

of the provision of the First Amendment that “Congress shall make *no law* ... abridging the freedom of speech, or of the press. ...” (Emphasis added.) That argument falls in light of our holding

that obscenity is not expression protected by the First Amendment. We therefore hold that the federal obscenity statute punishing the use of the mails for obscene material is a proper exercise of the postal power delegated to Congress by Art. I, § 8, cl. 7.⁷ [Footnote omitted.]

In 1973, the Supreme Court stated in *Miller v. California*:

This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles.⁸ [Footnote omitted.]

This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment.⁹



The dissenting Justices sound the alarm of repression. But, in our view, to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a “misuse of the great guarantees of free speech and free press. ...”¹⁰

The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent. ... But the public portrayal of hard-core sexual conduct for its own sake, and for the ensuing commercial gain, is a different matter.¹²

How to Fight Back Against Obscenity

- Know the law. Morality in Media’s National Obscenity Law Center has links to federal and state obscenity laws. Visit www.moralityinmedia.org.
- File a complaint about broadcast indecency with the Federal Communications Commission at



- www.fcc.gov/eb/oip.
- File a complaint for violations of Internet obscenity laws at www.obscenitycrimes.org. The website is run by Morality in Media, and each complaint it receives is reviewed and forwarded to the Department of Justice and to the complainant’s U.S. Attorney.

Footnotes:

- ¹ *Miller v. California* (1973) 413 U.S. 24.
- ² *Id.* at 25.
- ³ *Chaplinsky v. New Hampshire* (1942) 315 U.S. 571-572.
- ⁴ *Roth v. United States* (1957) 354 U.S. 481.
- ⁵ *Id.* at 483.
- ⁶ *Id.* at 484-485.
- ⁷ *Id.* at 492-493.
- ⁸ *Miller v. California* (1973) 413 U.S. 18-19.
- ⁹ *Id.* at 23.
- ¹⁰ *Id.* at 34.
- ¹¹ *Id.* at 34.
- ¹² *Id.* at 35.

Resource compiled by the Beverly LaHaye Institute, the think tank for Concerned Women for America. www.Beverlylahayeinstitute.org



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Obscenity IS NOT Protected Speech

PARENTAL DISCRETION ADVISED

Obscenity as defined by the court



Find out the criteria established by the U.S. Supreme Court to determine what is obscenity.

Obscenity verses free speech



View excerpts from several cases of how the court made it clear that obscenity is never to be considered free speech.

Fighting back against obscenity



Find out how you can make a difference in combating obscenity.

The First Amendment states, “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.”



Obscenity is a legal definition, and much of what we know as “pornography” meets the legal definition. If pornographic material meets the three criteria listed below, it is obscenity. If it is obscene, it is illegal. Many people, especially pornography producers, distributors, and viewers, continually claim that the First Amendment protects obscenity as a freedom of speech issue. The United States Supreme Court says those people are wrong.

What is Obscenity?

The Supreme Court established a standard as the basis for determining what material is obscene. The Court set that standard in a 1973 case called *Miller v. California*. It is therefore known as the “Miller test” or the “three-prong test.” If material meets all three criteria¹ in *Miller v. California*, then it is obscene:

- (a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value

The Court continued by giving some examples² of what state statutes could use to define paragraph (b) above for regulation:

- (a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated
- (b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals

United States Supreme Court Rulings

In 1942, the Supreme Court stated in *Chaplinsky v. New Hampshire*:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and

obscene. ... It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.³ [Footnotes omitted.]

In 1957, the Supreme Court stated in *Roth v. United States*:

The dispositive question is whether obscenity is utterance within the area of protected speech and press. Although this

is the first time the question has been squarely presented to this Court either under the First Amendment or under the

Fourteenth Amendment, expressions found in numerous opinions indicate that this Court has always assumed that obscenity is not protected by the freedoms of speech and press.⁴ [Footnote omitted.]

At the time of the adoption of the First Amendment, obscenity law was not as fully developed as libel law, but there is sufficiently contemporaneous evidence to show that obscenity, too, was outside the protection intended for speech and press.⁵

“... either under the First Amendment or under the Fourteenth Amendment ... this Court has always assumed that obscenity is not protected by the freedoms of speech and press.”
Roth v. United States

[Footnote omitted.]

All ideas having even the slightest redeeming social importance — unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion — have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956.⁶ [Footnotes omitted.]

Roth’s argument that the federal obscenity statute unconstitutionally encroaches upon the powers reserved by the Ninth and Tenth Amendments to the States and to

the people to punish speech and press where offensive to decency and morality is



hinged upon his contention that obscenity is expression not excepted from the sweep