

Free speech coalition

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Citation: Ashcroft v. Free Speech Coalition, No. 00-795, SUPREME COURT OF THE UNITED STATES, 535 U. S. 234; 122 S. Ct. 1389; 152 L. Ed. 2d 403; 2002 U. S. LEXIS 2789, October 30, 2001, Argued, April 16, 2002, Decided.

Facts

This suit was brought by the Free Speech Coalition, an entertainment industry for adults based in California, against the government. The coalition and others argued that the Child Pornography Prevention Act of 1996(CPPA) abridged speech freedom, provided for under the First Amendment. Ashcroft v. Free Speech Coalition 535 U. S. 2d at 5. CPPA prohibits the use of images that appear to openly show minors, adults who come across as minors or computer images that are sexually explicit, even though they do not use any real children. In addition, CPPA prohibits the production and distribution of “ any image that conveys the impression it depicts a minor engaging in sexually explicit conduct”. The government’s side argued that the law needed to prohibit virtual imaging of child pornography to protect minors from pedophiles.

Issue

The constitutionalities of the clauses “ appear to be” and “ conveys the impression” that children were engaging in explicitly sexual activity and the abridgement of valuable speech.

Decision

The Supreme Court ruled that the CPPA violated the freedom of speech provided for under the First Amendment, thus the ban on child pornography involving virtual images was unconstitutional.

Rationale

One of the rules under the First Amendment provides that a whole artistic
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work cannot be merited on the basis of one sexually explicit view.

Accordingly, the work should be judged as a whole to determine its value.

Essentially, pornography can only be proscribed if it is obscene and if it uses real children. In this case, therefore, the ban by the CPPA was invalid, since it barred the use of images that were neither obscene nor used actual children.

In *Ashcroft v. Free Speech Coalition* 535 U. S. 2d, 403 (2002), the court held that the rights of adults access such speech could not be withdrawn in order to protect minors from such speech. The use of the phrases “ appears to be” and “ conveys the impression” is relative and depends on the interpretation of the court. The work of art must contain obscene content in speech presentation, for it to be banned.

Considering Ferber’s standard, a ban on child pornography can only be upheld if production and sale of artistic work was “ intrinsically related” to child abuse, by causing harm to the victim and leading to crime. Therefore, if a work of art causes harm to a child by making them prone to sexual acts, such a work will be banned, See *id.* at 13. The Supreme Court also overruled the argument advanced by the government stating that the ban on “ virtual child pornography” was necessary to reduce cases of pedophiles seducing children.

Standard

The standard for this ruling came from the First Amendment, Miller, and Ferber standards. The first Amendment provides that the government is not allowed to abridge protected speech. Under this provision, the government cannot dictate what the public sees and hears, so long as the content is not defamatory, obscene, or made with pornographic images of real children.

Under the Miller standard, the government must prove that the work is

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offensive to community values and does not have any value; politically, artistically, scientifically or literally. *Id.* at 12. Concerning the Ferber standard, the production of an artistic work, not its content, is the basis for banning child pornography. Conclusively, the CPPA failed to meet all the provisions of the First Amendment, the Miller standard, and the Ferber standard, therefore making it unconstitutional.

Work cited

John D. Ashcroft, Attorney General, Et Al., Petitioners V. The Free Speech Coalition Et Al, 5353 U. S. 2d 234 (U. S 2002).