Media Coalition Applauds Supreme Court Ruling Affirming Standard to Bring First Amendment Challenge

Unanimous Decision Keeps Court House Door Open to Booksellers, Publishers and Librarians to Bring "Pre-Enforcement" Challenges to Censorship Laws

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June 16, 2014 (Washington D.C.) — The United States Supreme Court today held that "a credible threat of enforcement" is a sufficient threat of injury to establish standing in a First Amendment case when bringing a "pre-enforcement" challenge. The case, *Susan B. Anthony List v. Driehaus* (No. 13-193), was argued April 22.

"We are gratified that the Court today recognized the immense harm that can occur when individuals are required to put their liberty at risk in order to vindicate their free speech rights," said David Horowitz, Executive Director of Media Coalition. "This decision affirms the principle that a person, organization or business should not have to risk prosecution to challenge the Constitutionality of a law."

A pre-enforcement challenge is a critical tool for protecting free speech, Horowitz explained, because the passage of an unconstitutional law can have a substantial chilling effect, making people afraid to exercise their rights. Such challenges, brought either before or soon after a law goes into effect, can eliminate the danger of the chilling effect by obtaining a prompt judicial decision on the law's constitutionality and, if necessary a preliminary injunction that suspends the law while the case is being litigated.

In today's decision, the Justices cited *Virginia v. American Booksellers Association* as one of several cases that "bear mention" because it helped to establish the legal principle that a "well-founded fear" of prosecution was sufficient to justify a pre-enforcement First Amendment challenge.

In March, a broad range of booksellers, librarians, publishers, and media organizations, submitted a friend-of-the-court brief in *Driehaus*, urging the Court to adhere to the standard set forth by the Supreme Court in 1988 in *Virginia v. ABA*, a milestone case brought by members of Media Coalition. The standard stated by the Court is that a person who has a well-founded fear of prosecution under a law that infringes First Amendment rights should have standing to bring a "pre-enforcement" challenge to the law.

Michael Bamberger, a partner of Dentons and lead counsel on the amicus brief, said, "I cannot overstate the importance of this decision in protecting First Amendment rights. An affirmance of the Sixth Circuit decision could have resulted in unconstitutional laws going unchallenged causing a substantial chilling effect on free speech."

The organizations and their members who signed the brief believe that people, organizations or businesses need not face a choice between engaging in self-censorship and risking criminal prosecution when challenging a law the infringes the First Amendment. They have all brought challenges to censorship laws under the standard affirmed in *Virginia v. A.B.A.,* as shown in an **Interactive Map** illustrating the impact and scope of free speech cases.

The brief in *Driehaus* was filed on behalf of: **American Booksellers Association; American Booksellers Foundation for Free Expression; American Library Association; Association of American Publishers, Inc.; Comic Book Legal Defense Fund; Freedom to Read Foundation; Great Lakes Independent Booksellers Association; Mountain & Plains Independent Booksellers Association; Pacific Northwest Booksellers Association; Southern Independent Booksellers Alliance; Annie Bloom's Books, Changing Hands Bookstore, Inc.; Harvard Book Store, Inc.; Paulina Springs Books; Powell's Bookstore, Inc.; Schuler Books, Inc.; Tattered Cover, Inc.; The King's English, Inc.; Weller Book Works; Village Books; and Dark Horse Comics**.

The groups' brief explains the importance of allowing challenges to censorship laws prior to prosecution. The brief cites 23 such challenges over the last 35 years, many of which were brought by members of Media Coalition and others who signed the brief. These cases could have been dismissed under the Sixth Circuit's definition of standing. In all of those challenges, the statutes were enjoined or narrowed to comply with the First Amendment.

In *Driehaus*, a U.S. District Court in Ohio dismissed a challenge by Susan B. Anthony List (SBAL) to a state law regulating speech in campaign advertising. The Court found that SBAL lacked standing to file a "pre-enforcement" challenge because it couldn't demonstrate that prosecution was likely or imminent. The United States Court of Appeals for the Sixth Circuit affirmed the decision, and SBAL then sought review by the Supreme Court. The Supreme Court heard the oral argument in April.

Media Coalition, Inc., founded in 1973, is an association that defends the First Amendment rights of producers and distributors of books, movies, magazines, recordings, home video, and video games, and defends the American public's First Amendment right to have access to the broadest possible range of information, opinion and entertainment.

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