The Burger Court Opinion Writing Database

Grove Press v. Maryland Board of Censors

401 U.S. 480 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

1970 OT #63

FILE COPY

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

From: Harlan, J.

Circulated: FEB 24 1970

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

GROVE PRESS *v.* MD. STATE BD. OF CENSORS

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 905. Decided February —, 1970

MR. JUSTICE HARLAN, dissenting.

If this case involved obscenity regulation by the Federal Government, I would unhesitatingly reverse the conviction, for the reasons stated in my separate opinion in *Roth* v. *United States*, 354 U. S. 476, 496 (1957). Even in light of the much greater flexibility that I have always thought should be accorded to the States in this field, see, *e. g.*, my dissenting opinion in *Jacobellis* v. *Ohio*, 378 U. S. 184, 203 (1964), suppression of this particular film presents a borderline question. However, laying aside my own personal estimate of the film, I cannot say that Maryland has exceeded the constitutional speed limit in banning public showing of the film within its borders, and accordingly I vote to affirm the judgment below.

SUPREME COURT OF THE UNITED STATES

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

SUPREME COURT OF THE UNITED STATES

From: White, J.

October Term, 1969

Circulated: 3-5-70

GROVE PRESS, INC., ET AL. *v.* MARYLAND STATE BOARD OF CENSORS

Recirculated: _____

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 905. Decided March —, 1970

MR. JUSTICE WHITE, dissenting.

Prior decisions of this Court in effect hold that publications depicting nude figures, without more, are not obscene. In part at least those decisions rest on the application of the standards fashioned in *Roth* v. *United States*, 354 U. S. 476 (1957), and in subsequent cases, to govern the impact of the First Amendment in this area. As I understand those cases, representations or photographs of nude figures do not exceed the customary limits of candor in the community (are not patently offensive), and are therefore not obscene. To that extent, those cases were soundly decided.

But I cannot join today's summary order extending constitutional protection to motion pictures depicting sexual intercourse between human beings and placing their public exhibition beyond the reach of federal, state, or local laws. Surely the Court is not seriously suggesting that such movies are without prurient appeal and it borders on the absurd to say that they are within the customary limits of candor in the community. Nor can I imagine any redeeming social value in displaying motion pictures which include scenes of men and women engaged in coitus. The Court does not pause to explain itself, but on whatever ground it rests, the decision today demeans the great purposes of the First Amendment. Neither ideological zeal nor the specter of censorship warrants draping the mantle of the First Amendment around the motion picture at issue here. The question

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

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

GROVE PRESS, INC., ET AL. *v.* MARYLAND STATE BOARD OF CENSORS

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 905. Decided March —, 1970

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting.

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