



Jaynes v. Commonwealth
Update: Virginia's SPAM Law Held Unconstitutional

Ruling

In its opinion dated September 12, 2008 the Virginia Supreme Court held that Virginia Code § 18.2-152.3:1 (anti-spam statute) is unconstitutionally overbroad on its face because it prohibits the anonymous transmission of all unsolicited bulk e-mails, including those containing political, religious, or other speech protected by the First Amendment of the Constitution.

Recent History

February 29, 2008: In affirming the Court of Appeals' previous decision the Virginia Supreme Court, by a 4-3 vote, held (in part) that the standing requirement for an overbreadth challenge to the anti-spam law was a procedural rule controlled by state courts (rather than federal case law tied to the First Amendment and applied to the states through the 14th Amendment). Deciding that Jaynes lacked standing under current Virginia law and procedure, the Virginia Supreme Court refused to address the First Amendment overbreadth challenge. Consequently the Court upheld Jaynes' conviction.

April 28 and May 19 2008: After reporting its opinion, the Virginia Supreme Court granted Jaynes' petition for rehearing and withdrew its prior opinion.

September 12, 2008: The Virginia Supreme Court, by a unanimous vote, reversed the decision of the Court of Appeals holding that on its face, the anti-spam statute was unconstitutionally overbroad in violation of the First Amendment.

Rationale

The Virginia Supreme Court retreated from its previous position and held that Jaynes' had standing to challenge the anti-spam statute under the First Amendment. As a result, the Virginia Supreme Court developed a more detailed analysis of the First Amendment implications and unanimously concluded that the law restricts the dissemination of protected speech in violation of the First Amendment. In its holding, the Virginia Supreme Court acknowledged that similar statutes in other states are protected from First Amendment scrutiny because they contain exceptions for non-commercial email that does not involve criminal activity, defamation, or obscene materials. In other words, similar anti-spam statutes are only applicable to unprotected commercial speech, and therefore insulated from similar First Amendment challenges.