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Case

YELP INC. v. HADEED CARPET CLEANING
(Record Number 140242)

From

The Court of Appeals of Virginia.

Counsel

Paul Alan Levy and Scott Michelman (Public Citizen Litigation Group) and Raymond D. Battocchi (Raymond D. Battocchi, P.C.) for appellant.

Raighne C. Delaney, James Bruce Davis, and Rachelle E. Hill (Bean, Kinney & Korman, P.C.) for appellee.

Assignments of Error

1. The Court of Appeals erred when, in disagreement with appellate courts in ten other states, it held that the First Amendment allows a court to enforce subpoenas to Internet providers for information identifying users who exercised their First Amendment right to speak anonymously, without any evidence that the users' speech was tortious or otherwise wrongful.
2. The Court of Appeals erred by deciding that it could not reach the First Amendment issue without first deciding that the statutory procedure for litigating subpoenas to identify anonymous speakers, Virginia Code § 8.01-407.1, is unconstitutional.
3. The Court of Appeals erred by concluding that § 8.01-407.1 reflects a legislative policy decision to reject the approach of appellate courts in other states that require evidence of wrongdoing before the First Amendment right to speak anonymously is taken away.
4. The Court of Appeals erred by stating that it need not find a compelling interest because any criticism of a commercial enterprise is commercial speech, a ruling that is without legal basis and was not raised by briefs of either party below, whose briefs cited only cases involving noncommercial speech.
5. The Court of Appeals erred by ruling that § 8.01-407.1 and the First Amendment authorized enforcement of Hadeed Carpet Cleaning's subpoena to identify seven anonymous speakers without any evidence that the gist of their criticisms of Hadeed's business practices was untrue.
6. The Court of Appeals erred by failing to consider the devastating consequences to anonymous online speech that would result from allowing disclosure of speakers' identities without evidence of tortious conduct.
7. The Court of Appeals erred by failing to consider whether there was a compelling governmental interest in infringing on the First Amendment rights of anonymous online speakers.
8. The Court of Appeals erred by applying an abuse of discretion standard in reviewing the Circuit Court's decision to enforce the subpoena, because decisions about the application of the First Amendment are subject to independent review on the record as a whole.
9. The Court of Appeals erred by holding, again contrary to rulings in the appellate courts of several sister states, that a Virginia trial court may assert subpoena jurisdiction over a non-party California company, to produce documents located in California, just because the company has a registered agent in Virginia.

Date Granted

05-29-2014

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