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FIRST AMENDMENT - MARYLAND

Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore

United States Court of Appeals, Fourth Circuit - July 3, 2013 - F.3d - 2013 WL 3336884

In suit challenging facial validity of ordinance requiring limited-service pregnancy centers to post disclaimers that they did not provide or make referrals for abortions or certain birth-control services, the District Court dismissed claims of church and archbishop for lack of standing, and granted summary judgment in favor of co-plaintiffs, permanently enjoining enforcement of ordinance on ground that it was invalid under the Free Speech Clause, and parties cross-appealed.

In an en banc opinion, the Court of Appeals held that district court erred by entering a permanent injunction without allowing city defendants discovery or adhering to the applicable summary judgment standard.

As a general proposition, summary judgment is appropriate only after adequate time for discovery; discovery is usually essential in a contested proceeding prior to summary judgment because a party asserting that a fact is genuinely disputed must support the assertion by, inter alia, citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials.

Even if strict scrutiny proved to be the applicable First Amendment standard, city was entitled to opportunity to develop evidence relevant to the compelling governmental interest and narrow tailoring issues, including, inter alia, evidence substantiating the efficacy of the ordinance in promoting public health, as well as evidence disproving the effectiveness of purported less restrictive alternatives to the ordinance's disclaimer.

Disclosure requirements aimed at misleading commercial speech need only survive rational basis scrutiny under First Amendment, by being reasonably related to the state's interest in preventing deception of consumers. Absence of the speaker's economic motivation does not preclude classification of the speech as commercial for purposes of First Amendment analysis.

Genuine issues of material fact existed as to whether limited-service pregnancy center's advertising constituted commercial speech for purposes of First Amendment analysis, precluding summary judgment in favor of pregnancy center on its claim challenging validity of ordinance requiring limited-service pregnancy centers to post disclaimers that they did not provide or make referrals for abortions or certain birth-control services.