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# Court Puts Burden of Proof On Plaintiffs in Libel Cases

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The Supreme Court, in a major victory for the news media, ruled yesterday that people suing news organizations for libel must overcome the difficult burden of proving that the published statements about them were false.

The 5-to-4 decision, written by Justice Sandra Day O'Connor, overturned laws or court rulings in at least nine states that require the media to show that what they published was true.

The issue of which party has the burden of proof is pivotal and often determines whether a suit is even worth bringing. Until yesterday, however, the constitutional requirements for both public figure and private figure plaintiffs had been unclear, libel lawyers said.

The case involved only suits by private individuals, who face fewer legal obstacles in pressing libel suits than public figures. But experts said it will apply as well to suits by public figures.

"The First Amendment," O'Connor said yesterday, quoting a 1974 ruling, "requires that we protect some falsehood in order to protect speech that matters."

The ruling, which protects only reporting on issues of "public concern," drew a harsh dissent from Justice John Paul Stevens, who called it "pernicious." Stevens said the court "today seems to believe

that the character assassin has a constitutional license to defame."

He argued that, under prior court decisions, plaintiffs suing the media already have to prove that a news organization acted carelessly or negligently. ("Public figures" must show "reckless or knowing disregard for the truth.")

"In my view," Stevens said, "there can be little, if any, basis for a concern that a significant amount of true speech will be deterred" by states that require the media to bear the burden of proof.

Stevens was joined by Chief Justice Warren E. Burger and Justices Byron R. White and William H. Rehnquist.

The decision in *Philadelphia Newspapers, Inc. v. Hepps* extends a series of rulings in the last 20 years that generally have broadened First Amendment protections for the media.

It was the second major pro-media ruling in the past few years for the current court, which was once conventionally described as anti-press. Three years ago, the justices said that appellate courts should exercise extraordinary review over lower court libel decisions in order to safeguard First Amendment rights of the press.

The ruling yesterday stemmed from an investigative series written a decade ago by two reporters for *The Philadelphia Inquirer*. The series said federal "investigators have found connections" between a chain of beer distributorships owned by Maurice S. Hepps and "underworld figures."

Hepps sued the newspaper. A trial judge ruled that Pennsylvania's law requiring *The Inquirer* to prove the veracity of its stories violated the Constitution and said Hepps must prove the allegations were false. A jury ruled in favor of the newspaper.

But the state high court overturned the ruling, saying that while the Supreme Court's 1974 decision in *Gertz v. Welch* required Hepps to prove the newspaper had been negligent or careless, the 1974 ruling did not force him to prove the articles were false as well. The state court sent the case back for a new trial.

O'Connor, in reversing the state court, offered a brief outline for libel law standards.

She said that the need for constitutional protection increases with the importance of the subject being reported in the press. When the plaintiff is a public figure and the published material is of public concern, the Constitution requires the

greatest protection. But when the speech is of "exclusively private concern and the plaintiff is a private figure," she said, "the constitutional requirements do not necessarily" demand special protection for the media.

O'Connor said Pennsylvania's "shield" law, which allows reporters to refuse to divulge sources, may make it more difficult to win suits against the media, but she said it did not seem that important to the constitutional standard for libel.

Bruce W. Sanford, a First Amendment expert and media attorney, said the ruling would be "extraordinarily helpful to the media to deter people with weak claims from suing."

Michael McDonald, general counsel for the American Legal Foundation, which supports the cause of libel plaintiffs, said the ruling was "surprising" and was another example of the high court's further "nationalization" of the First Amendment.

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