

The Burger Court Opinion Writing Database

Rowan v. Post Office Department

397 U.S. 728 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

2

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Filed: 4/21/70

No. 399.—OCTOBER TERM, 1969

Recirculated: _____

Daniel Rowan, dba American
Book Service, et al.,
Appellants,
v.
United States Post Office
Department et al.

On Appeal From the
United States District
Court for the Central
District of California.

[April —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Appellants challenge the constitutionality of Title III of the Postal Revenue and Salary Act of 1967, 39 U. S. C. (Supp. IV) § 4009, under which a householder may require that a mailer remove his name from its mailing lists and stop all future mailings to the householder. The appellants are publishers, distributors, owners, and operators of mail order houses, mailing list brokers, and owners and operators of mail service organizations whose business activities are affected by the challenged statute.

A brief description of the statutory framework will facilitate our analysis of the questions raised in this appeal. Title III of the Act is entitled "Prohibition of Pandering Advertisements." It provides a procedure whereby any householder may insulate himself from advertisements which offer for sale "matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative." 39 U. S. C. § 4009 (a).¹

¹Subsection (g) provides that upon the addressee's request the order shall include the names of the addressee's minor children who reside with him and who have not attained their nineteenth birthday.

Change PP. 8, -10

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES The Chief Justice

No. 399.—OCTOBER TERM, 1969

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Daniel Rowan, dba American
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[April —, 1970]

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Change 8,110

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

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¹ Subsection (g) provides that upon the addressee's request the order shall include the names of the addressee's minor children who reside with him and who have not attained their nineteenth birthday.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 28, 1970

Re: No. 399 - Rowan v. U. S. Post Office Department

Dear Bill:

I have your note, copy to the Conference.

As to your No. (2) point, I agree that it is broader than the opinion calls for and I am willing to delete it.

As to the No. (1) sentence, I think it is essential to the opinion and if the hold^{up} doesn't mean that, it doesn't mean anything. I have already removed the statement that this is an absolute right and I cannot delete the remaining sentence.

W.E.B.
W. E. B.

Mr. Justice Brennan

cc: The Conference

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technical changes throughout
3, 4, 8, 9, 10, 11

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart ✓
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: _____

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No. 399.—OCTOBER TERM, 1969

Daniel Rowan, dba American
Book Service, et al.,
Appellants,
v.
United States Post Office
Department et al.

On Appeal From the
United States District
Court for the Central
District of California.

[May 4, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Appellants challenge the constitutionality of Title III of the Postal Revenue and Federal Salary Act of 1967, 81 Stat. 645, 39 U. S. C. § 4009 (Supp. IV, 1969), under which a householder may require that a mailer remove his name from its mailing lists and stop all future mailings to the householder. The appellants are publishers, distributors, owners, and operators of mail order houses, mailing list brokers, and owners and operators of mail service organizations whose business activities are affected by the challenged statute.

A brief description of the statutory framework will facilitate our analysis of the questions raised in this appeal. Title III of the Act is entitled "Prohibition of pandering advertisements in the mails." It provides a procedure whereby any householder may insulate himself from advertisements that offer for sale "matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative." 39 U. S. C. § 4009 (a).¹

¹ Subsection (g) provides that upon the addressee's request the order shall include the names of the addressee's minor children who reside with him and who have not attained their nineteenth birthday.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

April 11, 1970

THE CHIEF JUSTICE
U. S. SUPREME COURT
WASHINGTON, D. C.

THE TON WELLSMAN CO. v. HILBY

On your letter of April 10, 1970, regarding the reconsideration of the Court's decision in H. K.

Six costly years,

H. L. B.

The Chief Justice
all Members of the Conference

April 22, 1970

Dear Chief:

In No. 399 - Rowan v. United
States Post Office, please note that I
join your opinion.

William O. Douglas

The Chief Justice

WS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 5/11/70

No. 399.—OCTOBER TERM, 1969

Recirculated:

Daniel Rowan, dba American
Book Service, et al.,
Appellants,
v.
United States Post Office
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On Appeal From the
United States District
Court for the Central
District of California.

Dear Bill
Please
join me
WOW

[May 4, 1970]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion but add a few words. I agree that 39 U. S. C. § 4009 is constitutional insofar as it permits an *addressee* to require a mailer to remove *his* name from its mailing lists and to stop all future mailings to the addressee. As the Court notes, however, subsection (g) of § 4009 also allows an addressee to request the Postmaster General to include in any prohibitory order "the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee." In light of the broad interpretation which the Court assigns to § 4009, and see page —, *ante*, the possibility exists that parents could prevent their children, even if they are 18 years old, from receiving political, religious or other materials which the parents find offensive. In my view, a statute so construed and applied is not without constitutional difficulties. Cf. *Tinker v. Des Moines School Dist.*, 393 U. S. 503 (1969); *Ginsberg v. New York*, 390 U. S. 629 (1968). In this case, however, there is no particularized attack upon the constitutionality of subsection (g), nor, indeed, is there any indication on this record that under § 4009 (g) children in their late teens have been unwillingly deprived of the opportunity to receive materials. In these cir-

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April 22, 1970

Mr. J. M. ... U.S. Post Office Dept.

I am glad to join your opinion, which I like very much, but I have one minor suggestion. Your statement on page 10 to the effect that parents have an "absolute" right to control the reading of their children in the home makes me a little queasy. I have a distaste for absolutes and I can think of situations where a state might be able to enter the home in this realm, e.g., requiring children to read their report cards. I hope you will consider some appropriate modification of the language at this point.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 28, 1970

RE: No. 399 - Rowan v. United States Post Office Department, et al.

Dear Chief:

I would hope you would think it appropriate to delete the following sentences at page 10 of your new circulation:

(1) At the top of the page: "Nor should the citizen be at risk that offensive material addressed directly to his children gets into their hands before it can be stopped."

(2) In the next paragraph: "That the breadth of this statutory scheme enables a citizen to foreclose the power of a religious body to send him advertisements for a Bible, because he finds them objectionable, tells us no more than that unbelievers or Moslems can shield their children as in their sole discretion they consider proper."

It may be that I'd agree that parents should have this authority if we had a case presenting that question, but I'd rather not pass on that until the issue is directly before us.

If these sentences can be deleted, I am more than happy to join.

Sincerely,

Bill
W. J. B. Jr.

The Chief Justice

cc: The Conference

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SUPREME COURT OF THE UNITED STATES

No. 399.—OCTOBER TERM, 1969

Daniel Rowan, dba American
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On Appeal From the
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[May 4, 1970]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 22, 1970

No. 399 - Rowan v. Post Office Dept.

Dear Chief,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

CONFIDENTIAL

CONFIDENTIAL

Dear Chief:

Please join me in your

circulation of April 14, 1976

Sincerely,

B.R.V.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D.C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 23, 1970

Re: No. 399 - ~~Evans~~ v. Post Office Dept.

Dear Chief:

Please join me in your opinion.

Sincerely,


T.M.

The Chief Justice.

cc: The Conference