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National Coalition for Sexual Freedom

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Communications Decency Act (CDA) Lawsuit

NEW YORK CITY (July 26, 2005) A three judge panel has made a decision in the National Coalition for Sexual Freedom and acclaimed photographer Barbara Nitke's challenge against the Communications Decency Act (CDA) which criminalizes free speech on the Internet. According to the court, the plaintiffs presented "insufficient evidence" to support findings that the variation in community standards is substantial enough that protected speech is inhibited by the CDA.

According to the decision handed down by the Federal District Court for the Southern District of NY, in case #01 CIV 11476 (RMB): "The plaintiffs have offered evidence that there are at least 1.4 million Websites that mention "BDSM" (bondage, discipline, and sadomasochism)... The plaintiffs have submitted images and written works that represent material posted to a small number of Websites, that they contend may be considered obscene in some communities but not in others. These examples provide us with an insufficient basis upon which to make a finding as to the total amount of speech that is protected in some communities but that is prohibited by the CDA because it is obscene in other communities."

The court agreed that NCSF members and Barbara Nitke are genuinely at risk of prosecution under the CDA and that their speech has in fact been inhibited. According to the decision: "Nitke's fear that the CDA will be enforced against her is actual and well-founded. She has submitted objective evidence to substantiate the claim that she has been deterred from exercising her free-speech rights, and this fear is based on a reasonable interpretation of the CDA... NCSF has submitted objective evidence that one of its member organizations, TES, has been deterred from exercising its free-speech rights and that this deterrence is based on a well-founded fear that the CDA would be enforced against it."

John Wirenius, attorney for the plaintiffs, says, "We are disappointed that the court did not act on the uncontradicted evidence we presented that artists and citizens who are sexual minorities are disproportionately censored by the Government's ability to pick its own forum and standard for obscenity cases. The government brings obscenity cases where it knows it can get convictions."

"I am appalled by this decision," says co-plaintiff Barbara Nitke, a fine art photographer who explores sexual relationships in her work. "It is vitally important to keep the Internet free for education, the arts and open discussion on sexual topics. This law is a form of unfair censorship that must be stopped. I am absolutely going to appeal this."

NCSF challenged against the CDA law because personal websites and chat groups that include discussions and images of SM, swinging or polyamory are at risk of prosecution. Membership groups that maintain educational websites about adult sexuality are also at risk.

Under the Bush administration, nearly 40 prosecutors, as well as investigators

and FBI agents are spending millions of dollars to bring anti-obscenity cases to courthouses across the country for the first time in 10 years. Obscenity is judged by "local community standards," which means that a religious political extremist in the Midwest can claim that a website from San Francisco is obscene and therefore illegal.

NCSF is dedicated to proactively challenging the rise in obscenity and pornography prosecutions, including filing an Amicus Briefs in support of Extreme Associates, and supporting the Free Speech Coalition's injunction filed against the expanded record-keeping provisions of 18 U.S.C. § 2257.

National Coalition for Sexual Freedom - www.ncsfreedom.org
Barbara Nitke - www.barbaranitke.com

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A project of NCSF

The National Coalition for Sexual Freedom 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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