# SUPREME COURT OF THE UNITED STATES

No. 98–678

LOS ANGELES POLICE DEPARTMENT, PETITIONER
*v.* UNITED REPORTING PUBLISHING CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[December 7, 1999]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

California Government Code §6254(f)(3) places two conditions on public access to arrestees' addresses– that the person requesting an address declare that the request is being made for one of five prescribed purposes, and that the requestor also declare that the address will not be used directly or indirectly to sell a product or service.

The District Court permanently enjoined enforcement of the statute, and the Court of Appeals affirmed, holding that the statute was facially invalid because it unduly burdens commercial speech. We hold that the statutory section in question was not subject to a "facial" challenge.

Petitioner, the Los Angeles Police Department, maintains records relating to arrestees. Respondent, United Reporting Publishing Corporation, is a private publishing service that provides the names and addresses of recently arrested individuals to its customers, who include attorneys, insurance companies, drug and alcohol counselors, and driving schools.

Before July 1, 1996, respondent received arrestees' names and addresses under the old version of §6254, which generally required state and local law enforcement agencies to make public the name, address, and occupation of every individual arrested by the agency. Cal. Govt. Code §6254(f) (West 1995). Effective July 1, 1996, the state legislature amended §6254(f) to limit the public's access to arrestees' and victims' current addresses. The amended statute provides that state and local law enforcement agencies shall make public:

> "[T]he current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator . . . except that the address of the victim of [certain crimes] shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury." Cal. Govt. Code §6254(f)(3) (West Supp. 1999).

Sections 6254(f)(1) and (2) require that state and local law enforcement agencies make public, *inter alia*, the name, occupation, and physical description, including date of birth, of every individual arrested by the agency, as well as the circumstances of the arrest.[1] Thus, amended

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[1] Section 6254(f) provides, in pertinent part:

"Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a

§6254(f) limits access only to the arrestees' addresses.

Before the effective date of the amendment, respondent sought declaratory and injunctive relief pursuant to 42 U. S. C. §1983 to hold the amendment unconstitutional under the First and Fourteenth Amendments to the United States Constitution. On the effective date of the statute, petitioner and other law enforcement agencies denied respondent access to the address information because, according to respondent, "[respondent's] employees

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related investigation:

"(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

"(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph."

could not sign section 6254(f)(3) declarations." Brief for Respondent 5. Respondent did not allege, and nothing in the record before this Court indicates, that it ever "declar[ed] under penalty of perjury" that it was requesting information for one of the prescribed purposes and that it would not use the address information to "directly or indirectly . . . sell a product or service," as would have been required by the statute. See §6254(f)(3).

Respondent then amended its complaint and sought a temporary restraining order. The District Court issued a temporary restraining order, and, a few days later, issued a preliminary injunction. Respondent then filed a motion for summary judgment, which was granted. In granting the motion, the District Court construed respondent's claim as presenting a facial challenge to amended §6254(f). *United Reporting Publishing Corp.* v. *Lungren*, 946 F. Supp. 822, 823 (SD Cal. 1996). The court held that the statute was facially invalid under the First Amendment.

The Court of Appeals affirmed the District Court's facial invalidation. *United Reporting Publishing Corp.* v. *California Highway Patrol*, 146 F. 3d 1133 (CA9 1998). The court concluded that the statute restricted commercial speech, and, as such, was entitled to "'a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values.'" *Ibid.* (quoting *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 456 (1978)). The court applied the test set out in *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 566 (1980), and found that the asserted governmental interest in protecting arrestees' privacy was substantial. But, the court held that "the numerous exceptions to §6254(f)(3) for journalistic, scholarly, political, governmental, and investigative purposes render the statute unconstitutional under the First Amendment." 146 F. 3d, at 1140. The court noted that "[h]aving one's name, crime, and address printed in the local paper is a

far greater affront to privacy than receiving a letter from an attorney, substance abuse counselor, or driving school eager to help one overcome his present difficulties (for a fee, naturally)," and thus that the exceptions "undermine and counteract" the asserted governmental interest in preserving arrestees' privacy. *Ibid.* Thus, the Court of Appeals affirmed the District Court's grant of summary judgment in favor of respondent and upheld the injunction against enforcement of §6254(f)(3). We granted certiorari. 525 U. S. 1121 (1999).

We hold that respondent was not, under our cases, entitled to prevail on a "facial attack" on §6254(f)(3).

Respondent's primary argument in the District Court and the Court of Appeals was that §6254(f)(3) was invalid on its face, and respondent maintains that position here. But we believe that our cases hold otherwise.

The traditional rule is that "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." *New York* v. *Ferber*, 458 U. S. 747, 767 (1982) (citing *Broadrick* v. *Oklahoma*, 413 U. S. 601, 610 (1973)).

Prototypical exceptions to this traditional rule are First Amendment challenges to statutes based on First Amendment overbreadth. "At least when statutes regulate or proscribe speech . . . the transcendent value to all society of constitutionally protected expression is deemed to justify allowing 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.'" *Gooding* v. *Wilson*, 405 U. S. 518, 520–521 (1972) (quoting *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965)). "This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their right for fear of criminal sanctions provided by a

statute susceptible of application to protected expression." *Gooding* v. *Wilson*, *supra*, at 520–521. See also *Thornhill* v. *Alabama*, 310 U. S. 88 (1940).

In *Gooding*, for example, the defendant was one of a group that picketed an Army headquarters building carrying signs opposing the Vietnam war. A confrontation with the police occurred, as a result of which Gooding was charged with "'using opprobrious words and abusive language . . . tending to cause a breach of the peace.'" 405 U. S., at 518-519. In *Thornhill*, the defendant was prosecuted for violation of a statute forbidding any person to "'picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise . . . .'" 310 U. S., at 91.

This is not to say that the threat of criminal prosecution is a necessary condition for the entertainment of a facial challenge. We have permitted such attacks on statutes in appropriate circumstances where no such threat was present. See, *e.g.*, *National Endowment for Arts* v. *Finley*, 524 U. S. 569 (1998) (entertaining a facial challenge to a public funding scheme); *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725 (1997) (entertaining a landowner's facial challenge to a local redevelopment plan); *Anderson* v. *Edwards*, 514 U. S. 143 (1995) (entertaining a facial challenge to a state regulation restructuring the disbursal of welfare benefits).

But the allowance of a facial overbreadth challenge to a statute is an exception to the traditional rule that "the person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." *Ferber*, 458 U. S., at 767 (citing *Broadrick*, *supra*, at 610). This general rule reflects two "cardinal principles" of our constitutional order:

the personal nature of constitutional rights and the prudential limitations on constitutional adjudication. 458 U. S, at 767. "By focusing on the factual situation before us, and similar cases necessary for development of a constitutional rule, we face 'flesh and blood' legal problems with data 'relevant and adequate to an informed judgment.'" *Id.*, at 768 (footnotes omitted).

Even though the challenge be based on the First Amendment, the overbreadth doctrine is not casually employed. "Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is 'strong medicine' and have employed it with hesitation, and then 'only as a last resort.'" *Id.*, at 769 (citing *Broadrick*, *supra*, at 613). "[F]acial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from "pure speech" toward conduct and that conduct– even if expressive– falls within the scope of otherwise valid criminal laws . . . ." 458 U. S., at 770 (quoting *Broadrick*, *supra*, at 615). See also *Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.*, 482 U. S. 569 (1987).

The Court of Appeals held that §6254(f)(3) was facially invalid under the First Amendment. Petitioner contends that the section in question is not an abridgment of anyone's right to engage in speech, be it commercial or otherwise, but simply a law regulating access to information in the hands of the police department.

We believe that, at least for purposes of facial invalidation, petitioner's view is correct. This is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses. See *Rubin* v. *Coors Brewing Co.*, 514 U. S. 476 (1995).

The California statute in question merely requires that if respondent wishes to obtain the addresses of arrestees it must qualify under the statute to do so. Respondent did not attempt to qualify and was therefore denied access to the addresses. For purposes of assessing the propriety of a facial invalidation, what we have before us is nothing more than a governmental denial of access to information in its possession. California could decide not to give out arrestee information at all without violating the First Amendment.[2] Cf. *Houchins* v. *KQED, Inc.*, 438 U. S. 1, 14 (1978).

To the extent that respondent's "facial challenge" seeks to rely on the effect of the statute on parties not before the Court– its potential customers, for example– its claim does not fit within the case law allowing courts to entertain facial challenges. No threat of prosecution, for example, see *Gooding*, or cutoff of funds, see *NEA*, hangs over their heads. They may seek access under the statute on their own just as respondent did, without incurring any burden other than the prospect that their request will be denied. Resort to a facial challenge here is not warranted because there is "no possibility that protected speech will be muted." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 380 (1977).

The Court of Appeals was therefore wrong to facially invalidate §6254(f)(3). Respondent urges several grounds as alternative bases for affirmance, but none of them were passed on by the Court of Appeals and they will remain open on remand if properly presented and preserved there.

The judgment of the Court of Appeals is accordingly

*Reversed.*

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[2]Respondent challenged the statute as a violation of equal protection under the Fourteenth Amendment, but the Court of Appeals did not pass on that challenge, nor do we.