QUESTIONING THE CONSTITUTIONALITY OF CONTENT-BASED
RESTRICTIONS ON INTERNET SPEECH: A CASENOTE ON ASHCROFT V.
AMERICAN CIVIL LIBERTIES UNION

I. INTRODUCTION

On June 29, 2004, in Ashcroft v. American Civil Liberties Union, the United States Supreme Court held that the Child Online Protection Act (COPA) most likely violated the First Amendment by burdening the ability of adults in accessing certain protected speech. In so holding, the five-Judge majority considered alternative less restrictive means, such as filtering and blocking software that would be as effective, if not more effective, than COPA in protecting minors from harmful materials on the Internet. An analysis of the Court’s decision will demonstrate why the Court held that COPA was not the least restrictive alternative, which ultimately led the Court to hold that COPA was almost certainly unconstitutional.

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3. U.S. Const. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).
4. See generally Ashcroft, 124 S. Ct. at 2788-89.
5. Id. at 2792-94.
6. See id. at 2788-89, 2795.