

# ADDITIONAL DEVELOPMENTS—CONSTITUTIONAL LAW

## *CASHATT V. FLORIDA*

*873 So. 2d 430 (Fla. Dist. Ct. App. 2004)*

A Florida court of appeals upheld a state law criminalizing the use of the Internet to knowingly solicit underage sex, ruling that even if the law was a content based restriction, it satisfied strict scrutiny.

In 2001, Florida passed a statute criminalizing the use of the Internet to knowingly lure or solicit children to commit illegal sexual acts. Defendant Cashatt was caught attempting to set up a face-to-face meeting with a detective posing online as a fourteen-year-old boy. Cashatt pleaded *nolo contendere* to violation of the act but challenged the constitutionality of the statute. Cashatt argued that the statute was an impermissible content-based restriction on free speech, that it was overbroad and vague, and that it violated the Commerce Clause of the U.S. Constitution. The court rejected all constitutional claims and upheld the statute.

The court held that even if the statute was considered a content-based restriction on speech, it satisfied strict scrutiny, the analysis normally undertaken for such restrictions. First, the state had a compelling interest in protecting children from luring or solicitation to commit illegal actions. Second, the statute was found to be narrowly tailored, prohibiting not generally indecent or obscene content, but only communications intended to lure a child into committing illegal acts. The court further noted that the statute was not overbroad insofar as it allows consenting adults to exchange sexually oriented information, that it does not proscribe using the Internet to declare a “predilection to have sex with children,” and that it limits the act to those who “knowingly” engage in the prohibited conduct.

The court also rejected a Commerce Clause challenge to the statute, holding that the effect of the law on interstate commerce is incidental at best in comparison with the state’s strong interest in preventing harm to children.