at the beginning of the breakup of the family, none of us knew how much we depended on Sarge to preserve our ignorance of the fragility, the very impermanence, of the family. None of us knew that she was helping us  
5 postpone our anger and need for blame — blame for the separation and divorce, for the destruction of the family unit, for our lost innocence.

Whenever the girls stepped down from the school bus for their three or four nights' stay at my house, they were clearly, profoundly comforted to see Sarge, her wide grin, her wet black eyes glazed by cataracts, her floppy tail and slipshod, slanted, arthritic gait as she trailed them  
10 from the bus stop to the house. Wherever the girls settled in the yard or the house, as long as she didn't have to climb the narrow attic stairs to be with them, Sarge lay watchfully beside them, as if guarding them from a danger whose existence Louise and I had not yet acknowledged.

Vickie wasn't around all that much, but Sarge was not attached to her in the same intense  
15 way as to the three younger girls. Sarge pretty much ignored Vickie. From the dog's perspective, I think Vickie was a late-arriving, auxiliary member of the pack, which I hate to admit is how the three younger girls saw her, too, despite my best efforts to integrate all four daughters into a single family unit. No one admitted this, of course, but even then, that early in the game, I saw that I was failing to build a recombinant nuclear family. Vickie was a free  
20 radical and, sadly, would remain one.

Mostly, when the children were at school or up at their mother's, Sarge slept through her days. Her only waking diversion, in the absence of the girls, was going for rides in my car, and I took her everywhere I went, even to my office at the college, where she slept under my desk while I met my classes. From dawn to dusk, when the weather turned wintry and snow  
25 was falling, if I was at home and my car parked in the driveway, Sarge's habit, so as not to miss an opportunity for a ride, was to crawl under the vehicle and sleep there between the rear wheels until I came out. When I got into the car I'd start the engine and, if the girls were with me, count off the seconds aloud until, fifteen or twenty seconds into my count, Sarge appeared at the driver's-side window. Then I'd step out, flip open the tailgate and lift her into the back.  
30 If the girls weren't there I still counted, but silently. I never got as high as thirty before Sarge was waiting by the car door.

I don't remember now where we were headed, but this time all four daughters were in the car together, Vickie in the front passenger's seat, Andrea, Caitlin and Sasha in back. I remember it as a daytime drive, even though, because of Vickie's classes and the younger  
35 girls' school hours, it was unusual for all four to be in the car at the same time during the day. Maybe it was a Saturday or Sunday; maybe we were going ice-skating at one of the local ponds. It was a bright, cloudless, cold afternoon, I remember that, and there was no snow on the ground just then, which suggests a deep freeze following the usual January thaw. We must

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40 have been five or six months into the separation and divorce, which would not be final until the following August.

Piling into the car, all four of the girls were in a silly mood, singing along to a popular Bee Gees disco song, “More Than a Woman,” singing in perfect mocking harmony and substituting lines like “bald-headed woman” for “more than a woman,” and breaking each other up, even the youngest, Andrea, who would have just turned seven then. I can’t say I was  
45 distracted. I was simply happy, happy to see my daughters goofing off together, and was grinning at the four of them as they sang, my gaze turning from one bright face to another, when I realized that I had counted all the way to sixty and was still counting. That far into it, I didn’t make the connection between the count and lifting Sarge into the back of the station wagon. I simply stopped counting, put the car in reverse and started to back out of the  
50 driveway.

There was a thump and a bump. The girls stopped singing. No one said a word. I hit the brake, put the car in park and shut off the motor. I lay my forehead against the steering wheel rim.

All four daughters began to wail. It was a primeval, keening, utterly female wail. Their  
55 voices rose in pitch and volume and became almost operatic, as if for years they had been waiting for this moment to arrive, when they could at last give voice together to a lifetime’s accumulated pain and suffering. A terrible, almost unthinkable thing had happened. Their father had slain a permanent member of the family. We all knew it the second we heard the thump and felt the bump. But the girls knew something more. Instinctively, they understood  
60 the linkage between this moment, with Sarge dead beneath the wheels of my car, and my decision the previous summer to leave my wife. My reasons for that decision, my particular forms of pain and suffering, my years of humiliation and sense of having been too compromised in too many ways ever to respect myself again unless I left my wife, none of that mattered to my daughters, even to Vickie, who, as much as the other three, needed the  
65 primal family unit with two loving parents in residence together, needed it to remain intact and to continue into her adult life, holding and sustaining her and her sisters, nurturing them, and more than anything else, protecting them from bad things.

Russel Banks, “A Permanent Member of the Family”, *A Permanent Member of the Family*,  
New York: Ecco, 2013, p. 27-30

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## DOCUMENT B

[...] [T]his 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.

### 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," Brief for Appellee 18, 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 childrearing 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."

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40 ". . . [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,  
45 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."

*Poe v. Ullman, supra* at 367 U. S. 542-543 (dissenting opinion).

50 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  
55 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  
60 values that underlie our society."

US Supreme Court ruling in *Moore v. City of East Cleveland* 431 U.S. 494 (1977), extract  
from plurality opinion. Retrieved from <https://supreme.justia.com>

DOCUMENT C



Norman Rockwell, *Freedom from Want*, oil on canvas, 45.75 in x 35.5 in, Norman Rockwell Museum, Stockbridge, Massachusetts. First published in the March 6<sup>th</sup>, 1943 issue of *The Saturday Evening Post*