

Written Testimony of the Woodhull Freedom Federation

Submitted to the Subcommittee on Constitution, Civil Rights and Property Rights of
the Judiciary Committee of the United States Senate March 16, 2005

The Woodhull Freedom Federation (WFF) is an international advocacy organization whose purpose is to affirm sexual freedom as a fundamental human right. WFF focuses on building a sexual freedom movement and changing antiquated and unjust sex laws.

The Woodhull Freedom Federation is deeply concerned that this Subcommittee has proceeded to hearing without inviting the participation of ordinary American citizens who purchase, read, and view adult-themed expressive materials. Regulation without democratic dialogue results in flawed legislation that often falls short of achieving its legitimate objectives and risks invalidation under our Constitution.

The Federation believes that it is fundamental to a free and democratic society that adults choose for themselves what they say, hear, read and see. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." Moreover, the government's "obligation is to define the liberty of all, not to mandate [its] own moral code." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833, 847 and 850 (1992).

Obscenity prosecutions pose dangerous threats to adult rights to obtain sexually-oriented expressive materials. It is a well-settled proposition of our American constitutional law that all forms of expression, including those with sexual themes, is presumed protected by the First Amendment. We recognize that the courts have also held that material fitting the strict legal definition of obscenity is not so protected.

But no given work can be deemed to be legally obscene until after the government has proven that it falls within the constitutionally required definition, beyond a reasonable doubt; this is the standard demanded in criminal cases by fundamental law.

Child pornography laws, federal and state, are very severe. Child pornography is regularly, vigorously, and consistently prosecuted throughout the United States, as it should be. The reason this prosecution is so successful and consistent is that child pornography laws are well-defined and carefully targeted to address a specific social ill.

Obscenity laws, in direct contrast to child pornography laws, are virtually standardless. Citizens should not fear prosecution merely for possessing lawful, sexually expressive materials. As laws imposing a "moral standard" on all citizens, obscenity prosecutions extend to the punishment of sexual expression that occurs entirely between consenting adults. As a result, they lend themselves to selective enforcement to punish persons whose sexual conduct is legal and private simply because that conduct is viewed with disdain by government officials.

Whether in the marketplace of goods or in the marketplace of ideas, individuals in a free society retain the right to select those goods or ideas which have value to them. Neither individuals nor government should restrict that right by imposing their moral preferences upon others. Thus those who would avoid sexually oriented expression altogether cannot prevent others from reading or seeing it.

Likewise, those who enjoy such expression and find it worthwhile must observe the rule of consent, and not expose it to the unwilling.

The decision in the *Extreme Associates* case expressly protects children and unwilling exposed adults from obscene sexual expression. (*United States v. Extreme Associates, Inc.*, Cr. No. 03-0203, 20 January 2005

<http://news.findlaw.com/hdocs/docs/conlaw/usextremeassoc012005opn.pdf>)

Had that case involved either minors or non-consenting adults, it would not have been dismissed.

We think that our laws and traditions show an emerging awareness that "liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex." *Lawrence v. Texas*. Consensual sexual expression is a fundamental human right, constitutionally protected as one of the personal and private liberties of American citizens. Government cannot and must not impose its own moral code on expressive materials containing sexual content, even where some may find the content personally objectionable.

Respectfully submitted,

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