



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

March 8, 2004

Geraldine R. Gennet  
General Counsel, House of Representatives  
219 Cannon House Office Building  
Washington, DC 20515

Re: Foretich v. United States, No. 02-5224 (D.C. Cir.)

Dear Ms. Gennett:

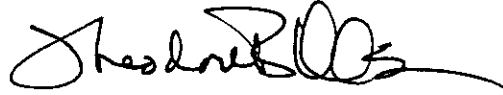
I am writing to advise you that I have determined not to petition for a writ of certiorari in the above case.

This case concerns the constitutionality of Pub. L. No. 104-25, § 350, 110 Stat. 2979, D.C. Code § 11-925. The Act provides that, after a child is 13 years old, custody or visitation rights of a party may not be granted without the child's consent if the child asserts that the party has been sexually abusive with the child. The Act applies to "any pending case involving custody over a minor child or the visitation rights of a parent of a minor child," but other terms of the Act effectively limit its application to the custody dispute between Dr. Eric Foretich and his ex-wife, Elizabeth Morgan, over their daughter, Hilary.

In 1997, Dr. Foretich filed suit challenging the constitutionality of the Act as a bill of attainder. The district court rejected that constitutional challenge, but the Court of Appeals for the District of Columbia Circuit reversed. The court held that since Dr. Foretich's daughter had reached the age of majority, most of his claimed injuries were moot. The court nonetheless held that there was a live controversy because the very existence of the Act could be understood to cause continuing injury to Dr. Foretich's reputation. Finding that the law applied only to the dispute between Dr. Foretich and Elizabeth Morgan and that the legislation imposed punishment on Dr. Foretich, the court concluded that the Act constituted an unconstitutional bill of attainder.

A petition for a writ of certiorari to review the court of appeals' judgment must be filed by March 15, 2004. Because the custody dispute that prompted the legislation is now moot, and the Act does not apply to any other known case, I have determined not to seek Supreme Court review of the court of appeals' judgment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Theodore B. Olson', with a stylized flourish at the end.

Theodore B. Olson  
Solicitor General