

## **Erie Times-News (PA)**

### **U.S. SUPREME COURT TO HEAR ERIE NUDE DANCING CASE**

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BYLINE: JOHN GUERRIERO

The U.S. Supreme Court said Monday it will hear arguments in the city of Erie's attempt to reinstate a ban against totally nude dancing in public places. The ruling could affect nude clubs nationwide.

"The highest court in the land will have the final say," said City Solicitor Greg Karle, who will argue the city's case before the justices.

"Do you know how many appeals they take? Not many," Karle said. Attorneys ask the court to hear an average of 7,600 cases annually, but the justices only grant about 140 of those requests, said James Bolden, docketing clerk for the Supreme Court.

The court has not set a date for the Erie case, said Elissa Dodge, an assistant in the clerk's office. The court is next scheduled to hear oral arguments in October, but Erie's case probably wouldn't be heard until November, she said.

The court will decide how far governments can go in banning totally nude dancing in barrooms and other adults-only establishments. The case might clarify the line between protected freedom of expression and unlawful lewd behavior.

The case involves an Erie ordinance, enacted in 1994, that required exotic dancers to wear at least pasties and G-strings. The law was challenged in court by PAP's A.M., the owner of a former nude dancing club called Kandyland at 14th and State streets.

Erie County Senior Judge George Levin overturned the city's ordinance in 1995 after ruling it was unconstitutional. Commonwealth Court reversed Levin's ruling and reinstated the ordinance.

But last October, the state Supreme Court again tossed out the ordinance, saying that totally nude dancing was a constitutionally protected right. The city then asked the nation's highest court to hear the case.

Karle said the state Supreme Court erred by ignoring binding precedent in a 1991 U.S. Supreme Court decision that upheld a similar law in Indiana. In that ruling, the justices permitted states and local governments to forbid erotic dancers from appearing totally nude in barrooms and clubs.

**Philip Friedman**, the attorney who represents Pap's A.M., said his argument is that the city ordinance bans total nudity in public places, but the law doesn't apply to stage shows with nudity such as "Hair," "Oh! Calcutta!" and "Equus."

"The only difference is the message that's conveyed with that nudity. The city says it's OK to convey the message in 'Hair' and 'Equus,' but not OK to convey the (erotic) message at Kandyland,"

**Friedman** said.

**Friedman** called it discriminatory to allow nudity in more "upper crust" establishments, such as the Warner Theatre, but not at Kandyland.

Nick Panos, 72, of Harborcreek Township, said he had owned Pap's A.M. Though he's no longer in the business, Panos said he believes the case is worth pursuing on freedom of speech grounds.

"What's right is right," Panos said.

The Supreme Court's ruling could affect Kandy's Dinner Theater, 4004 Peach St., another all-nude dance club in Erie that opened on Nov. 20, 1998.

Attorney Tim Lucas, who represents Kandy's, said his client will have a strong interest in the case's outcome. Summit Township resident Joseph B. Cunningham, who owns Kandy's Dinner Theater, declined Monday to speak with a reporter.

Mary Lou McCall, one of dozens of residents who oppose Kandy's, said she was pleased, but surprised with Monday's news because the Supreme Court hears so few cases.

"Obviously, it's an issue that needs to be addressed," said McCall, an Averlon Avenue resident who lives about 220 feet from Kandy's.

"I think the First Amendment right of freedom of speech is what they've been saying right along with the dancing. It's not free speech. It's a nude pornographic act that's being performed," McCall claimed.

"I feel a community should be able to decide whether a community wants that kind of activity or not," said McCall, the mother of three daughters ages 14, 5 and 3.

**Friedman** said it's an interesting issue for the Supreme Court to decide.

"There are cases all over the country that have dealt with it. It doesn't surprise me at all that it's been granted. I've said from day one and the city has too, that it's a very close question," **Friedman** said.

**Friedman** agreed the outcome would affect Kandy's Dinner Theater.

"Sure, it would affect every nude club in the country," he said.

Neither **Friedman** nor Karle have argued before the U.S. Supreme Court. "That's the achievement of any attorney," Karle said.

"From a professional standpoint, it's a real challenge and it's a fascinating issue," he said.

The attorneys said they believe Erie attorney Andrew Conner last argued a case before the U.S. Supreme Court. Conner said that he and Erie lawyer Dan Miller argued a banking dispute in 1981 over whether a nine-month certificate of deposit amounted to a security under the federal Securities Act.

Karle said the appeal won't cost Erie taxpayers any money. A donation that the city received in 1994 will cover the expenses, he said. Karle couldn't recall who made the donation.