

SUPREME COURT OF OHIO

American Booksellers Foundation for Free Expression v. Cordray

124 Ohio St. 3d 329, 2010-Ohio-149 (2010) · No. 2009-0609 · Decided January 27, 2010

SUMMARY

The Supreme Court of Ohio answered certified questions concerning the application of R.C. 2907.31(A) and (D) to electronic communications involving material harmful to juveniles. It held that the statute is limited to personally directed electronic communications and does not apply to material posted on generally accessible websites or in public chat rooms when the sender cannot prevent particular recipients from accessing it.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	January 27, 2010
DOCKET	2009-0609
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Ohio decided two certified questions of state law submitted by the United States Court of Appeals for the Sixth Circuit during an appeal from a federal district court judgment permanently enjoining enforcement of R.C. 2907.31(D).
STANDARD OF REVIEW	De novo interpretation of statutory language in answering certified questions
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Ohio answering certified questions of state law.

TOPICS

statutory interpretation

plain meaning rule

free speech

first amendment

appellate procedure

PRACTICE AREAS

statutory interpretation

constitutional law

free speech

appellate procedure

QUESTIONS PRESENTED

1. Whether R.C. 2907.31(D) limits the application of R.C. 2907.31(A) to electronic communications that can be personally directed to a known or suspected juvenile recipient, such as instant messages, person-to-person e-mails, and private chat rooms.
2. Whether R.C. 2907.31(D) exempts material posted on generally accessible websites and in public chat rooms from liability when the method of mass distribution does not permit the sender to prevent a particular juvenile recipient from receiving the material.

HOLDINGS

1. R.C. 2907.31(D) limits the application of R.C. 2907.31(A) to electronic communications that can be personally directed to a recipient whom the sender knows or has reason to believe is a juvenile, including instant messages, person-to-person e-mails, and private chat rooms.
2. A person does not violate R.C. 2907.31(D) by posting material harmful to juveniles on a generally accessible website or in a public chat room because those methods of mass distribution do not allow the poster to prevent particular recipients, including juveniles, from accessing the material.

KEY QUOTATIONS

“We conclude that the scope of R.C. 2907.31(D) is limited to electronic communications that can be personally directed, because otherwise the sender of matter harmful to juveniles cannot know or have reason to believe that a particular recipient is a juvenile.” (5)

“We conclude that a person who posts matter harmful to juveniles on generally accessible websites and in public chat rooms does not violate R.C. 2907.31(D), because such a posting does not enable that person to “prevent a particular recipient from receiving the information.”” (6)

FACTUAL BACKGROUND

The challenged Ohio statute prohibits knowingly or recklessly providing material harmful to juveniles and applies the prohibition to electronic communications. The statute requires that the sender know or have reason to believe that the recipient is a juvenile, while exempting mass distributions when the sender lacks adequate information about a particular recipient or cannot prevent a particular recipient from receiving the information. The certified questions focused on electronic communications such as e-mail, instant messaging, private chat rooms, public chat rooms, and generally accessible websites.

PROCEDURAL HISTORY

American Booksellers and related organizations initially sued in federal district court to enjoin enforcement of Ohio statutes concerning material harmful to juveniles, and the district court granted a preliminary injunction. After the General Assembly amended the statute, the parties filed cross-motions for summary judgment; the district court permanently enjoined enforcement of R.C. 2907.31(D), finding constitutional problems under the First Amendment. On appeal, the Sixth Circuit certified two questions concerning the scope of R.C. 2907.31(D) to the Supreme Court of Ohio.

DISPOSITION

other

CASES CITED

- Bookfriends, Inc. v. Taft (S.D. Ohio 2002), 223 F. Supp. 2d 932, 945
- Am. Booksellers Found. for Free Expression v. Strickland (S.D. Ohio 2007), 512 F. Supp. 2d 1082, 1094-1106
- Bellotti v. Baird, 428 U.S. 132, 147 (1976)
- Harrison v. Natl. Assn. for the Advancement of Colored People, 360 U.S. 167, 177 (1959)

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