

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Jane Doe I v. Juana Marine-Lombard

Jane Doe I v. Juana Marine-Lombard, 909 F.3d 99 · No. No. 17-30292 · Decided November 16, 2018

SUMMARY

The Fifth Circuit vacated a preliminary injunction against Louisiana's Act No. 395, which requires erotic dancers at alcohol-licensed establishments to be at least 21 years old. Applying intermediate scrutiny under *United States v. O'Brien*, the court held the age restriction was a content-neutral regulation narrowly tailored to combat secondary effects like human trafficking and prostitution, and that the state's limiting construction excluding mainstream theater and ballet cured any overbreadth. The court also rejected a facial vagueness challenge, finding that the terms "breasts or buttocks" are commonly understood and that the Act provides sufficient notice of prohibited conduct. The case addresses First Amendment overbreadth and vagueness doctrines, intermediate scrutiny for incidental speech restrictions, and standing requirements for facial challenges.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Leslie H. Southwick; Carl E. Stewart; Edith Brown Clement
JURISDICTION	Federal
DECIDED	November 16, 2018
DOCKET	No. 17-30292
DISPOSITION	vacated
PROCEDURAL POSTURE	Interlocutory appeal from the district court's grant of a preliminary injunction.
STANDARD OF REVIEW	Abuse of discretion for preliminary injunction, clear error for findings of fact, de novo for conclusions of law.
PRECEDENTIAL VALUE	published
PARTIES	Jeff Landry, Attorney General for the State of Louisiana, Intervenor - Appellant; Juana Marine-Lombard, in her official capacity as Commissioner, Louisiana Office of Alcohol and Tobacco Control, Defendant - Appellant v. Jane Doe I; Jane Doe II; Jane Doe III

TOPICS

QUESTIONS PRESENTED

1. Whether the Act is facially overbroad or lacks narrow tailoring under the First Amendment
2. Whether the Act is facially vague
3. Whether the plaintiffs have standing to bring a facial vagueness challenge

HOLDINGS

1. The Act is not overbroad; it is narrowly tailored to serve the substantial governmental interest of combating secondary effects of human trafficking and prostitution, and it does not burden substantially more speech than necessary.
2. The Act is not vague; it provides sufficient definiteness using common terms like 'breasts' and 'buttocks' that ordinary people can understand what is prohibited.
3. Yes, they have standing because they have expressed a serious interest in returning to erotic dancing and their desire to dance has been chilled by the Act's vagueness.

KEY QUOTATIONS

“if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” (909 F.3d at 108)

“the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.” (909 F.3d at 108)

“so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.” (909 F.3d at 112)

“the natural understanding of an obligation to cover a person's buttocks is that they must be covered entirely.” (909 F.3d at 125)

FACTUAL BACKGROUND

In 2016, Louisiana amended two statutes to require that entertainers on premises licensed to serve alcohol and whose breasts or buttocks are exposed to view be 21 years of age or older. Three erotic dancers aged 18, 19, and 20 filed a complaint against the state official responsible for enforcement, claiming the Act violated the First and Fourteenth Amendments. The district court concluded that the plaintiffs were likely to succeed on the merits of their claims that the Act is unconstitutionally overbroad and vague and issued a preliminary statewide injunction. The State brought this interlocutory appeal.

PROCEDURAL HISTORY

The district court granted a preliminary statewide injunction barring enforcement of Act No. 395, finding the Act unconstitutionally overbroad and vague. The State appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

We REMAND for further proceedings consistent with our ruling.

CASES CITED

- *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981)
- *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000)
- *Illusions-Dallas Private Club, Inc. v. Steen*, 482 F.3d 299 (5th Cir. 2007)
- *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002)
- *United States v. O'Brien*, 391 U.S. 367 (1968)
- *United States v. Albertini*, 472 U.S. 675 (1985)
- *Broadrick v. Oklahoma*, 413 U.S. 601 (1973)
- *Hill v. Colorado*, 530 U.S. 703 (2000)
- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)
- *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994)
- *Kolender v. Lawson*, 461 U.S. 352 (1983)
- *New York v. Ferber*, 458 U.S. 747 (1982)
- *United States v. Stevens*, 559 U.S. 460 (2010)
- *Voting for Am., Inc. v. Steen*, 732 F.3d 382 (5th Cir. 2013)
- *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010)
- *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014)
- *Center for Individual Freedom v. Carmouche*, 449 F.3d 655 (5th Cir. 2006)
- *Dodger's Bar & Grill, Inc. v. Johnson Cnty. Bd. of Cnty. Comm'rs*, 32 F.3d 1436 (10th Cir. 1994)
- *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010)
- *Roark & Hardee LP v. City of Austin*, 522 F.3d 533 (5th Cir. 2008)
- *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012)
- *Service Emps. Int'l Union, Local 5 v. City of Houston*, 595 F.3d 588 (5th Cir. 2010)
- *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50 (1976)
- *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984)
- *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)
- *J & B Entm't, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998)
- *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991)

- City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002)
- Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995)
- Houston Chronicle Publ'g Co. v. City of League City, 488 F.3d 613 (5th Cir. 2007)
- Fernandes v. Limmer, 663 F.2d 619 (5th Cir. 1981)
- National Rifle Ass'n of Am., Inc. v. McCraw, 719 F.3d 338 (5th Cir. 2013)
- Cooper Indus., Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 876 F.3d 119 (5th Cir. 2017)
- City of El Cenizo v. Texas, 890 F.3d 164 (5th Cir. 2018)
- Jefferson Cmty. Health Care Ctrs, Inc. v. Jefferson Par. Gov't, 849 F.3d 615 (5th Cir. 2017)
- Lake Charles Diesel, Inc. v. Gen. Motors Corp., 328 F.3d 192 (5th Cir. 2003)
- Secretary of Md. v. Joseph H. Munson Co., 467 U.S. 947 (1984)
- International Soc'y for Krishna Consciousness v. Eaves, 601 F.2d 809 (5th Cir. 1979)
- Mississippi State Democratic Party v. Barbour, 529 F.3d 538 (5th Cir. 2008)
- Kucinich v. Tex. Democratic Party, 563 F.3d 161 (5th Cir. 2009)
- NLRB v. Kentucky River Cmty. Care, Inc., 532 U.S. 706 (2001)
- SEC v. Chenery Corp., 318 U.S. 80 (1943)
- United States v. Hicks, 980 F.2d 963 (5th Cir. 1992)