

Erie Times-News (PA)

Erie stripped of nudity law

December 21, 2002

Tag: 0F811D1B37236DF6

Section: News Page: 1 LISA THOMPSON
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The state's highest court has overturned Erie's precedent-setting anti-nudity ordinance and extended state constitutional protection to nude dancing as a form of free expression.

The decision in what is known as the Kandyland case is binding and final. For Pennsylvanians, it overturns the U.S. Supreme Court's March 2000 decision to uphold Erie's anti-nudity ordinance.

As a result, nude dancing is now legal in the city, and elsewhere in the state.

What is not clear yet is what that will mean practically.

Kandyland, the strip club that started the legal battle with the city ordinance in 1995, and its successor, Kandy's Dinner Theater, no longer exist. And taverns and so-called bottle clubs that feature erotic dancing are governed by Pa. Liquor Control Board regulations and new state laws that bar nudity and lewd behavior, said Assistant City Solicitor Gerald Villella.

It appears, under the ruling, the context in which nude dancing may be permissible is in exotic dance establishments that do not serve alcohol.

Villella believes the ruling does not pose a threat.

"The activity we were worried about," he said, is now regulated.

"We never like to lose a case, but I don't think it will have a real effect on the state of the law in Pennsylvania," he said.

But two others with close ties to the case said the opinion could have far-reaching consequences.

Erie lawyer Greg Karle, who argued the city's case before the U.S.

Supreme Court in 2000, said the state has now joined with Massachusetts, the only other state in the union to accord strippers the elevated protections of symbolic expression.

He asked what other types of symbolic expression may get such heightened levels of protection. "Cross burning, that's symbolic expression. Does that get accorded the same level of protection?" he said.

Erie lawyer **Philip Friedman**, who filed the appeal, said the opinion could have far-reaching consequences for other municipalities that adopted ordinances similar to Erie's after the U.S. Supreme Court decision.

"It is going to affect every (similar) ordinance in Pennsylvania," he said.

"You'll see a lot of litigation around the country. People will be going into state court to argue for freedom of expression under their state constitutions."

In principle, the court's decision is far-reaching, as well, **Friedman** said.

"The opinion is important because it is the correct decision," he said.

Under the ordinance, the city was engaging in censorship, he said.

Kandyland took the city to court to appeal the city's 1994 anti-nudity

ordinance aimed at strip clubs. The law banned nudity in public places and required performers to wear at least pasties and G-strings.

Erie County Judge George Levin struck down the law in 1995. The state Commonwealth Court overturned him. The state Supreme Court in 1998 reversed Commonwealth Court and struck down the ordinance on federal constitutional grounds. But the U.S. Supreme Court, in turn, reversed that opinion and upheld the ordinance.

Writing the main opinion, Justice Sandra Day O'Connor said nude dancing deserves some First Amendment protection as expressive conduct. But she said the nude dancing ban furthered Erie's interest in combatting the negative secondary effects associated with adult entertainment establishments, such as crime.

She said the ordinance targeted the secondary effects, not the message expressed in the dance.

After that ruling, **Friedman** still had an avenue of appeal under the state constitution, which he filed in August 2000. The case disappeared from public view and the sole remaining nude dance club closed.

But this week in a 34-page opinion issued Thursday, the state Supreme Court unveiled its findings.

The state court looked onto the dance floor and found that the expression of an erotic message deserved protection under the state's free expression provision.

Referring to the state's history of protecting free expression, it said the federal standard fell short of the state's. The city could take other steps to protect its own interests without violating the rights of nude dancers, it said.

The state court said the Erie ordinance was not "content neutral," that it was not indifferent to the activity it sought to ban but rather targeted that expression specifically. Because it sought to squelch the erotic message being expressed in nude dancing, it violated the Pennsylvania constitution's freedom of expression provision, it said.

The court explained its jurisdiction on the matter in several ways. It said federal law on the issue was unclear.

"We are left then with a circumstance where we must decide a Pennsylvania constitutional question, but the governing federal law, to which we ordinarily would look for insight and comparison, has been fluid and changing and still is not entirely clear.

"As a matter of policy, Pennsylvania citizens should not have the contours of their fundamental rights under our charter rendered uncertain, unknowable or unchangeable, while the U.S. Supreme Court struggles to articulate a standard to govern a similar federal question."

It said that the state constitution afforded more protection to the activity than did the First Amendment to the U.S. Constitution. And in such cases, the court said, the state controls.

"It is a settled principle of Pennsylvania jurisprudence that a provision of the Pennsylvania Constitution may, in appropriate circumstances, provide broader protections than are afforded by its federal counterpart."

The state constitution's provision protecting free expression is "an ancestor, not a stepchild, of the First Amendment," the court said.

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