

Media Coalition Defends First Amendment for Broad Range of Media in 2010

In 2010, Media Coalition again performed its role as the leading defender of the First Amendment for media businesses and won a series of victories that affirmed that free speech protections apply to all speech, regardless of the medium of expression or “value” of the content. During the year, Media Coalition brought successful challenges to censorship legislation that saw an Oregon law restricting minors’ access to all sexual material struck down and an Ohio law that blocked Internet access to such content significantly narrowed; played a key role *U.S. v. Stevens*, where the Supreme Court ruled that a law criminalizing images of cruelty to animals was unconstitutional; and had preliminary injunctions granted in its challenges to Internet censorship laws enacted in Alaska and Massachusetts. Despite these successes the challenges continue. Less than a week after the Supreme Court’s ruling in *U.S. v. Stevens*, the Court agreed to decide whether violent video games could be regulated for minors in *Schwarzenegger v. EMA*, which should be decided this year, and the Alaska and Massachusetts cases continue.

- **Media Coalition Lawsuit Thwarts Ohio’s Attempt to Censor the Internet**

Media Coalition’s first success of 2010 came when the Sixth Circuit Court of Appeals significantly narrowed a sweeping censorship law after nearly a decade of litigation. In 2010, Ohio applied its harmful to minors law to the Internet. Media Coalition argued that the law limited online speech to only what is acceptable for young people, infringing upon adults’ right to view and businesses’ right to disseminate sexually frank material according to their own or their customers’ preferences and needs. The Court adopted Media Coalition’s analysis of the risk the law posed to online speech and narrowed the language to prohibit adults from sending “harmful” material to specific minors rather than unconstitutionally prohibiting sexual speech on the Internet as a whole.

- **Supreme Court Affirms Protections for Violent Speech in *U.S. v. Stevens***

In April, the Supreme Court handed down an important First Amendment victory in *U.S. v. Stevens*. The court in an 8-1 decision refused to create a new exception to the First Amendment and struck down a federal law criminalizing images of intentional harm to animals. Media Coalition played a key role in that victory, first by submitting an amicus brief to emphasize to the Justices that the law threatened films including *Apocalypse Now* and *Roger & Me*; hunting television shows and magazines; and Ernest Hemingway’s *Death in the Afternoon*. Media Coalition also took the lead on the overall amicus strategy by alerting a wide range of groups at risk under the law, including journalists, filmmakers, outdoor media groups, and the National Rifle Association, about the case’s importance and then working to facilitate their filing of amicus briefs that addressed the all of legal issues in the case. The Court dismissed the government’s assertion that speech could be subjected to a content-based test of its value and censored if that value was found lacking. The diversity of the amicus briefs demonstrated to the Court that the law applied to a much broader range of content than the “low value” dogfighting and “crush” videos at which the government said it was aimed. The Court also declined to uphold the law despite the government’s promise to apply the statute narrowly. As Chief Justice Roberts wrote, “this Court will not uphold an unconstitutional statute merely because the Government promises to use it responsibly.”

- **Media Coalition Wins Fight for Retailers Rights in Oregon**

In *Powell's v. Kroger*, the Ninth Circuit Court of Appeals struck down an Oregon law that would have restricted minors' access to art and health books, mainstream movies, and magazines. The court emphasized the threat the law posed to Judy Blume's *Forever* and Margaret Atwood's *A Handmaid's Tale*, popular graphic novels, and other mainstream works. Like the Supreme Court in *U.S. v. Stevens*, the Ninth Circuit dismissed claims by the attorney general that the law would only be used to prosecute "hardcore pornography." Media Coalition's victory ensures that retailers of First Amendment-protected material no longer have to choose between zealously policing young customers' media consumption and risking prosecution.

- **Alaska and Massachusetts Ignore Case Law, Enact Restrictions on Internet Speech**

In a span of less than one week last fall, U.S. District Courts in Alaska and Massachusetts granted preliminary injunctions in two challenges brought by Media Coalition to laws that would have barred electronic transmission of speech deemed "harmful to minors," which adults have a First Amendment right to read and view. Both laws were enacted earlier in 2010 despite testimony from Media Coalition warning legislators of constitutional problems and citing a substantial body of case law from its previous challenges to such legislation. The Alaska law would also have allowed brick and mortar retailers to be prosecuted for unknowingly selling "harmful" works to minors and forced to register as sex offenders. Both suits continue, but the injunctions protect businesses and their customers during the litigation.

- **Violent Speech Returns to Supreme Court Docket**

In September, Media Coalition submitted an amicus brief to the Supreme Court in *Schwarzenegger v. EMA*, the Court's first consideration of whether businesses can sell or rent violent video games to minors. The law at issue, enacted by California in 2005, bars minors from buying or renting such video games and requires that the creator of the game affix an "18" label to its packaging and that retailers post information about the industry rating system in their stores. Media Coalition submitted the primary brief representing content providers and retailers, which argued that the First Amendment does not allow restrictions on media with violent content and that upholding the law could lead to censorship of similar content in other media. The brief emphasized that threat with a list of books that are frequently challenged in schools and libraries due to their violent themes. Justice Scalia drew from those examples when he asked California's deputy attorney general whether the state would criminalize classic but brutal literature like *Grimm's Fairy Tales*. The case was argued before the Supreme Court in November and should be decided by the end of the term.

As 2010 proved, the battle for free speech does not end with a successful challenge to an Internet censorship law or a sweeping Supreme Court decision affirming the breadth of the First Amendment's speech protections. The effort to preserve the robust free speech protections enjoyed by mainstream media continues. Even after the victories of 2010, the challenges in Alaska and Massachusetts will continue into 2011, and legislators across the nation have introduced numerous bills to restrict many different types of speech in all kinds of media – from allowing lawsuits against travel books in Hawaii and Internet restrictions in Arkansas to a ban on digitally altering pictures in Alabama and attempts to enforce industry ratings in Georgia, New York, and Iowa. By regularly tracking and responding to censorship efforts, Media Coalition plays a vital role in protecting its members' free speech rights. Media Coalition will continue to fill this role as new threats arise and old ones are revived in legislatures and courtrooms across America in 2011 and beyond.