



Office of the Attorney General
Washington, D. C. 20530

March 7, 2012

The Honorable John A. Boehner
Speaker
United States House of Representatives
Washington, DC 20515

Re: United States v. William L. Cassidy, No. 8:11-91 (D. Md. Dec. 15, 2011)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that on February 28, 2012, the Department of Justice determined not to appeal the decision of the district court in the above-referenced case. A copy of the decision is enclosed.

In 2007, defendant William Cassidy became involved with a Tibetan Buddhist sect called Kunzang Palyul Choling, but only after Cassidy had misrepresented his religious background. The sect's leader, A.Z., eventually confronted Cassidy about his actual background, and Cassidy left the group. Then, over the course of several months in 2010, Cassidy posted hundreds of vulgar and derogatory comments about A.Z. on Twitter and a personal blog. The government indicted Cassidy on one count of interstate stalking, in violation of 18 U.S.C. 2261A(2)(A). As relevant here, that provision makes it a crime to use "any interactive computer service" "to engage in a course of conduct that causes substantial emotional distress" to a person in another State, with the intent to "cause substantial emotional distress to that person."

The district court dismissed the indictment, holding that Section 2261A(2)(A) violates the First Amendment as applied in this case. The court reasoned that Cassidy's Internet postings did not fall within any category of speech unprotected by the First Amendment; that Section 2261A(2)(A) regulated Cassidy's speech based on its content and was therefore subject to strict scrutiny; and that the government lacked a compelling interest in criminalizing Cassidy's speech because, although the speech was emotionally distressing, A.Z. could have avoided it by blocking Cassidy's tweets or not reading his blog. The court further reasoned that even if the statute were analyzed as a content-neutral regulation of conduct, Section 2261A(2)(A) placed more than an incidental restriction on Cassidy's speech regarding matters of public concern. The district court emphasized that it was invalidating Section 2261A(2)(A) only as applied to the facts of this case, without addressing Cassidy's facial challenges.

The Department defended the constitutionality of Section 2261A(2)(A) in this case, and it will continue to do so in future cases to the extent consistent with recent Supreme Court precedent. In Snyder v. Phelps, 131 S. Ct. 1207, 1219 (2011), the Court held that speech in a

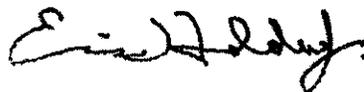
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public place on matters of public concern may not be subject to civil liability on the ground that such speech inflicts emotional distress on its listeners. Snyder involved a public protest of a funeral, and the Court recognized that Internet postings might pose distinct issues. See id. at 1214 n.1; id. at 1221 (Breyer, J., concurring). The Court also recognized that it had permitted restrictions on speech in other contexts in order to protect unwilling but captive listeners; however, the Court held that doctrine inapplicable in Snyder because the funeral attendees were largely able to avoid the speech at issue. See id. at 1220.

Accordingly, the Department may be able to defend the constitutionality of Section 2261A(2)(A) as applied in future cases, consistent with the Court's decision in Snyder. Here, however, the district court found that Cassidy's speech did not target A.Z. in a way that made the speech difficult to ignore, because A.Z. could have avoided the speech by blocking Cassidy's tweets or not reading his blog. Because the district court declined to address Cassidy's facial challenge and held that the statute was unconstitutional only as applied to these specific facts, the decision in this case does not prejudice the Department's ability to defend Section 2261A(2)(A) in appropriate future cases. Finally, to the extent that Cassidy's Internet postings threatened physical harm, the government retains the ability to prosecute those threats under Section 2261A(2)(B).

A notice of appeal was due on January 17, 2012, and the Department filed a protective notice of appeal on that date. The Department's opening brief is currently due on April 13, 2012, but the Department intends to dismiss the appeal in advance of that date. Please let me know if we can be of further assistance in this matter.

Sincerely,



Eric H. Holder, Jr.
Attorney General

Enclosure