

D03D CR210192188-S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF DANBURY
v. : AT DANBURY
SEANPAUL REYES : OCTOBER 13, 2021

**MEMORANDUM IN OPPOSITION TO SEANPAUL REYES AND
IN SUPPORT OF THE STATE OF CONNECTICUT**

“Principally relied upon are prior cases emphasizing the importance of the First Amendment guarantees to individual development and to our system of representative government, decisions requiring that official action with adverse impact on First Amendment rights be justified by a public interest that is ‘compelling’ or ‘paramount,’ and those precedents establishing the principle that justifiable governmental goals may not be achieved by unduly broad means having an unnecessary impact on protected rights of speech, press, or association.” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

“The heart of [the State’s] claim is that the burden on news gathering outweighs any public interest in obtaining the information.” *Id.*

“We do not question the significance of free speech, press, or assembly to the country’s welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated.” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

However, “it is clear that the First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability. Under prior cases, otherwise valid laws serving substantial public interests

may be enforced against the press as against others, despite the possible burden that may be imposed. The Court has emphasized that ‘[t]he publisher of a newspaper has no special immunity from the application of general laws. *He has no special privilege to invade the rights and liberties of others.*’ *Associated Press v. NLRB*, 301 U. S. 103, 132-133 (1937). It was there held that the Associated Press, a news-gathering and disseminating organization, was not exempt from the requirements of the National Labor Relations Act. The holding was reaffirmed in *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186, 192-193 (1946), where the Court rejected the claim that applying the Fair Labor Standards Act to a newspaper publishing business would abridge the freedom of press guaranteed by the First Amendment. *See also Mabee v. White Plains Publishing Co.*, 327 U. S. 178 (1946). *Associated Press v. United States*, 326 U. S. 1 (1945), similarly overruled assertions that the First Amendment precluded application of the Sherman Act to a news-gathering and disseminating organization. *Cf. Indiana Farmer's Guide Publishing Co. v. Prairie Farmer Publishing Co.*, 293 U. S. 268, 276 (1934); *Citizen Publishing Co. v. United States*, 394 U. S. 131, 139 (1969); *Lorain Journal Co. v. United States*, 342 U. S. 143, 155-156 (1951). Likewise, a newspaper may be subjected to nondiscriminatory forms of general taxation. *Grosjean v. American Press Co.*, 297 U. S. 233, 250 (1936); *Murdock v. Pennsylvania*, 319 U. S. 105, 112 (1943).” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972. (emphasis added).

“The prevailing view is that the press is not free to [gather] with impunity everything and anything it desires to [gather]. Although it may deter or regulate what is said or published, the press may not circulate knowing or reckless falsehoods damaging to private reputation without subjecting itself to liability for damages, including punitive damages, or even criminal prosecution. *See New York Times Co. v. Sullivan*, 376 U. S. 254, 684*684 279-280 (1964);

Garrison v. Louisiana, 379 U. S. 64, 74 (1964); *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 147 (1967) (opinion of Harlan, J.); *Monitor Patriot Co. v. Roy*, 401 U. S. 265, 277 (1971). A newspaper or a journalist may also be punished for contempt of court, in appropriate circumstances. *Craig v. Harney*, 331 U. S. 367, 377-378 (1947).” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

The point is that, with all due respect, freedom of the press is not an absolute right. Freedom of the press may be governed, weighed, and limited.

“It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access. . .not available to the public generally. *Zemel v. Rusk*, 381 U. S. 1, 16-17 (1965); *New York Times Co. v. United States*, 403 U. S. 713, 728-730 (1971), (STEWART, J., concurring); *Tribune Review Publishing Co. v. Thomas*, 254 F. 2d 883, 885 (CA3 1958); *In the Matter of United Press Assns. v. Valente*, 308 N. Y. 71, 77, 123 N. E. 2d 777, 778 (1954). *In Zemel v. Rusk, supra*, for example, the Court sustained the Government's refusal to validate passports to Cuba even though that restriction ‘render[ed] less than wholly free the flow of information concerning that country.’ *Id.*, at 16. The ban on travel was held constitutional, for ‘[t]he right to speak and publish does not carry with it the unrestrained right to gather information.’ *Id.*, at 17.” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

“Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal. In *Sheppard v. Maxwell*,

384 U. S. 333 (1966), for example, the Court reversed a state court conviction where the trial court failed to adopt ‘stricter rules governing the use of the courtroom by newsmen, as Sheppard’s counsel requested,’ neglected to insulate witnesses from the press, and made no ‘effort to control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides.’ *Id.*, at 358, 359. ‘[T]he trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters.’ *Id.*, at 361. *See also Estes v. Texas*, 381 U. S. 532, 539-540 (1965); *Rideau v. Louisiana*, 373 U. S. 723, 726 (1963).” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

“The media plaintiffs ask us to hold that the limitation on press interviews imposed by § 415.071 violates the freedom of the press guaranteed by the First and Fourteenth Amendments. They contend that, irrespective of what First Amendment liberties may or may not be retained by prison inmates, members of the press have a constitutional right to interview any inmate who is willing to speak with them, in the absence of an individualized determination that the particular interview might create a clear and present danger to prison security or to some other substantial interest served by the corrections system.” *Pell v. Procunier*, 417 US 817 - Supreme Court 1974.

The point is that, once again, with all due respect, freedom of the press to gather information is not an absolute right. Freedom of the press may be governed, weighed, and limited.

“A number of States have provided newsmen a statutory privilege of varying breadth, but the majority have not done so, and none has been provided by federal statute.” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972.

“We have never held that an individual's [First Amendment rights] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.” *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 US 872 - Supreme Court 1990.

“Neither are we now convinced that a virtually impenetrable constitutional shield, beyond legislative or judicial control, should be forged to protect. . .the press. A system that would be *unaccountable* to the public *would pose a threat to the citizen's justifiable expectations of privacy.*” *Branzburg v. Hayes*, 408 US 665 - Supreme Court 1972. (emphasis added).

SUBMITTED,

/s/

MARC STOUT, *Pro Se*
30 Willow Branch Place
Fredericksburg, VA 22405
(540) 370-6980
formulafocused@gmail.com