

DAVIS MOOT COURT COMPETITION.

SECOND BEST BRIEF. 1989.

SISSY PHELPS & CARY MOSELY.

IN THE
SUPREME COURT OF THE STATE OF GOTHAM
October Term, 1989

NO. 89-999

THE GOTHAM DAILY NEWS,
Petitioner,
v.
BRUCE WAYNE,
Respondent.

On Appeal from the State of Gotham
Court of Appeals

Brief for Petitioner

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Counsel for Petitioner

QUESTIONS PRESENTED

- I. Whether the Court of appeals erred in affirming the Superior Court's determination that section 10-4 of the General Statutes of the State of Gotham violates Art. I, sec. 12 of the Gotham state constitution and whether section 10-4 is valid under the fourteenth amendment of the United States Constitution?

- II. Whether the Court of Appeals erred in affirming the Superior Court's determination that section 10-5, which allows a defamation plaintiff to recover monetary damages without proof of fault, does not violate the first amendment of the United States Constitution?

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IN THE
SUPREME COURT OF THE STATE OF GOTHAM

NO. 89-999

THE GOTHAM DAILY NEWS, Petitioner,

v.

BRUCE WAYNE, Respondent.

BRIEF FOR PETITIONER

STATEMENT OF THE CASE

On January 10, 1989, The Gotham Daily News (the Petitioner in this action) published an article by reporter, Jack Napier, accusing Bruce Wayne (the respondent in this action) of sexually molesting a twelve year old girl. Bruce Wayne v. The Gotham Daily News, No. 89-999, slip op. at 1 (Goth. Ct. App. 1989). Bruce Wayne is a former Gotham Superior Court judge and was, at that time, chairman of the Governor's Task Force to Restore and Promote Family Values. Id. Wayne denied the story but resigned his position on the task force and resigned as director of three corporations. Id. at 2.

After the story was published, Wayne asked Petitioner for a retraction. Id. Petitioner chose not to retract and Wayne filed a defamation suit for damages. Id. In its answer, Petitioner elected to convert the action for damages into a declaratory judgment action pursuant to section 10-4 of the Gotham General Statutes. Id. Alternatively, Petitioner moved to dismiss the action for damages on the grounds that section 10-5 is unconstitutional because it allows the plaintiff to recover monetary damages without proving fault. Id.

Wayne moved to strike the answer asserting that Petitioner had pleaded an insufficient defense. Id. Wayne argues that section 10-4 is unconstitutional under the state and federal constitutions because it allows the defendant to force the plaintiff into a declaratory judgment action. Id.

The Superior Court granted Wayne's motion to strike, ruling that section 10-4 violated Wayne's right to a remedy

under article I, section 12 of the Gotham state constitution. Id. The Superior Court did not address the argument that section 10-4 violated the fourteenth amendment of the United States Constitution. Id. at 3. The Superior Court denied Petitioner's motion to dismiss ruling that New York Times v. Sullivan does not require a plaintiff to prove fault as a predicate to an award of monetary damages. Id.

The case then proceeded to trial as an action for monetary damages. Id. At trial, Napier did not reveal his sources and did not produce the medical records cited in his article. Id. The jury found that the article contained false facts that had injured Wayne's character and awarded Wayne \$23,000 in damages. Id.

The Court Of Appeals affirmed the Superior Court's determination that section 10-4 violates art. I, sec. 12 of the Gotham constitution. Id. at 4. The Court of Appeals did not address the question of whether the statute was constitutional under the United States Constitution. Id. at 5. The Court of Appeals also affirmed the Superior Court's determination that section 10-5 is constitutional. Id.

Petitioner appeals these ruling of the Court Of Appeals to this court. (R. 11)

SUMMARY OF THE ARGUMENT

I.

Section 10-4 of the Gotham General Statutes is constitutional under article I, section 12 of the Gotham constitution. The statute is a permissive modification of a plaintiff's remedies. It provides "a remedy by due course of law" through the judicial declaration that the defendant's statement is false. Section 10-4 is constitutional under the fourteenth amendment of the United States Constitution. The defendant's decision to seek declaratory judgment does not deprive the plaintiff of a cause of action and it does not deprive the plaintiff of employment. Finally, Gotham's interest in protecting first amendment freedoms satisfies the rational basis test of Equal Protection analysis.

II.

Section 10-5 of the Gotham General Statutes, which allows Wayne to recover monetary damages without proving fault, violates the first amendment of the United States Constitution. Section 10-5 is facially unconstitutional because it does not follow the constitutional requirements recognized by the Supreme Court in New York Times v. Sullivan and subsequent cases.

The State of Gotham can never impose liability without fault on defendants in libel actions. Section 10-5 is unconstitutional because it ignores the interests in freedom of speech and press guaranteed by the first amendment. Protection of these interests is essential to encouraging debate on questions of public concern.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE SUPERIOR COURT'S DETERMINATION THAT SECTION 10-4 VIOLATES ARTICLE I, SECTION 12 OF THE GOTHAM STATE CONSTITUTION.

A. The Declaratory Judgment Action Of Section 10-4 Is A Permissive Legislative Modification Of Common Law Remedies That Provides "A Remedy By Due Course Of Law" Through Judicial Declaration That The Defendant's Statement Is False.

Article I, section 12 of Gotham's constitution does not prohibit legislative modification of common law remedies. The Supreme Court of the United States has long held that a legislature may create new rights or abolish old ones to attain a permissible legislative objective. Silver v. Silver, 280 U.S. 117, 122 (1929).

Article I, section 12 provides: "Every person for an injury done him in his lands, goods, person or character shall have a remedy by due course of law." Goth. Const. art. I, sec. 12. Other state courts have held that similar or identical provisions permit legislative modification of common law remedies. See Keogh v. City of Bridgeport, 444 A.2d 225, 230 (Conn. 1982) (upholds statute precluding actions against fellow firemen when injured fireman also has a right to worker's compensation benefits); Jones v. State Board of Medicine, 97 Idaho 859, ___, 555 P.2d 399, 404 (1976) (upholds statute imposing cap on the amount of damages a plaintiff may recover in a malpractice action).

The Court of Appeals held in its opinion that section 10-4 deprives Wayne of a "meaningful remedy" by allowing the defendant "to force the plaintiff into declaratory judgment."

Bruce Wayne v. The Gotham Daily News, No. 89-999, slip op. at 5 (Goth. Ct. App. April 10, 1989). The court analogized the declaratory judgment provision to a Montana retraction statute that was held unconstitutional in Madison v. Yunker, 180 Mont. 54, 589 P.2d 126 (1978). The Montana statute allowed the publication of a retraction to be a complete defense in cases of unintentional libel. Madison, 589 P.2d at 128. The court below reasoned that both statutes were unconstitutional because they deprived the plaintiffs of an action for money damages. Wayne, No. 89-999 at 5.

Other courts have disagreed with Madison. In Holden v. Pioneer Broadcasting Co., 228 Or. 405, 417, 365 P.2d 845, ___ (1961), cert. denied, 370 U.S. 157 (1962), the Supreme Court of Oregon upheld the constitutionality of a statutory scheme very similar to Gotham's Libel Reform Act. The constitutional provision at issue was almost identical to article I, section 12. The Oregon statute prohibited the plaintiff in an "inadvertent libel" from recovering damages once the defendant had retracted. Holden, 228 Or. at 409. The Holden court held that the retraction remedy was an adequate substitute for money damages. Id. at 414. See also Werner v. Southern California Associated Newspapers, 35 Cal.2d 121, 216 P.2d 825 (1950) (upholding retraction statute against equal protection and due process challenges).

Other states have upheld the constitutionality of retraction statutes by interpreting the statute to allow the plaintiff the option of either demanding a retraction or seeking general

damages. See Thorson v. Albert Lea Publishing Co., 190 Minn. 200, 251 N.W. 177 (1933); Osborn v. Leach, 135 N.C. 628, 47 S.E. 811 (1904).

The Supreme Court of Arizona held its retraction statute unconstitutional. Boswell v. Phoenix Newspapers, Inc., 730 P.2d 186, 196 (Ariz. 1986). While the statutory scheme was similar to that of Madison and Holden, the language of the Arizona constitution was very different. The relevant section provided that "the right of action to recover damages for injuries shall never be abrogated." Ariz. Const. art. 18, sec. 6. Boswell, 730 P.2d at 188.

The language of Gotham's constitution does not specifically protect a defamation plaintiff's right to a damage remedy. The Gotham legislature's modification of a damage remedy into a declaratory judgment remedy does not contradict the plain language of article 1, section 12 that "every person...shall have a remedy."

Curiously, in its analysis, the Court of Appeals did not address the constitutionality of Gotham's own retraction statute. Goth. Gen. Stat. Sec. 10-2 (1988). The plain import of this section is that Respondent would not have been able to proceed with any cause of action had Petitioner published a retraction.

It was error for the Court of Appeals to hold that article I, section 12 of the Gotham constitution does not permit substitution of the declaratory judgment action for the common law damages remedy. The declaratory judgment action provides

a remedy by due course of law through judicial declaration that the defendant's statement is false and defamatory.

B. Section 10-4 Does Not Violate Due Process Under The Fourteenth Amendment Because It Does Not Deprive The Plaintiff Of A Cause Of Action And It Does Not Deprive The Plaintiff Of Employment.

To question the constitutionality of a statute under the due process clause of the United States Constitution, Petitioner must assert that he has been deprived of life, liberty or property by state action. U.S. Const. amend. XIV. Reputation is not a property or liberty interest that is encompassed within the protection of the due process clause. Paul v. Davis, 424 U.S. 693, 709 (1976).

In his concurring opinion, Judge Penguin argues that section 10-4 deprives the plaintiff of property interests in his cause of action. Wayne, No. 89-999 at 8. (Penguin, J., concurring) A cause of action is a property interest that cannot be extinguished by state error. Logan v. Zimmerman Brush Co., 455 U.S. 422, 429 (1982).

In Zimmerman Brush, the plaintiff had a short left leg. He complained to the Illinois Fair Employment Commission that he had been illegally dismissed from work because of his handicap. The plaintiff's cause of action was terminated when a commission official failed to act within the statutorily defined time limit. The statute in question gave the plaintiff a cause of action but also terminated the right. Zimmerman Brush, 455 U.S. at 425-427.

At first glance, the Zimmerman facts appear similar to

the case at bar. However, in the instant case, an action for damages is not terminated by error. The declaratory judgment action is part of a statutory scheme to create a new remedy for defamation plaintiffs. Goth. Gen. Stat. Preamble. More importantly, the action for damages does not exist as an independent cause of action. It only exists "subject to sections 2 and 4." Goth. Gen. Stat. Sec. 10-5. Unlike the plaintiff in Zimmerman, whose cause of action matured and then was terminated, Wayne's cause of action never arose because the procedures in sections 2 and 4 were not exhausted.

Judge Penguin also asserts that Wayne is deprived of a property interest in his job. Wayne, No. 89-999 at 8. Judge Penguin cites Zimmerman Brush and Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) as support for this proposition. The Supreme Court recognized, in Loudermill, that an employee who can only be dismissed "for cause" has a protected property interest in his employment. Loudermill, 470 U.S. at 501.

Property interests are defined from independent sources such as state law. Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In the instant case, Bruce Wayne had no employment interest created by state law. He was appointed to the Task Force by an individual who could presumably discharge Wayne at any time. Wayne's private employment is not an interest created by the Constitution. Id.

Respondent Wayne does not have a constitutionally protected interest in a cause of action or employment. Therefore, section

10-4 does not violate any rights protected by the due process clause of the fourteenth amendment.

C. Section 10-4 Satisfies The "Rational Basis" Test Under The Equal Protection Clause Of The Fourteenth Amendment

"The fourteenth amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others." McGowan v. Maryland, 366 U.S. 420, 425. Equal Protection is offended only if the statute's classification rests on grounds wholly irrelevant to the achievement of the state's objective. Id. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Id. at 426.

McGowan sets out the rational basis test of equal protection analysis. While the Court has also articulated a "heightened scrutiny" test and the "strict scrutiny" test, these levels of judicial review have historically been reserved for "suspect" and "quasi-suspect" classifications. See Generally Reed v. Reed, 404 U.S. 71 (1971) (gender-based classification subject to "heightened scrutiny"); McLaughlin v. Florida, 379 U.S. 184 (1964) (race classification subject to "strict scrutiny").

The rational basis test was applied by Judge Penguin in his concurrence. Wayne, No. 89-999 at 8-9. (Penguin, J., concurring) Judge Penguin stated that the legislative distinction between libel plaintiffs and all other plaintiffs is "wholly arbitrary and irrational." Id. at 9. Judge Penguin and the lower court failed to address the numerous policy considerations that exist to justify Gotham's objective in

classifying defamation plaintiffs differently from the the plaintiffs in other actions.

Harm to reputation is a difficult concept to measure. The Holden court noted: "The harm to a plaintiff is likely to be irreparable, either by way of money recovery or through retraction." Holden 228 Or. at 416.

Many plaintiffs often receive nominal amounts. See e.g. Eulo v. DeVal Aerodynamics, Inc., 47 F.R.D. 35 (E.D. Pa. 1969) (plaintiff sued for \$300,000; jury awarded six cents). The declaratory judgment action parallels an action for nominal damages without implying that the plaintiff's reputation is only worth a nominal amount.

The Gotham legislature, no doubt, considered the benefits to the plaintiff under the the damages remedy and the declaratory judgment action and selected the remedy that balanced the state and individual interests most effectively.

Judge Penguin missapplied the rational basis standard by analogizing to Quinn v. Millsap, S. Ct. 2324 (1989) Quinn applies to classification scheme that excludes property owners. That type of suspect classification is not present here.

Section 10-4 is a permissive legislative modification of common law remedies that does not violate the Gotham constitution or the fourteenth amendment.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE SUPERIOR COURT'S DETERMINATION THAT SECTION 10-5 OF THE GOTHAM GENERAL STATUTES, WHICH ALLOWS A DEFAMATION PLAINTIFF TO RECOVER MONETARY DAMAGES WITHOUT PROVING FAULT, DOES NOT VIOLATE THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

A. Section 10-5 Of The Gotham General Statutes Is Facially Unconstitutional Because It Does Not Follow The Constitutional Requirements Recognized By The Supreme Court In New York Times v. Sullivan And Subsequent Cases.

1. Bruce Wayne Is A Public Official Because He Has Assumed A Position Of Influence Over The Resolution Of Issues Which Have A Significant Impact On The General Public.

A public official cannot recover damages for defamation relating to his official conduct unless he proves the defamatory statement was made with "actual malice": with knowledge that it was false, or with reckless disregard of whether it was false or not. New York Time v. Sullivan, 376 U.S. 254, 283 (1964).

The Supreme Court has not expressed the limits of the public official category. Hutchinson v. Proxmire, 443 U.S. 111, 119 (1979). The "public official" designation at least applies to one holding a position in government of "such apparent importance that the public has an independent interest in the qualifications and performance" of the person. Rosenblatt v. Baer, 383 U.S. 75, 86 (1965) The Court in Rosenblatt noted that the definition of "public official" includes persons in a position "significantly to influence the resolution" of issues which affect the public. Id. at 85.

The public official doctrine applies if the statements about a person are "broadcast within the official's jurisdiction" and a

large part of the population would recognize his public status from his name alone. Buffalino v. Associated Press, 692 F.2d 266, 274 (2d Cir. 1982).

As chairman of the Task Force to Restore and Promote Family Values, Bruce Wayne will report the task force's findings to the Governor. Policymakers engage in areas of "apparent importance" that involve public interests. Kassel v. Gannett, 875 F.2d 935, 939 (1st Cir. 1989). Wayne's report will have at least an impact on "values" policy that may go into effect as legislation. Bruce Wayne thus falls within the boundaries of the "public official" definition noted in Rosenblatt because Wayne will have a significant impact on governmental policy.

2. If The Court Does Not Consider Wayne A Public Official, It Should Recognize His Status As A Public Figure.

A public figure who thrusts himself into a controversy or is involved in activities of interest to the public must prove "actual malice" in order to recover damages. Curtis Publishing Co. v. Butts, 388 U.S. 130, 155 (1967).

A person is a public figure if there is "clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society." Gertz v. Robert Welch, Inc., 418 U.S. 323, 352 (1974). Public figures assume a special prominence in resolving public issues, subject themselves to the risk of defamatory comment and have access to channels of rebuttal. Id. at 344.

Judges are necessarily involved in public affairs and as a result they obtain a certain notoriety. A judge is a public

figure required to show actual malice even if the libelous statements relate to the "judge's private life and did not concern performance of his official duties." Harris v. Plain Dealer Publishing Co., 40 Ohio App. 3d 127, 129, 532 N.E.2d 192, 194 (1988) (publication alleging judge beat his wife frequently).

Wayne has voluntarily put himself in a position to determine questions of "values" and has assumed the risk of bad press, a "necessary consequence of that involvement in public affairs." Gertz, 418 U.S. at 344. As task force chairman, Wayne has access to the media in order to make his findings known. In assuming the position, Wayne has invited, "attention and comment" and should expect to suffer some relinquishment in the interest of his good name. Gertz, 418 U.S. at 345, 351. The Court should examine the risk of public scrutiny to which Wayne exposed himself by voluntarily putting himself in the public eye where he will have to defend his actions. See Scottsdale Publishing, Inc. v. Superior Court, 159 Ariz. 72, 79, 764 P.2d 1131, 1138, (Ariz. Ct. App. 1988). The Court should recognize Wayne's status as a public figure.

3. If The Court Considers Wayne A Private Individual,
The State Of Gotham Still Cannot Impose Liability
Without Fault.

When a newspaper publishes allegedly defamatory speech of public concern, the first amendment requires that even a private figure must show the newspaper was at fault and that the statements at issue are false in order to recover damages. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 766, 776 (1986).

When the plaintiff is a private individual, Gertz provides

adequate safeguards for the press by requiring some type of fault. Time, Inc. v. Firestone, 424 U.S. 448, 458 (1976). When a private person is defamed by a statement deemed a private matter, he may not recover without proving at least negligence of the defendant. See Dun & Bradstreet, Inc. v. Greenmoss Builders, 472 U.S. 749 (1985) (court not explicitly discussing fault basis, although implying plaintiff could recover presumed, punitive, and actual damages upon a showing of negligence).__ States may define standards of liability for false and defamatory publications which injure private individuals provided they do not impose liability without fault. Gertz, 418 U.S. at 347 (published statement held to be a public matter).

4. The Allegedly Defamatory Article Is A Matter Of Public Concern Because It Involves Criminal Conduct And Fitness For Office.

In all libel actions "arguably concerning matters of public concern," the person defamed must show the publisher acted in a grossly irresponsible manner. Med-Sales Associates, Inc. v. Lebharr-Friedman, 663 F. Supp. 908, 912 (S.D.N.Y. 1987) (emphasis added).

Two factors have refined the common law rules to conform to the First Amendment: whether the plaintiff is a public figure or official, or private person and whether the speech in controversy is of public concern. Hepps, 475 U.S. at 767, 775.

The Court in Dun noted two criteria for determining what constitutes speech of public concern: scope of dissemination and the degree of public interest. Dun, 472 U.S. at 761-2 (court holding credit report not of public concern because sent to only

five subscribers and a "specific business audience"). In the instant case, Napier's article in the Gotham Daily News was widely disseminated to the general public.

The public official rule protects the free flow of information to people about public officials and "anything which might touch on an official's fitness for office is relevant." Garrison v. Louisiana, 379 U.S. 64, 77 (1964). "As a matter of constitutional law a charge of criminal conduct can never be irrelevant" to fitness for office for the purpose of applying the actual malice standard. Monitor Patriot Co. v. Roy, 401 U.S. 265, 277 (1971). Crime is a matter about which "the public has an interest and a right to be informed" and the money spent to combat crime "indicates the interest of the public." Cerrito v. Time, Inc., 302 F.Supp 1071, 1073 (N.D. Cal. 1969). If anything touches on Wayne's fitness for the office of chairman on the Task Force to Restore and Promote Family Values, it is the possibility of his sexual molestation of a twelve-year old girl.

Generally the defamatory comment must pertain to the plaintiff's public position and not to something "purely personal" in order to provoke the public's interest. Evans v. Lawson, 351 F. Supp. 279, 284 (W.D.Va. 1972) (case holding that public figures are those coming into the public eye as spokesmen on various issues). The Supreme Court in Garrison held that very few "personal attributes are more germane to fitness for office than dishonesty {or} malfeasance" though these characteristics may also affect the official's private role. Garrison, 379 U.S. at 76-7. When the speech pertains to the ethics of a public

official or government employee and therefore his fitness for office, the "subject matter is quintessentially one of public concern." Lewis v. Elliott, 628 F. Supp. 512, 521 (D.D.C. 1986) (court favoring broad interpretation of "public official").

The charge of sexual molestation against Wayne relates to him as a public as well as a private person. The article exposing such immoral behavior is relevant to his ability to inform the public about family values and is thus a public concern.

When a newspaper publishes speech of public concern, the Constitution requires private plaintiffs to prove not only fault, but also falsity. Hepps, 475 U.S. at 776 (court making it clear that it's holding would also apply to public person plaintiffs).

Regardless of whether Wayne is considered a public official or figure or a private person and regardless of whether the speech at issue is considered a public or private matter, section 10-5 is facially unconstitutional as it does not provide for a showing of fault.

B. Section 10-5 Of The Gotham General Statutes Ignores The First Amendment Protections Of Freedom Of Speech And Press And Must Be Struck Down As Unconstitutional.

Section 10-5 does not solve the evils the legislature sought to avoid and the Gotham Court of Appeals does not properly balance the state interests and the first amendment interests.

The Court of Appeals claims that Section 10-5 "limits the award of monetary damages by allowing only provable pecuniary loss as damages, thereby eliminating the Court's concerns in Sullivan regarding the chilling effect of large damage awards."

Wayne, No. 89-999 at 6. Yet provable money losses can amount to large damage awards leading to media "self-censorship." Thus Section 10-5 does not eliminate the fear of the chilling effect.

The Court of Appeals speculates that Section 10-5 is consistent with the primary purpose of libel law: promoting restoration of a "falsely damaged reputation." Wayne, No. 89-999 at 5. Yet Section 10-5 disregards the constitutional requirement of fault and, as noted in the dissent, there is no rational relationship between money awards and the redressing of reputational harm.

The Court of Appeals claims that media defendants are assisted by focusing not on fault but on the plaintiff's injury, eliminating the need to invade the editorial processes of the defendant. Wayne, No. 89-999 at 6. This aid is not measurable and the right to invade, which is not absolute, is not as important an issue as the chilling effect and the necessity of having a fault requirement.

The Court of Appeals asserts without supporting reasons that the statute lessens the newspaper's cost of defending by "eliminating the time-consuming and complex fault requirement." Wayne, No. 89-999 at 6. Eliminating the fault requirement actually lessens the plaintiff's cost of pursuing the action. Reducing the plaintiff's burden of proof increases his chances of receiving a quick remedy and a large damage award.

The Court of Appeals and the legislature of Gotham fail to recognize the first amendment protections afforded the press. A statute not requiring a showing of fault prevents the press from

doing what it is entitled to do under the first amendment: publish articles that satisfy the public's "right to know." Penalizing published speech concerning public persons, who have assumed the risk of harsh verbal attacks, in the same way as speech concerning the private affairs of private persons violates the first amendment. The idea that freedom of expression on public questions is guarded by the first amendment has long been settled by the Supreme Court. New York Times, 376 U.S. at 269.

Plaintiffs must prove fault especially when crucial first amendment concerns are apparent: speech on public issues occupies the "highest rung of the hierarchies of first amendment values", but speech on purely private matters is of "less First Amendment concern." Dun, 472 U.S. at 759. Refraining from criticizing government, or self-censorship, would result due to the fear of completely innocent error if strict liability were imposed. Attacks used to show a person's unfitness for office are part of a citizen's rights to participation in government.

Section 10-5 is constitutionally deficient in failing to provide the protections for freedom of speech and press required by the First and Fourteenth Amendments in a libel action brought by a public official, or public figure against critics of his conduct relevant to his public position. See New York Times, 376 U.S. at 264.

CONCLUSION

For the reasons set forth above, we respectfully request this Court to reverse the rulings of the Court of Appeals and uphold the constitutionality of section 10-4 of the Gotham General Statutes and to hold section 10-5 unconstitutional and to remand the case to the Superior Court for a new trial.

Respectfully submitted,

Team D3
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