

Appeals court upholds condom use in LA porn films

December 15 2014, by John Rogers

A Los Angeles County ordinance requiring actors in pornographic films to use condoms does not violate the porn industry's First Amendment rights of free expression, a federal appeals court ruled Monday.

The decision from a three-judge panel of the 9th U.S. Circuit Court of Appeals rejected the industry's contention that having actors use condoms would interfere with a film's fantasy element by subjecting viewers to real-world concerns like pregnancy and [sexually transmitted diseases](#).

For the First Amendment argument to apply, the court ruled, there would have to be a great likelihood that a film's audience would understand that intended message.

"Here, we agree with the district court that, whatever unique message plaintiffs might intend to convey by depicting condomless sex, it is unlikely that viewers of adult films will understand that message," said Judge Susan P. Graber, writing for the panel's majority.

The ordinance, adopted by LA County voters in 2012, was championed by the Los Angeles-based AIDS Healthcare Foundation as a means of reducing sexually transmitted diseases. The foundation's president, Michael Weinstein, hailed Monday's ruling as a "total vindication."

"The court struck down every one of their arguments," he said of the porn industry, which sued to have the measure overturned.

An industry spokeswoman did not respond to a request for comment, and it was not immediately clear if more appeals were planned.

In the past, industry officials have said using condoms in films has shown audiences don't want to see them. Officials also say the industry's own safety regulations, requiring actors be tested for venereal disease every two to four weeks, are sufficient.

In addressing that issue, the appeals [court](#) cited a 2009 letter from the Los Angeles County Department of Health stating the rate of venereal disease infection for porn actors is 20 percent, compared with only 2.4 percent for the general public.

Weinstein said he hopes the industry will continue to appeal, taking the case to the U.S. Supreme Court, so there can be a final, definitive ruling.

Meanwhile, his group continues to push for a statewide condom rule for porn [films](#).

Such a proposed law died in a Senate committee last year, and Weinstein said Monday he hopes it will be resurrected. In the meantime, he said, his organization is going forward with a petition drive to put the issue before voters if the Legislature doesn't act.

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