Rideout v. Gardner

Closed
Expands Expression

MODE OF EXPRESSION
Electronic / Internet-based Communication

DATE OF DECISION
August 11, 2015

OUTCOME
Law or Action Overturned or Deemed Unconstitutional

CASE NUMBER
14-cv-489-PB

REGION & COUNTRY
United States, North America

JUDICIAL BODY
Appellate Court

TYPE OF LAW
Constitutional Law

THEMES
Political Expression

TAGS
First Amendment, Censorship

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CASE ANALYSIS

Case Summary and Outcome

New Hampshire passed a law that makes it unlawful for voters to take and disclose photos of their voting ballots to show others how they have voted. Three voters investigated under this law challenged it on First Amendment grounds. The court ruled that the new law is a content-based restriction on speech that cannot survive the standard of strict scrutiny.

Facts

In 2014, an existing law that forbid voters from disclosing their voter ballots was amended. The amended law, the New Hampshire Revised Statute § 659:35, penalized with fines the taking and sharing of digital images or photographs of marked voter ballots and sharing those images on social media or in other public ways.

The amendment aimed to curb buying votes. The court noted that New Hampshire did not offer evidence showing that vote buying or voter coercion occurred in New Hampshire since the late 1800s.

The plaintiffs in this case are three of the four people the Attorney General began to investigate in an alleged violation of the statute.

Leon Rideout, the first plaintiff, photographed his marked voter ballot and posted in on Facebook and Twitter. Andrew Langlois, the second plaintiff, wrote the name of his dead dog on his ballot, took a picture of it and shared in on Facebook. Brandon Ross, the third plaintiff, took a photo of his marked voter ballot and posted in on Facebook with a phrase “Come at me bro,” as he was aware of the amended law.

Decision Overview

Honorable Judge Paul Barbadoro, of the New Hamshire U.S. District Court, wrote the memorandum and order. The Court first ruled on whether the restriction on speech was content based or content neutral. The distinction is important because, content based speech must withstand higher scrutiny. Applying precedent from Reed v. Town of Gilbert, 135 S. Ct. 2218

(2015), the Court ruled that the amended law is content based because it restricts speech on the basis of its subject matter. The Court dismissed the state's defense that a ballot is a non-public forum and thus, strict scrutiny should not be applied. To the Court, the argument was flawed because the law did not restrict speech on the ballot, but the public dissemination of the ballot.

To withstand strict scrutiny, a law must further a compelling interest and be narrowly tailored to achieve that interest. For an interest to be compelling, it must address an actual problem. New Hampshire does not have a problem with voter buying or other voter fraud, so no problem exists that the law alleges to address.

DECISION DIRECTION

GLOBAL PERSPECTIVE

CASE SIGNIFICANCE

OFFICIAL CASE DOCUMENTS

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