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NCSF's LANDMARK LAWSUIT CHALLENGING INTERNET OBSCENITY LAW IS UPHELD

NEW YORK CITY (March 30, 2003) -- A three-judge panel for the Southern District of New York, rendered a decision on the preliminary motions by the Government and by the plaintiffs in *Nitke v. Ashcroft* (Case No. 01 Civ. 11476). The National Coalition for Sexual Freedom (NCSF), a national advocacy organization, and Barbara Nitke, an acclaimed New York City photographer with her own Web site (www.BarbaraNitke.com), filed a lawsuit in December 2001 seeking to overturn the obscenity provision of the Communications Decency Act (CDA) under which individuals and groups who operate Web sites can be prosecuted.

The panel consisting of Circuit Judge Robert D. Sack, District Judge Richard M. Berman, and District Judge Gerard E. Lynch unanimously agreed that the plaintiffs must be given an opportunity to prove that the CDA is overbroad, banning speech that is protected. The judges agreed that "local community standards" may threaten speech whose value is not understood as "serious" by an audience unfamiliar with alternative lifestyles.

The indecency provisions of the CDA were struck down by the Supreme Court in 1997, leaving in place the obscenity provision that sexually-oriented material that is "patently offensive under local community standards" is not protected by the First Amendment unless its author can prove its "redeeming social value." In the May 13, 2002, decision by the U.S. Supreme Court in *Ashcroft v. ACLU*, a majority of the Justices stated that the application of local community standards to online materials could deprive citizens of their rights to free speech by allowing the most puritanical communities to enforce their own standards on the entire nation.

"The First Amendment does not allow any one locality to impose its morality on the nation," said constitutional scholar and author John Wirenius, legal counsel for NCSF and a partner in Leeds Morelli & Brown, P.C. "Local community definitions of what is obscene vary dramatically. This CDA challenge will ensure that the Internet is not transformed from a free-ranging discussion into a restrictive forum in which the only speech allowed is inoffensive under the most prudish standard."

"The CDA statute could deprive artists and educators of one of the last venues we have for displaying, discussing, and selling sexually frank material," said Barbara Nitke, President of the Camera Club of New York and faculty member of New York School of Visual Arts. "I live in fear of prosecution because my photographs could be deemed obscene in some communities."

"Many NCSF members maintain websites addressing sexual topics that could

potentially be targeted for prosecution under the CDA," said Susan Wright, NCSF spokesperson.

Experts and civil liberties groups have expressed their support of overturning the CDA in Amicus Briefs, including the Electronic Frontier Foundation, Society for the Scientific Study of Sexuality, the Triangle Foundation, and the National Center for Lesbian Rights. Affidavits were also submitted by: Arthur Danto, Johnsonian Professor Emeritus at Columbia University; Internet philosopher Howard Rheingold; free speech activist and adult filmmaker Candida Royalle; and Robert and Carleen Thomas, who were convicted in 1994 under the community standards of Memphis, TN for Internet postings that were deemed inoffensive in their local Northern California community.

The full text of the complaint can be found at:

<http://www.ncsfreedom.org/cda.htm>

National Coalition for Sexual Freedom (NCSF) is a national organization committed to creating a political, legal, and social environment in the United States that advances equal rights of consenting adults who practice forms of alternative sexual expression. NCSF is primarily focused on the rights of consenting adults in the SM-leather-fetish, swing, and polyamory communities, who often face discrimination because of their sexual expression.

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