

**FILED: NOVEMBER 15, 2000**

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION - LEONARD GREEN, Clerk**

**No. 99-2064**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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Cyberspace Communications, Inc.;  
Arboret; Marty Klein; AIDS  
Partnership of Michigan; Art On The  
Net; Mark Amerika Of Alt-X; Web Del  
Sol: Glad Day Bookshop, Inc; Litline;  
American Civil Liberties Union

Plaintiffs-Appellees,

JOHN ENGLER, Governor of the State  
of Michigan; JENNIFER M. GRANHOLM,  
Attorney General of the State of Michigan

Defendants-Appellants.

ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE EASTERN

DISTRICT OF MICHIGAN

**MEMORANDUM  
OPINION**

**Before: GUY and NORRIS, Circuit Judges: HOOD, District Judge.**

PER CURIAM. Plaintiffs, Cyberspace Communications, Inc.; Arbornet; Marty Klein; AIDS Partnership of Michigan; Art On The Net; Mark Amerika Of Alt-X; Web Del Sol; Glad Day Bookshop, Inc; Litline; and American Civil Liberties Union, filed suit against John Engler, Governor of the State of Michigan, challenging the constitutionality of 1999 Mich. Pub. Act 33, and seeking to enjoin its enforcement. The Act amended an existing statutory prohibition against distribution, and by replacing reference to “obscene matter” with “sexually explicit matter.” The district court granted a preliminary injunction enjoining enforcement of 1999 Mich. Pub. Act 33.

In the course of its opinion, the district court concluded that “the act offends the guarantee of free speech in the First Amendment and is, therefore, unconstitutional.” It also appears to have decided that the Act violates the Commerce Clause. Since final conclusions on the ultimate issues involved in the lawsuit are premature and inappropriate at this stage of the district court proceedings, we assume that the district court was speaking tentatively only, in the context of viewing the likelihood of plaintiffs’ ultimate success on the merits of their claims. Indeed, the final paragraphs of the opinion speak in those terms.

Because the district court cited and relied upon opinions of the United States Supreme Court that arguably support its conclusion that plaintiffs would likely succeed on the merits of their claim, we are unable to say that the district court abused its discretion when it granted the preliminary injunction.

Accordingly, we affirm the order of the district court granting the preliminary injunction and remand this cause for further proceedings. Upon remand, the parties will be afforded the opportunity to argue the merits of plaintiffs’ claims.