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We are looking for a team of page designers to design and paginate its news, sports, A&E and opinion pages. Designers do not need to be journalism majors.

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# Decency Act hearings begin

## Critics say Exon Amendment is unconstitutional

By JIM GOODWIN  
Staff Reporter

James Exon may be finished in the U.S. Senate, but a review of one of his final legislative measures — the Communications Decency Act — is just getting under way in the U.S. Supreme Court.

The court will begin hearing arguments Wednesday as to the constitutionality of the act, also known as the Exon Amendment.

The act makes it a crime, punishable by up to two years in prison and/or a \$250,000 fine, for anyone to engage in speech that is "indecent" or "patently offensive" on an "interactive computer service" that could be viewed by a minor.

But a temporary restraining order, granted by a Philadelphia federal judge seven days after the bill's enactment on Feb. 8, 1996, has prohibited the act's enforcement.

That could change this summer if the Supreme Court rules — after an anticipated three months of deliberation — in favor of the Exon Amendment.

### The road to court

The court will hear oral arguments beginning Wednesday. It will open *Reno vs. American Civil Liberties Union*, which is the federal government's appeal to a Philadelphia federal court's decision stating that the Communications Decency Act is unconstitutional.

Exon anticipated legal challenges to his amendment, and wrote into the act a direct link to the Supreme Court from federal district court level. Normally, an intermediary U.S. Court of Appeals would hear a trial before it could be appealed to the Supreme Court.

The Philadelphia case was a consolidation of two such legal challenges — *ACLU vs. Reno* and *American Library Association vs. Department of Justice* — filed against the new law within weeks of its enactment.

Altogether, 50 individuals, organizations and for-profit and not-for-profit corporations signed on as plaintiffs in the trial.

On June 12, 1996, the three judges presiding over the consolidated trial unanimously ruled in favor of those plaintiffs, finding the act unconstitutional.

The federal government filed an appeal to the decision two weeks later, paving the way for the Supreme Court showdown.

### Drawing lines

Critics like Matt LeMieux, executive director of the Nebraska chapter of the ACLU, said he hoped the objections raised by the Philadelphia trial plaintiffs will persuade Supreme Court justices to keep the original ruling intact.

"The courts can say the act is constitutional or isn't and say why. Then the legislators can go back and rewrite the original statute."

JAMES EXON  
former U.S. senator

While the decency act may have been well-intended, it also was ill-conceived and illegal, LeMieux said.

"It would be an incredible step backwards if the Exon Amendment were upheld," LeMieux said. "It's pretty simple. Go ahead and read the First Amendment: 'Congress shall make no law ...'"

Such contentions aren't new to Exon, who said he's heard them all before.

"These same types of opponents use similar arguments when the court hears other First Amendment cases," Nebraska's former senior senator said. "The attack that they make is a standard blanketed attack they always make."

"The act is aimed at protecting minors only, and leaves adults to their own vices."

Specific criticisms about the Exon Amendment have plagued the act since President Bill Clinton signed it into law as part of the Telecommunications Reform Act of 1996. The decency act's parent bill partially deregulated the telecommunications industry.

Leading critics, such as the ACLU, say the decency act is unconstitutionally over-broad and vague because it doesn't define "indecent" or "patently offensive." They also say the act's "interactive computer service" phrase legally could be construed to constitute as few as two linked computers, a likely network size for small businesses and homes.

John Bender, a University of Nebraska-Lincoln professor of communications law, said the act's indecent speech ban had no legal precedents, a fact the Supreme Court would closely study.

"The law would probably have to be narrowed," Bender said. "Historically, indecent speech has only been restricted for broadcast and minors."

LeMieux said that while the act could limit children's Internet access to pornography, as was Exon's intention, it also would eliminate legitimate topics of Internet discussion intended for adults.

Banned subjects conceivably could include sex education, gay and lesbian rights and birth control issues, LeMieux said.

"I don't see any other way you could craft this bill where the government wasn't interfering with the legitimate activities of adults," LeMieux

said. "It's outrageous."

### Backing up

Exon said the scenario is not only conceivable; it's already occurred.

He cited as proof *Sable Communications of California vs. Federal Communications Commission*, a 1989 case in which the Supreme Court ruled that a ban on offering sexually-oriented prerecorded telephone messages violated the First Amendment.

The court said the statute was unconstitutional because its denial of adult access to such messages far exceeded the compelling interest of preventing minors from being exposed to the messages.

In the FCC's favor, the court also ruled that the ban didn't unconstitutionally prohibit the interstate transmission of such "dial-a-porn" messages.

Exon said Congress gladly accepted the latter portion of the ruling, and altered the statute's other requirements to bring it into compliance with the Constitution.

Exon said he believed the Supreme Court's decision on the Communications Decency Act could net similar results, in which case his former colleagues similarly would rewrite the portions found unconstitutional.

"The courts can say the act is constitutional or isn't and say why. Then the legislators can go back and rewrite the original statute," Exon said. "The people who are challenging this law are ignoring the previous legislation preventing minors from getting to pornography."

### Minor problem

Bender said an often-overlooked compromise might exist between the decency act's supporters and opponents.

Given proper technology, gatekeeping software could limit minors' access to potentially offensive material, Bender said.

The devices — at least their prototypes — already exist in the form of blocking and filtering programs, such as CYBERSitter and SurfWatch, Bender said.

"It's conceivable that those providing potentially offensive material could 'tag' that material to block it," Bender said. "How technologically feasible that would be, I don't know, but as a requirement by law, I think it's possible."

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