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Court strikes down Internet decency law

by Peter Freiberg

Kiyoshi Kuromiya

Gay, AIDS, and civil liberties activists this week hailed the U.S. Supreme Court decision striking down a federal law that could have pushed Gay-related Internet material into a "cyberspace closet."

Declaring that full First Amendment rights of free speech apply online, the court said on June 26 that the Communications Decen-

Continued on page 25

States may prohibit 'assisted suicides'

by Lisa Keen

by Clint Steib

Cornelius Baker

In a blow to people with AIDS who might want medical assistance to expedite their dying in the final days of their lives, the U.S. Supreme Court last week ruled that it is constitutional for a state to ban "assisted suicides."

Continued on 25

Supreme Court strikes down Internet decency act

Continued from page 1

cy Act (CDA) infringed on these rights by making it a crime to send "indecent" or "patently offensive" material that could be accessed by minors.

Five of the 20 plaintiffs in the suit brought by the American Civil Liberties Union (ACLU) against the CDA were Gay and AIDS organizations. Although the CDA did not specifically target Gay or AIDS material, activists feared its vague wording would lead to efforts by the religious right to keep such material off the Internet, a rapidly growing global network of linked computers.

In a strongly worded 7 to 2 majority opinion on June 26, Justice John Paul Stevens echoed these concerns.

"Could a speaker confidently assume that a serious discussion about birth control practices, homosexuality ... or the consequences of prison rape would not violate the CDA?" asked Stevens. "The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech."

Denny Lee, an openly Gay spokesperson for the ACLU, said, "Without question, the [CDA] had the potential to get rid of a lot of Gay and Lesbian material and content. ... [T]his law could have shoved much of Gay material into a cyberspace closet."

Gay and AIDS groups, who are increasingly using online communication to send information, exchange views, and organize, were jubilant that the threat of the CDA had been lifted. Under the law, violators would have faced a maximum $250,000 fine and two years in jail.

"We were able to breathe a sign of relief and continue doing what we do," said Ron Buckmire, founder and executive director of Queer Resources Directory (QRD), the largest and oldest collection of Gay-related information on the Internet (www.qrd.org).

"The Supreme Court," Buckmire said, "made it more difficult for potential censors of any references to homosexuality to hide behind the canard of 'protecting children' or banning 'indecent' material."

In an interview, Buckmire said that under the CDA, people could have been arrested for "saying anything about a topic that someone found indecent. ... It was so vaguely written that if you were talking about sodomy that could be considered 'indecent.'"

Buckmire estimates that QRD, a plaintiff in the ACLU suit, is visited by 50,000 to 100,000 people a month. His concern now is that the filtering software used by some parents to insure that their children can't get to pornographic or violent sites often screens out Gay and AIDS-related material automatically.

"That'll be the next skirmish in about a year or so," he says.

Patricia Nell Warren, a Lesbian author, co-owns a publishing firm, Wildcat Press (www.gaywired.com), that was also among the plaintiffs. Warren said she did not believe the Justice Department when officials there said "they were not interested" in prosecuting someone like her under the CDA.

In addition to chapters from Warren's books and Gay-related commentaries, Wildcat also publishes a magazine for Gay youth (www.gaywired.com/yap).

Kiyoshi Kuromiya, a Gay and AIDS activist who runs the Critical Path AIDS Project (www.critpath.org), a nonprofit information service, said he joined the ACLU lawsuit in part because he was committed to reaching teenagers as well as adults with safer sex information that was sexually explicit and sometimes worded in street language.

"I have socially relevant, important, and even lifesaving information," Kuromiya said. "The CDA would have violated my First Amendment rights to get that information out." To criminalize the publishing of lifesaving information on the Internet, he said, "would have been a great public health mistake."

Stefan Presser, legal director of the ACLU of Pennsylvania, was quoted by the *Philadelphia Inquirer* as saying, "Kiyoshi may have been the single most persuasive voice to the court."

A three-judge federal court in Philadelphia was the first court to rule that the CDA was unconstitutional, concluding, among other things, that Kiyoshi's Critical Path AIDS Project could be "profoundly affected" by the legislation; Critical Path, the judges noted, could not afford to verify that each of its online readers was over 18 and the educational Web site believes that to be effective it must allow its readers to remain anonymous.

In addition to Critical Path, two other AIDS-related groups — Safer Sex Page (www.safersex.org) and AIDS Education Global Information System, a computer bulletin board system reached at (714) 248-2836 — were among the plaintiffs.▼

States have the right to prohibit 'assisted suicide'

Continued from page 1

The two unanimous decisions—one on a case from Washington state, the other on a case from New York—were harshly criticized by Gay and AIDS organizations, many of which filed briefs in support of the lawsuits attempting to undo the laws which criminalize such medical assistance.

"People with AIDS have the right to make their own medical decisions — right until the very end," said Catherine Hanssens, who heads up the AIDS Project for Lambda Legal Defense and Education Fund. "Courts should not stand in the way of people using assistance from a trusted physician to end suffering when remission or real improvement is not in the cards."

The opinion in both cases—*Washington v. Glucksberg* and *New York v. Quill*—was delivered was delivered by Chief Justice William Rehnquist (a Nixon/Reagan appointee). The 9th Circuit U.S. Court of Appeals had struck down Washington state's law against assisted suicide; the 2nd Circuit had struck down a similar law in New York State.

Both laws prohibited physicians from assisting mentally competent patients in the late stage of dying from irreversible terminal illnesses, such as AIDS, by minimizing their final suffering through expediting their deaths medically.

Both cases involved at least one Gay man with AIDS. (All three plaintiffs have since died due to the illnesses.)

Lambda and a number of AIDS organizations supported the plaintiffs' litigation. While opponents of assisted suicide raised concerns that it could be abused and make terminally ill patients feel forced to end their lives prematurely, Cornelius Baker, executive director of the National Association of People With AIDS, said it gives patients an advantage by helping them feel like they had some control over their suffering.

"Just having the ability to control [their death] is enough," said Baker. "And we support the policy position that every person deserves a compassionate and dignified death."

In upholding the bans on assisted suicide, the Supreme Court did, to some extent, what it did in 1986 when it upheld sodomy laws. The court went to great lengths to note that "opposition to and condemnation of suicide — and, therefore, of assisting suicide — are consistent and enduring themes of our philosophical, legal, and cultural heritages."

"More specifically, for over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide," wrote Chief Justice William Rehnquist. Rehnquist reached back to 13th century legal writing and "pre-Norman institutions sometime in the 12th century" to make his point about society's longstanding disapproval for suicide no matter what the motivation.

Although technological advances in sustaining life have led society to develop such concepts as "living wills," which enable a person to stipulate that he or she does not wish to have their body kept alive when it might otherwise succumb, Rehnquist said that society, "for the most part," still opposes measures which take the life from a body before it might otherwise succumb.

Legally speaking, said Rehnquist, the court continues to be "reluctant," in delineating the meaning of the 14th Amendment's admonition against laws which deprive citizens of "life, liberty, or property, without due process of law," to expand its list of things it believes is covered under "liberty." The court has, he noted, agreed that "liberty" includes the right to marry and have "marital privacy," the right to have children and educate them as one sees fit, the right to use contraception and end one's own pregnancy, and the right to "bodily integrity."

Before it adds to that list, said Rehnquist, the court wants to know that an activity is "deeply rooted in this Nation's history and tradition" and that the liberty interest in question is a "fundamental" one and, therefore, one which government cannot infringe upon unless it has a "compelling" interest in doing so.

In this case, said Rehnquist, there is no tradition of support in this nation for assisting suicide and the right to assistance for suicide is not a fundamental one.

But even laws which do not infringe upon a fundamental right must have some rational reason for government to intervene. In this case, said Rehnquist, the state "unquestionably" has ample reasons:

- preserving human life,
- seeing that people with depression and pain are properly cared for,
- protecting the "integrity and ethics" of the medical profession,
- protecting "vulnerable groups," such as people who are poor, elderly, have a disability, and
- preventing society from starting "down the path to voluntary and perhaps even involuntary euthanasia."

Justice Sandra Day O'Connor (a Reagan appointee) added her own three-page concurring opinion to emphasize that her concern that "[t]he difficulty in defining terminal illness and the risk that a dying patient's request for assistance in ending his or her life might not be truly voluntary." Justice Ruth Bader Ginsburg (Clinton appointee) joined O'Connor's opinion.

Justice John Paul Stevens (Ford appointee) wrote a concurring opinion to emphasize that he believes that states, such as Washington, which authorize the death penalty "must acknowledge that there are situations in which an interest in hastening death is legitimate." He contended that the state's interest in preserving human life is not always in and of itself sufficient justification for denying "a dying patient's dignity and alleviating her intolerable suffering."

And Justice David Souter (Bush appointee) wrote an opinion that agreed that the bans are constitutional, but for reasons different from those explained by Rehnquist. Souter's main concern was that there is inadequate factual information to ensure that doctors can with certainty tell when a patient's request for assisted suicide is "voluntary, well considered, and stable." Thus, he said, the state has an interest in protecting what Rehnquist called "vulnerable groups."

In addition to Lambda, the AIDS Action Council also expressed its deep disappointment with the June 26 ruling.

"AIDS Action believes that the federal government should not interfere with an individual's exercise of the fundamental right to make his or her own decisions about life and death," said the AIDS Action Council's statement.

NAPWA's Baker said there are very few studies to indicate how many people with AIDS ask their physicians for assistance in ending their lives. But he said studies have shown that most people who ask their doctors for the necessary drugs to end their lives don't necessarily use them.

According to the Supreme Court, 44 states and the District of Columbia have laws that "prohibit or condemn" assisted suicide.▼