

The Burger Court Opinion Writing Database

Smith v. Daily Mail Publishing Co.

443 U.S. 97 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 18 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-482

Robert K. Smith, Etc., et al.,	} On Writ of Certiorari to the
Petitioners,	
v.	
Daily Mail Publishing Co.,	
Etc., et al.	Supreme Court of Appeals of West Virginia.

[May —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether a West Virginia statute violates the First and Fourteenth Amendments of the United States Constitution by making it a crime for a newspaper to publish, without the written approval of the juvenile court, the name of any youth charged as a juvenile offender.

(1)

The challenged West Virginia statute provides:

"[N]or shall the name of any child, in connection with any proceedings under this chapter be published in any newspaper without a written order of the court. . . ."
 W. Va. Code § 49-7-3.

and

"A person who violates . . . a provision of this chapter for which punishment has not been specifically provided, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars, or confined in jail not less than five days nor more than six months, or both such fine and imprisonment." *Id.*, at 49-7-20.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES AS MARKED:

2, 3, 4, 6, 8

From: The Chief Justice

Circulated: _____

Recirculated: MAY 23 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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for
See
1978-6-11

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

JUN 6 1979

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-482

Robert K. Smith, Etc., et al.,	} On Writ of Certiorari to the
Petitioners,	
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1979

Dear Bill:

482
Re: 78-842 Smith v. Daily Mail Publishing Co.

I do not want to drop entirely the sentence you discuss in your memorandum of June 11. How about changing it to a neutral cast:

rights created
"The important values embodied in the First Amendment must be considered along with the rights of defendants guaranteed by the Sixth Amendment. See Nebraska Press Association v. Stuart, 427 U.S. 539, 561."

Doesn't this accomplish your objective?

Regards,

WSB

Mr. Justice Brennan

5,7

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

4th DRAFT

Recirculated: JUN 13 1979

SUPREME COURT OF THE UNITED STATES

No. 78-482

Robert K. Smith, Etc., et al.,	} On Writ of Certiorari to the
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v.	
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7

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JUN 20 1979

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-482

Robert K. Smith, Etc., et al.,	} On Writ of Certiorari to the
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v.	
Daily Mail Publishing Co.,	
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 11, 1979

RE: No. 78-482 Smith v. Daily Mail Publishing Co.

Dear Chief:

I am with you in this and would be happy to join your opinion if you could see your way clear of dropping the sentence at page 7:

"The values embodied in the First Amendment are generally of comparable importance to those rights guaranteed by the Sixth Amendment. See Nebraska Press Association v. Stuart, 427 U.S. 539, 561."

Would this be possible?

Sincerely,



The Chief Justice

cc: The Conference

The Chief Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 13, 1979

RE: No. 78-482 Smith v. Daily Mail Publishing Co.

Dear Chief:

Please join me in your circulation of June 13.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1979

Re: 78-482 - Smith v. Daily Mail Publishing Co.

Dear Chief:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

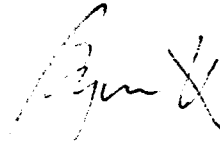
May 22, 1979

No. 78-482 - Smith v. Daily Mail Pub'l.
Company

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 20, 1979

Re: No. 78-482 - Smith v. Daily Mail Publishing Co.

Dear Chief:

Please join me.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 25, 1979

Re: No. 78-482 - Smith v. Daily Mail Publishing Co.

Dear Chief:

Please join me.

Sincerely,

H. A. B.)
by was

The Chief Justice

cc: The Conference

Q.4

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 7 JUL 1979

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Recirculated:

No. 78-482

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Petitioners,	
v.	
Daily Mail Publishing Co.,	
Etc., et al.	Supreme Court of Appeals of West Virginia.

[June —, 1979]

MR. JUSTICE REHNQUIST, concurring in the judgment.

Historically, we have viewed freedom of speech and of the press as indispensable to a free society and its government. But recognition of this proposition has not meant that the public interest in free speech and press always has prevailed over competing interests of the public. "Freedom of speech thus does not comprehend the right to speak on any subject at any time," *American Communications Assn. v. Douds*, 339 U. S. 382, 394 (1950), and "the press is not free to publish with impunity everything and anything it desires to publish." *Branzburg v. Hayes*, 408 U. S. 665, 683 (1972); see *Near v. Minnesota ex rel. Olson*, 283 U. S. 697, 708, 716 (1931). While we have shown a special solicitude for freedom of speech and of the press, we have eschewed absolutes in favor of a more delicate calculus that carefully weighs the conflicting interests to determine which demands the greater protection under the particular circumstances presented. *E. g.*, *Landmark Communications, Inc. v. Virginia*, 435 U. S. 829, 838, 843 (1978); *Nebraska Press Assn. v. Stuart*, 427 U. S. 539, 562 (1976); *American Communications Assn. v. Douds*, *supra*, at 400.

The Court does not depart from these principles today. See *ante*, at 6. Instead, it concludes that the asserted state interest is not sufficient to justify punishment of publication

Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

p.4

From: Mr. Justice Rehnquist

Circulated:

2nd DRAFT

Recirculated:

✓13 JUN 1979

SUPREME COURT OF THE UNITED STATES

No. 78-482

Robert K. Smith, Etc., et al.,
 Petitioners,
 v.
 Daily Mail Publishing Co.,
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On Writ of Certiorari to the
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Mr. Justice Brennan
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 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____
 Recirculated: 21 JUN 1979

3rd DRAFT

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

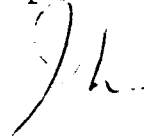
May 22, 1979

Re: 78-482 - Smith v. Daily Mail
Publishing Co.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference