

# NATION

## Court revives anti-porn law taking X out of PXs

By Joyce Howard Price  
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A federal appeals court in New York has ruled that a 1996 law barring official sales or rentals of "sexually explicit material" on military bases is constitutional.

In a 2-1 decision Friday, the U.S. Circuit Court of Appeals for the 2nd District overturned a lower court ruling that had found the Military Honor and Decency Act of 1996 was unconstitutional on grounds that it violated First Amendment and Fifth Amendment protections.

In their majority opinion, Chief Judge Ralph K. Winter and Judge Jose A. Cabranes concluded the act "does not violate the free-speech clause of the First Amendment," nor does it "run afoul of the equal-protection guarantee of the due-process clause of the Fifth

Amendment."

The opinion, written by Judge Cabranes, notes that the law does not ban sexually explicit magazines and videos: "Soldiers and sailors may still buy them elsewhere, receive them by mail, and read or watch them. Congress has decided only that the military itself will not be in the business of selling or renting these items to service members."

Judges Winter and Cabranes concluded that "Congress acted well within its constitutional authority to regulate official military conduct."

A third judge on the panel, Judge Fred I. Parker, dissented in a separate opinion.

Rep. Roscoe G. Bartlett, Maryland Republican and a primary sponsor of the law that prohibits sale or rental of sexually explicit materials in stores or post ex-

changes on military bases, hailed the appeals court's decision to overturn the ruling of U.S. District Judge Shira A. Scheindlin of New York's Southern District.

"After Tailhook and Aberdeen and other sexual-harassment scandals, there is no question that the United States military needs policies that support the highest standards of behavior," Mr. Bartlett said in a statement.

The Military Honor and Decency Act was challenged by Bob Guccione, publisher of Penthouse magazine, and others who produce sexually explicit materials. They charged that their free-speech rights would be abridged if military stores stopped selling and renting their products.

In ruling on that lawsuit, U.S. District Judge Scheindlin, an appointee of President Clinton, wrote that "citizens do not jettison their

constitutional rights simply by enlisting in the armed forces." She ordered a permanent injunction to bar enforcement of the law.

But the appeals court ruling held that "military exchanges are not public street corners" and "are not available for everyone to 'speak' from their shelves."

"These stores are nonpublic forums, in which the government may restrict the content of speech, so long as the restriction" does not represent viewpoint discrimination, the majority opinion said.

Judges Winter and Cabranes held that the Military Honor and Decency Act was designed to "uphold military honor, professionalism, and proper decorum by eliminating the appearance of official endorsement inherent in the military resale of the proscribed materials."

The legislation does this "in a

nonpublic forum, without engaging in viewpoint discrimination" and thus does not violate free-speech rights, the opinion said. The law's "distinctions among the types of materials it regulates are rationally related to legitimate governmental interests."

The majority opinion further held that the law is "sufficiently clear, in light of the appropriate level of scrutiny accorded to a military regulation carrying only indirect, civil penalties to survive a vagueness challenge."

In his statement yesterday, Mr. Bartlett noted that in a nationally televised interview last year, Mr. Guccione predicted the Military Honor and Decency Act would never survive a court challenge. The Maryland congressman said the new ruling "shows how out-of-touch these purveyors of garbage are with American society."

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