

LEGAL



BRIEFS

Alabama Ban on Sex Toy Sales Found Unconstitutional

BY SUSAN MURRAY AND BETH ROBINSON

Does the United States Constitution protect the rights of citizens to sell (or use) 'sexual devices'?

That's essentially the question that the federal district court in Alabama confronted this past March in the case of *Williams v. Pryor*. In that case, the court reviewed an Alabama law criminalizing the sale of "any device designed or marketed as primarily useful for the stimulation of human genital organs." Con-

cluding that the ban "bears no reasonable, rational relation to a legitimate state interest," the court concluded that the law was unconstitutional.

We should note that this was decidedly not a 'gay' case. Four of the plaintiffs challenging the law were heterosexual women, and the other two were businesses who catered to women. Nonetheless, the case involves state intrusion into citizens' sexual privacy, and thus has implications for all citizens, gay or straight.

The federal court in Alabama did not conclude that the fundamental right to privacy protected

citizens' sexual autonomy; the United States Supreme Court foreclosed such a conclusion with its infamous decision in the 1986 case of *Bowers v. Hardwick*. (Although *Hardwick* is still on the books, it has been dramatically weakened, if not altogether overruled, by the United States Supreme Court's more recent decision in the Colorado Amendment 2 case.)

However, the Alabama court did conclude that the law was far broader than necessary to protect children and "unwilling adults" from exposure to displays of "obscene material." Moreover, the court concluded that the sexual devices in question did not appeal to "prurient interests" and were therefore not obscene. The court noted that "prurient interests should not be equated with normal, healthy interests in sex," and acknowledged that in many cases of sexual dysfunction, such devices have a therapeutic value.

Most interestingly, the court struck down the statute in part because it interfered with the use of such devices by married couples who sometimes use the devices to aid their marital relationships.

The Alabama court's decision leaves five states with laws on the books banning the distribution of sexual devices: Georgia, Louisiana, Mississippi, Texas, and Virginia. ▼

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. If you'd like our column to cover a particular legal issue of interest to our community, please write OITM or call us at 388-6356.

Hate Crimes

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hate crimes measure in that chamber. They include Sens. Edward M. Kennedy, D-Mass., Gordon Smith, R-Ore.; Charles Schumer, D-N.Y.; Ron Wyden, D-Ore.; Patrick Leahy, D-Vt.; James Jeffords, R-Vt.; and Dianne Feinstein, D-Calif. In a July 20 "Dear Colleague" letter, the senators said: "Hate crimes are uniquely destructive and divisive. They injure not only the victim, but the entire community and sometimes the entire country."

The ultimate fate of the hate crime language is unclear because the House version of the Justice spending bill does not include it. A final verdict probably won't be known until fall, when the overall spending bill is likely to become part of expected budget bargaining between President Clinton and lawmakers.

"With strong administration backing and bipartisan support in both houses of Congress, we expect to be in a strong position in the conference committee to ensure final passage of the Hate Crimes Prevention Act," said Winnie Stachelberg, the Human Rights Campaign's political director.

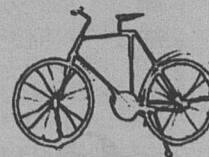
Also approved was a second, narrower bill by Sen. Orrin Hatch, R-Utah, that would expand federal jurisdiction to hate crimes committed after the crossing of state lines. It would also allow federal aid to state and local law enforcement officials prosecuting hate crimes. It would not expand coverage beyond crimes based on race, color, religion or national origin, which are already covered by federal hate crime law.

"In light of recent brutal anti-gay murders and statistics that show an increase in violent assaults against gay Americans, it is highly irresponsible to exclude sexual orientation from a proposal to combat hate violence," said HRC Political Director Winnie Stachelberg. "I do not understand how Senator Hatch could sit through a hearing and listen to Judy Shepard speak of her murdered gay son, and then offer legislation that does not address the problem of hate violence against gay people."

Under current law, the federal government can prosecute hate-motivated violence if the victim was on federal property or engaged in a federally protected activity such as going to school. ▼

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