Bigelow v. Virginia

421 U.S. 809 (1975)

Country: United States
Region: Americas
Year: 1975
Court: Supreme Court
Health Topics: Health care and health services, Sexual and reproductive health
Human Rights: Freedom of expression

Facts

Appellant Bigelow was the managing editor of a newspaper. An edition of the paper, under which appellant had direct responsibility, contained an advertisement for abortion services summarized by the Court as follows:
[T]he advertisement announced that the Women's Pavilion of New York City would help women with unwanted pregnancies to obtain "immediate placement in accredited hospitals and clinics at low cost" and would "make all arrangements" on a "strictly confidential" basis; that it offered "information and counseling"; that it gave the organization's address and telephone numbers; and that it stated that abortions "are now legal in New York" and there "are no residency requirements." Although the advertisement did not contain the name of any licensed physician, the "placement" to which it referred was to "accredited hospitals and clinics." Appellant was convicted for violating Virginia statute Â§ 18.1-63 (1960), which made it a misdemeanor to â€œencourage or prompt the procuring of an abortionâ€• by, among other things, the sale or circulation of any publication.

The Supreme Court of Virginia affirmed the conviction, rejecting Appellantâ€™s First Amendment claim. The case was remanded back to the Supreme Court of Virginia by the Supreme Court of the United States in light of the decisions in Roe v. Wade, U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973). The conviction was reaffirmed by the Supreme Court of Virginia on each reconsideration but without further oral argument. Bigelow again appealed to the U.S. Supreme Court.

Decision and Reasoning

The Court examined whether the Appellant had standing to challenge the Virginia statute on First Amendment grounds as facially overbroad. The Court held that the Bigelow had standing regardless of whether his own conduct could have been regulated by a more narrowly drawn statute because of â€œthe danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.â€•

The Court then examined whether commercial advertising, as a form of speech, was entitled to First Amendment protection. The Court held that the Virginia courts erred in their assumptions that commercial advertising was not entitled to First Amendment protection and that Appellant had no legitimate First Amendment interest.

Paid commercial advertisements and First Amendment guarantees of speech and press

The Court cited Pittsburgh Press Co. v. Human Rel. Commâ€™n, 413 U.S. 376 (1973), which reaffirmed the principle that commercial advertising enjoyed â€œa degree of First Amendment protection.â€• However, the Court noted that â€œadvertising, like all public expression, may be subject to reasonable regulation that serv[ed] a legitimate public interest.â€• The Court added that regulating illegal commercial activity would constitute a â€œvalid limitation on economic activity,â€• negating any First Amendment interest.

Legitimacy of Appellantâ€™s First Amendment interest

The Court held that, unlike in Pittsburgh Press, the advertisement in this case â€œdid more than simply propose a commercial transactionâ€•; the advertisement in Bigelowâ€™s paper â€œcontained factual material of clear public interest.â€• The Court held that statements such as â€œabortions are now legal in New Yorkâ€• and â€œthere are n residency requirementsâ€• involved the exercise of â€œthe freedom of communicating information and

disseminating opinion.â€• Thus appellantâ€™s First Amendment interests â€œcoincided with those of the general p

The Court then examined whether the statute was in violation of Appellantâ€™s First Amendment rights. The Court weighed Bigelowâ€™s First Amendment interests against the interests of the State and held as follows:

State interests

The Court recognized the â€œlegitimate State interest in maintaining the quality of medical care provided within its borders.â€• However, the Virginia statute was â€œdirected at the publishing of informative material relating to services offered in another Stateâ€• and was not directed towards advertising or its impact on the quality of medical services under Virginiaâ€™s authority or power to regulate.

Appellantâ€™s First Amendment interests

The Court held that although the advertiserâ€™s practices, though legal, could potentially be unfavorable to the public interest, this would not justify effectively â€œadvancing an interest in shielding [Virginiaâ€™s] citizens from information about activities outside [its] borders.â€•

The Court held that Appellantâ€™s First Amendment interests were strengthened because he was the publisher and editor of a newspaper and not a commercial advertiser. The Court cautioned that if the statuteâ€™s application were upheld, Virginia and other States â€œmight exert the power sought here over a wide variety of national publications or interstate newspapersâ€• carrying similar advertisements, which â€œwould impair, perhaps severely, their proper functioning.â€•

Decision Excerpts

â€œViewed in its entirety, the advertisement conveyed information of potential interest and value to a diverse audienceâ€”not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another State and its development, and to readers seeking reform in Virginia. The mere existence of the Women's Pavilion in New York City, with the possibility of its being typical of other organizations there, and the availability of the services offered, were not unnewsworthy. Also, the activity advertised pertained to constitutional interests. See Roe v. Wade, 410 U. S. 113 (1973), and Doe v. Bolton, 410 U. S. 179 (1973). Thus, in this case, appellant's First Amendment interests coincided with the constitutional interests of the general public.â€• 421 U.S., p. 822.

â€œA State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State. It may seek to disseminate information so as to enable its citizens to make better informed decisions when they leave. But it may not, under the guise of exercising internal police powers, bar a citizen of another State from disseminating information about an activity that is legal in that State.â€• 421 U.S., pp. 824 - 825.

â€œAdvertising, like all public expression, may be subject to reasonable regulation that serves a legitimate public interest. See Pittsburgh Press Co. v. Human Rel. Comm'n, supra; Lehman v. City of Shaker Heights, 418 U. S. 298 (1974). To the extent that commercial activity is subject to regulation, the relationship of speech to that activity may be one factor, among others, to be considered in weighing the First Amendment interest against the governmental interest alleged. Advertising is not thereby stripped of all First Amendment protection. The relationship of speech to the marketplace of products or of services does not make it valueless in the marketplace of ideas.â€• 421 U.S., p. 826.