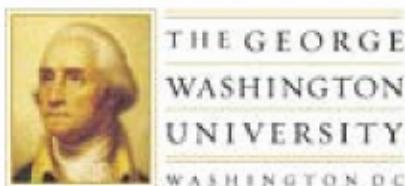


# The Burger Court Opinion Writing Database

*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.,  
Petitioners,  
*v.*  
Daily Mail Publishing Co.,  
Etc., et al. } On Writ of Certiorari to the  
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:

2nd DRAFT

Recirculated: MAY 23 1979

**SUPREME COURT OF THE UNITED STATES**

No. 78-482

Robert K. Smith, Etc., et al.,  
Petitioners,  
v.  
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See ~~see~~ ~~see~~  
July 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:

3rd DRAFT

JUN 6 1979

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

No. 78-482

Robert K. Smith, Etc., et al.,  
Petitioners,  
v.  
Daily Mail Publishing Co.,  
Etc., et al. } On Writ of Certiorari to the  
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[May —, 1979]

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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

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

5, 7

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

[June —, 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.

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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." § 49-7-20.

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:

4-100 JUN 20 1979

**SUPREME COURT OF THE UNITED STATES**

No. 78-482

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

[June —, 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.

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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." § 49-7-20.

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,

*WJ*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 12, 1979

*482*  
RE: No. 78-842 Smith v. Daily Mail Publishing Co.

Dear Chief:

I appreciate your willingness to accommodate my suggestions. May I make one last one: could "rights created by" be used in the first line for "values embodied in"? With that change, I'm happy to join.

Sincerely,

*Bill*

The Chief Justice

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

CHAMBERS OF  
JUSTICE W. 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,



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.  
1/

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: 7/29/1979

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Reincarnated;

No. 78-482

Robert K. Smith, Etc., et al.,  
Petitioners,  
*v.*  
Daily Mail Publishing Co.,  
Etc., et al. } On Writ of Certiorari to the  
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

p.4

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

From: Mr. Justice Rehnquist

Circulated:

2nd DRAFT

Recirculated:

13 May 1914

**SUPREME COURT OF THE UNITED STATES**

No. 78-482

Robert K. Smith, Etc., et al., Petitioners,  
*v.*  
Daily Mail Publishing Co., Etc., et al. } On Writ of Certiorari to the  
Supreme Court of Appeals of  
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[June —, 1979]

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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

p.5

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:

21 JUN 1979

Recirculated:

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-482

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Petitioners,  
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[June —, 1979]

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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

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