

DA 8-31-93

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FILED

SID J. WHITE

OCT 26 1993

IN THE SUPREME COURT OF FLORIDA
Case No. 81,905

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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 OPERATION RESCUE, et al.,)
)
 Appellants,)
)
 v.)
)
 WOMEN'S HEALTH CENTER, INC., et al.,)
)
 Appellees.)
 -----X

On certification from the
Fifth District Court of Appeal

SUPPLEMENTAL BRIEF OF OPERATION RESCUE, PATRICK MAHONEY,
RANDALL TERRY, AND BRUCE CADLE (RESPONDENTS IN CIRCUIT COURT,
APPELLANTS IN DISTRICT COURT OF APPEAL)

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ARGUMENT

In Cheffer, the Eleventh Circuit squarely held that the same injunction now before this Court is, as a matter of federal law, viewpoint-based. This holding necessitates the conclusion that the speech-restrictive portions of the injunction violate the First Amendment.

The Cheffer court ruled that the present injunction constitutes "a viewpoint-based restriction operating in a traditional public forum," slip op. at 12 (1993 WL 416820 at * 5). As the court explained,

That the speech restrictions at issue here are viewpoint-based cannot seriously be doubted. The order enjoins

Operation Rescue, Operation Rescue America, Operation Goliath, their officers, agents, members, employees and servants, and Ed Martin, Bruce Cadle, Pat Mahoney, Randall Terry, Judy Madsen, and Shirley Hobbs, and all persons acting in concert or participation with them or on their behalf

Such a restriction is no more viewpoint-neutral than one restricting the speech of "the Republican Party, and state Republican Party, George Bush, Bob Dole, Jack Kemp and all persons acting in concert or participation with them or on their behalf." The practical effect of this section of the injunction was to assure that while "pro-life" speakers would be arrested, "pro-choice" demonstrators would not.

Id. at 13-14 (1993 WL 416820 at * 6) (footnotes omitted).

Once it is established that the injunction imposes a viewpoint-based restriction on expression, it follows that the restrictions on speech here are unconstitutional. As the United States Supreme Court has recently reiterated, "The principle that has emerged from our cases is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." Lamb's Chapel v.

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INTRODUCTORY NOTE

This brief is filed on behalf of a separately represented group of parties (Operation Rescue, et al.) in the same litigation now before this Court. These parties, like the appellants before this court, were respondents in the circuit court. These parties filed a separate appeal (No. 93-01149 in the Fifth District Court of Appeal) and filed a separate motion for certification to this Court. (The court of appeal has not yet acted on that motion.) The decision of this Court in the present case will directly control the disposition of the case against these parties. Therefore, to protect their rights and interests as parties to the present litigation, these parties previously filed, with leave of this Court, a brief on the merits of the appeal before this Court. See Brief of Operation Rescue et al. These parties now file the present supplemental brief to clarify the impact, on this appeal, of the decision of the U.S. Court of Appeals for the Eleventh Circuit in the case of Cheffer v. McGregor, No. 93-2407 (11th Cir. Oct. 20, 1993) (1993 WL 416820). (A copy of this decision is attached.)

Center Moriches Union Free School Dist., 113 S. Ct. 2141, 2147-48 (1993) (internal quotation marks and citation omitted).

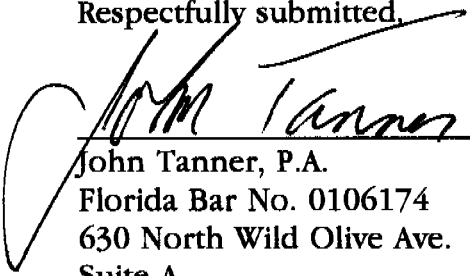
The unconstitutionality of viewpoint-based restrictions on speech holds true even in nonpublic forum property. Id. at 2147. This bedrock principle of free speech, then, necessarily applies with even greater force in such traditional public fora as the public streets and sidewalks at issue in this case.

CONCLUSION

That the injunction at issue restricts classic expressive activity, such as picketing, leafletting, and even pure verbal speech, is incontestable. See Amended Permanent Injunction ¶¶ (3), (4), (5), (6), (9). See generally Brief of Operation Rescue et al. That this injunction is viewpoint-based is, in light of the compelling logic of the Cheffer decision, manifest. That this Court must overturn paragraphs (3), (4), (5), (6), and (9) of this injunction¹ is, therefore, inescapable.

Respectfully submitted,

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¹Furthermore, the viewpoint-based nature of this injunction impugns the constitutionality of the restrictions on even otherwise unlawful expressive activity. See R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992). The illegality of such conduct, meanwhile, undercuts any asserted "need" for its duplicative prohibition in an injunction.

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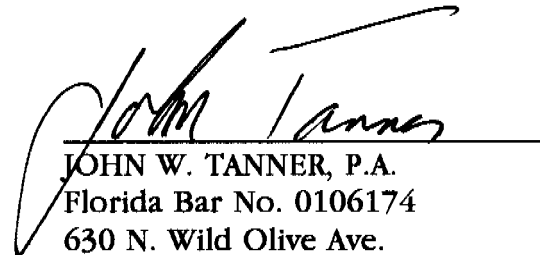
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October 25, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Talbot D'Alemberte, Esquire, 215 South Monroe Street, First Florida Bank Building, Suite 601, Tallahassee, Florida 32301; Christopher J. Weiss, Esquire, Post Office Box 633, Orlando, Florida 32802-0633; Jerri Blair, Esquire, Post Office Box 130, Tavares, Florida 32778; Kathy Patrick, Esquire, 1100 Louisiana, Suite 3400, Houston, Texas 77002; Mathew D. Staver, Esquire, 1900 Summit Tower Boulevard, Suite 540, Orlando, FL 32810, this 25th day of October, 1993.



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