

United States Courts for the Ninth Circuit



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*This summary constitutes no part of the opinion of the court.
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Planned Parenthood v. American Coalition of Life Activists,
99-35320/25/27/31

Decision Date: 5/16/02

En Banc Majority: Judge Rymer (author), joined by Chief Judge Schroeder and Judges Hawkins, Silverman, Wardlaw and Rawlinson

Dissenting: Judge Reinhardt (author), joined by Judges Kozinski, Kleinfeld and Berzon

Dissenting: Judge Kozinski (author), joined by Judges Reinhardt, O’Scannlain, Kleinfeld and Berzon

Dissenting: Judge Berzon (author), joined by Reinhardt, Kozinski and Kleinfeld, O’Scannlain joining in Part III only

Holding: The en banc panel partially affirmed District Judge Jones’s judgment following a \$100 million jury verdict for physicians and Planned Parenthood in an action alleging that the American Coalition of Life Activists violated the Freedom of Access to Clinic Entrances Act through use of "wanted"-style posters identifying physicians. The en banc panel held that the Activists’ speech, posters and list of physicians on their Internet website were not protected as "political speech" under the First Amendment, and affirmed the verdict and the district court’s injunction. Reversing in part, the en banc panel remanded to the district court for consideration of whether the punitive damages award comports with due process.

In dissent, Judge Reinhardt writes that the majority should have applied heightened scrutiny to the speech made in a political forum about issues of public concern. Judge Kozinski writes in dissent that the evidence in the record does not support a finding that the Activists threatened the plaintiffs, since neither the posters nor the website made “true threats.” In dissent, Judge Berzon would hold that special rules should be applied to examination of proscribable threats in the public protest, and under that standard, the jury verdict would have to be reversed because there was no unequivocal, unconditional and specific threat.