

## **A BRIEF INTRODUCTION TO PRIVATE MEMBERSHIP ASSOCIATION**

### **Preamble to the Constitution of the United States of America:**

***"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."***

The Preamble to the Constitution is an introductory, succinct statement of the principles at work in the full text. It is referred to in countless speeches and judicial opinions **Courts will not interpret the Preamble to confer any rights or powers not granted specifically in the Constitution. For the PMA The Right to Associate Evolves In Great Part, From The First Amendment.**

### **Legal Background**

While not explicitly defined in the Constitution, the Supreme Court has acknowledged that certain implicit rights, such as the right to associate, privacy, and presumed innocence, share constitutional protection in common with explicit guarantees such as free speech. Specifically, the Supreme Court has described the right to associate as inseparable from the right to free speech.

The right of association under the Constitution was heavily litigated in the 1950's and 1960's, and association members' rights were consistently upheld by the Court. In fact, the right of association became a cornerstone of the civil rights movement.

In general, members of an association do not fall under the jurisdiction of local, state, and federal governments and

corresponding laws and regulations. The exception to this general rule is when the activities of the private membership association "present a clear and present danger of substantive evil". *Thomas v. Collins*, 323 U.S. 516 (1945).

A simple example of private associations is alcohol service in dry counties in Texas. Since prohibition was repealed in 1933, regulation of the alcoholic beverage industry was delegated to individual states. Some states, such as Texas, allow individual counties and cities to govern the sale of alcohol. Initially, 46 out of Texas' 254 counties were completely dry, meaning the sale of alcohol was prohibited. However, over the years and in particular with the passing of the Private Club Act in 1961, the number of completely dry counties has diminished. Since 1961, the State has agreed to allow qualifying private associations and clubs to provide alcoholic beverages to private members only. These organizations may be in either the public or private domain.

**It is important to note that the right to associate is not limited to social or political activities. According to the Supreme Court, this right can be utilized for business activities of all types. Members of a private membership association have the right to private contract under the due process liberty clause of the 5th and 14th Amendments, and states may not pass laws that impair the obligation of a contract.**

Again, in *Thomas v. Collins*, the Supreme Court stated: "*Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest*".

Under the First and Fourteenth Amendments to the U.S. Constitution and equivalent provisions of your State Constitution, you have the right to associate with fellow members and offer benefits and services that are outside of the jurisdiction, venue

and authority of State and/or Federal agencies. What could come under scrutiny and in some cases be considered a criminal act outside the association can be perfectly legal within the protection of a private association.

### **Some Common Benefits of Operating Under a Private Membership Association**

- Conduct private association member activities outside the jurisdiction and authority of federal and state regulatory agencies whose mandate is to protect the health, safety, and welfare of the public.
- Maintain greater privacy of financial and business records.
- Greater security of being able to continue operation in a world of changing laws and politics.
- Increase profits due to unrestricted and beneficial structuring and strategies not available to regulated public domain business.
- Instead of conducting business under a legal loophole, you can operate under legal rights decided by the supreme law of the land, i.e., the Supreme Court decisions interpreting the U.S. Constitution. For example see *NAACP v. Alabama*, 357 U.S. 449.
- Simplify your business by eliminating annual reports such as those required with the LLC model.
- No need to register your unincorporated association PMA, as a corporation with the Secretary of State.

### **PMA Rights Apply to Any Field of Interest**

#### **An Early Example of PMAs. Many Dry Counties in Texas Allow Certain Clubs And Private Member Associations To Serve Alcohol**

Our Constitution is the entire basis for the right to form a PMA. Since 1803 and a famous Supreme Court case *Marbury v. Madison*, the Constitution as interpreted by the U.S. Supreme Court, is the Supreme Law of the Land.

**If you are a doctor, medical technician, nurse, other health care practitioner, dentist; or if you are in the field of finance, a non-attorney trying to assist others with legal needs, or any field of human interest, a properly structured Private Membership Association can allow you to operate your business with the added protection of private domain rights.**

Over the past several decades and due to favorable rulings, opinions and interpretations by the Supreme Court, the law of the land has highlighted our constitutional right to conduct business in the private domain versus the public domain.

In the public domain your statutory business operates under the jurisdiction of the state or federal regulatory agencies designed to protect the public. In the private domain of a private membership association PMA, you may operate outside the normal public jurisdiction and your association rights could only be restricted if "justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger".  
*Thomas v. Collins, Supra.*

NOTE: The right of association is part of the "bundle of rights protected by the First Amendment and related to "the right of privacy implicit in the First Amendment."

"The right of association has become a part of the bundle of rights protected by the First Amendment, and the need for a pervasive right of privacy against government intrusion has been recognized, though not always given the recognition it deserves. Unpopular groups like popular ones are protected. Unpopular groups if forced to disclose their membership lists may suffer reprisals or other forms of public hostility. But whether a group is popular or unpopular, the right of privacy implicit in the First Amendment creates an area into which the Government may not enter." *Gibson, 372 U.S. at 569-70 (citations and footnote omitted).*

See generally *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). The Court held that, “the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment.” *Id.* at 466. Justice Harlan opined that, “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces the freedom of speech.” *Id.* at 460