

To aid counsel in preparation of the findings of fact and conclusions of law the Court makes the following brief findings.

Plaintiffs do not challenge the regulation of obscenity, child pornography, speech used to entice or lure minors into inappropriate activity or harassing speech. Plaintiffs do not challenge the state's general harmful to minors regulation: A.R.S. § 13-3506. Defendants in their post-trial memorandum argue that the Court should narrowly construe the statute, severing any provisions that would reach protected expression and otherwise leave the remainder of the statute intact. Defendants urge the Court to strike the "reason to know" language from the statute and narrowly construe the term "to a minor" so that it applies only where an adult sends an item exclusively to one or more minors. The Court is further urged to strike the language in subsection 13-3506 which reads "or should have known." Defendants agree that this negligence-based language must be severed before the statute can be constitutional.

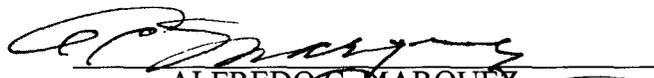
The Court may narrowly construe a statute in certain circumstances. The key to application of this principal is that the statute must be readily susceptible to the limitation: the Court should not rewrite a state law to conform it to constitutional requirements. *American Civil Liberties Union v. Johnson*, 194 F.3d 1149 (10th Cir. 1999). The Court finds that the necessary narrowing construction amounts to a re-writing of the statute which this Court cannot do.

The Court also finds that the term "Internet web site" is constitutionally vague.

The Act fails to prevent minors from receiving "harmful material." The Defendants' own interpretation of the act renders it so narrow in scope that the actual benefit conferred is extremely small. *American Civil Liberties Union v. Johnson*, 194 F.3d 1149 (10th Cir. 1999).

The Court also finds that Section B violates the commerce clause because Arizona has no legitimate interest in "protecting persons outside of Arizona from speech that Arizona deems to be harmful to minors."

Dated this 19th day of February, 2002.


ALFREDO C. MARQUEZ
Senior U.S. District Judge