No. 22-1088

In The

Supreme Court of the United States

JOHN T. MORRIS,

Petitioner

v.

STATE OF TEXAS, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals

PETITION FOR REHEARING

JOHN T. MORRIS
5703 Caldicote St.
Humble, Texas 77346
832-978-8943
Johnmorris1939@hotmail.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
GROUNDS FOR REHEARING	1
ARGUMENT	2
CONCLUSION	11
CERTIFICATE OF PETITIONER	13

TABLE OF AUTHORITIES

Page

CASES

Gill v. Whitford 3

In re Coleman v. MacLennan, 78 Kan. 711 7

In re Michael, 326 U.S. 224, 227 (1945) 8

In re Whitney v. California, 274 U.S. 357 (1927) 7

Ruth v. Common Cause, 139 S.Ct. 2484 2

New York Times v. Sullivan, 376 U.S. 254 ..... 1, 4, 7, 8, 10-12

U.S. v. Alvarez, 567 U.S. 709 ..... 7, 8, 9

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 1, 3, 4, 8-12

U.S. Const. amend. IV 1

U.S. Const. amend. XIV 1, 2

OTHER AUTHORITIES

Black's Law Dictionary 11

Lee C. Bollinger, *Images of a Free Press*, University of Chicago Press (1991) 6

Leonard W. Levy, *Emergence of a Free Press*, Univ. of Chicago Press, 1985 ..... 3, 9

GROUNDS FOR REHEARING

I. BASIC RIGHTS AND REDISTRICTING

When districts conform to Court recognized criteria in order to minimize burdens on the citizen's political, First and Fourteenth Amendment rights, and when as many voters who voted in a previous election are allowed to vote in their same district in a subsequent election, in order to allow them to use their accumulated knowledge from one election to the next, knowledge which is protected by the First and Fourth Amendment, the state will be restricted in respect to the normal non-partisan redistricting process which will unintentionally prevent the state from gerrymandering. This Court must also recognize that these are stand-alone fundamental rights, regardless of the fact that they affect the redistricting process or are affected by the process, they require First Amendment protection.

II. FUNDAMENTAL PERSPECTIVE ON THE FIRST AMENDMENT

This argument presents a perspective that views the First Amendment speech and press clause in fundamental terms, and states that the opinion in *New York Times v. Sullivan*, incorrectly conflated the elements in the Amendment in respect to information and expression. And by decoupling them, in respect to publications that purport to present the news, there is a logical solution to the issue of press regulation.

ARGUMENT

I. BASIC RIGHTS AND REDISTRICTING

If the Court denied the petition in respect to Parts 1 and 2, in respect to the Frequent Election Principle, and Court Recognized Redistricting Criteria, respectively, the Grounds for Rehearing comes close to explaining all that might be of concern to the Court except in respect to the use of the word gerrymandering. And this use of the word, and the opinion in *Ruth v. Common Cause*, which completely divorced the Court from gerrymandering, could understandably be a reason the Court denied the petition for certiorari

Gerrymandering has been, and still is, so prevalent in the states that you could easily understand if someone had forgotten that it is employed in the redistricting process and the not the process itself. The two words have to some degree become almost synonymous.

And it should be noted that the redistricting process in Texas is frankly a gerrymandering process, for all intents and purposes. The relief that was sought had nothing to do with a partisan reason, or any other reason why the district boundaries might be changed. The claim was based entirely, and solely, on the fact that the boundaries were changed, period, which when changed placed a burden on my political and First and Fourteenth Amendment rights.

Returning to the grounds for a rehearing, it needs to be explained, if it is not clearly evident, that when

districts are confined to recognized criteria, and where the citizens who voted in a previous election are allowed to vote in their same district in a subsequent election, the boundaries of the district become semi-permanent, and gives the state very little opportunity to change them substantially without violating the constitutional rights of the citizens. The boundaries will undoubtedly need to be changed as the various populations move and grow or decrease, but the change will only be gradual.

"The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." *Ruch v. Common Cause*, 139 S.Ct. 2484, at 2501 (opinion of Roberts) quoting *Gill v. Whitford*. Since it is clear, that the rights of the citizens, in respect to both the criteria-rights issue, and the frequent-election issue (use of the citizens knowledge form one election to the next), are here in this claim before the Court, they should be addressed by the Court in respect to their First Amendment rights.

The voters are also burdened by misinformation and disinformation from the press which is addressed in Part 3. It can be said that "[t]he electoral process would have been a sham if voters did not have the assistance of the press in learning what candidates stood for and what their records showed about past performance and qualifications." Leonard W. Levy, *Emergence of a Free Press*, Univ. of Chicago Press, 1985, p-273. Unfortunately, this is not a representation of our contemporary situation.

II. FUNDAMENTAL PERSPECTIVE ON THE FIRST AMENDMENT

Since this claim has more than one issue, and even though they are related, the speech and press issue is so complex, that any attempt to have addressed it in a legal formal manner, in terms of Supreme Court precedent, in the Petition for Certiorari would have been a futile act, to say the least. In respect to *New York Times v. Sullivan*, and having read almost all of the cases involved, I was impressed with the fact that, in my opinion, quite a few of them, with all due respect to the Court, were poorly reasoned, and a number of them shamelessly so. In which case, in order to present a solid argument for the regulation of the press, in purely legal terms, it would have required convincing the Court, first of all that, at least five or six cases needed to be reconsidered. The argument would have also had to deal with the subjectivity relied on in *New York Times v. Sullivan* that bordered on advocacy rather than legal reasoning. For this reason, I will proceed as I did in the Petition for Certiorari, and present a narrative supported by my reasoning – reason being the sole of law.

A few months after I was discharged from the Air Force with an honorable discharge after serving for four years, I had occasion to be watching an old movie on a popular TV program called Bill Kennedy's Showtime. A program that was broadcast from Windsor, Canada to Detroit. At some point during the movie the network broke in to announce that the President had been shot. They said "he had been mowed down by

gunshots from a grassy knoll." This, I believe, is exactly as I heard it. In particular, the words "grassy knoll." A number of years later I learned from an old school friend who said that while he was playing golf with a friend who owned a collision shop in Dearborn, Michigan, that this owner had a contract with Ford Motor company, and for this reason he was given the job of repairing the limousine that President Kennedy was in when he was shot. He told my friend that what puzzled him about this was that, though he identified what he believed was gunshot damage to the front of the car, no one from either the government or the media came to inspect the car. The media in the ensuing years tried their best to convince the American people that there was no gunfire from the grassy knoll, and only from the Book Depository Building. These are two distinct facts that should have been the basis of deliberations and debate that might have led to the apprehension of those behind the assassination had we not abandoned a fundamental intellectual process.

A gorilla plunges a stick into a small body of water. Scientists have concluded that he did this to determine its depth, for whatever reason. (Wikipedia: Gorilla/Intelligence). This is an intellectual process every man, woman and child has utilized. Every day of our lives we acquire factual information in order to find a solution to a problem. Sometimes we use this factual information in a discussion or a debate. It is a universal intellectual process as old as mankind. And it should be noted that there is a distinct two-part characteristic to this process where, first of all, there is the

acquisition of factual information, and then a deliberation that will lead to a solution. When we drive down the street, we are confronted with factual information that may require us to respond. Before we vote again for an incumbent representative, we first review his record over the last two years. We cannot escape this intellectual process. We are always forced to apply this process in respect to very important issues or even things that are relatively minor. But there is an essential perquisite, if we are to find an effective solution to a problem – the facts must always be true.

The citizens in the United States today have very little faith in the media, as noted in the Petition for Certiorari. They do not believe they are receiving the truth. In his book *Images of a Free Press*, published in 1991 by the University of Chicago Press, Lee C. Bollinger, p-26 stated "that we should worry about whether the Court has been sufficiently attentive to the competing human costs wrought by the principle of an autonomous, unregulated press as it has evolved in recent decades." He believes there's no guarantee the press will not abuse its freedom. "The press can exclude important points of view, operating as a bottleneck in the marketplace of ideas. It can distort knowledge of public issues not just by omission but also through active misrepresentation and lies," and he went on to say, "all of these concerns become more serious as the number of those who control the press become fewer." And in fact, there is every reason to believe that this has been the state of affairs for decades, as alluded to in the afore mentioned Kennedy

assassination evidence. Without honest news, or in terms of information, in respect to the car alluded to above, we are driving with an opaque windshield. And since we can portray this car as our own democracy, we are about to hit a brick wall.

"[W]here an article is published," about a candidate which is believed to be true and without malice "for the purpose of enabling such voters to cast their ballot more intelligently . . . although the principal matters contained in the article may be untrue in fact and derogatory to the character of the plaintiff . . . the burden is on the plaintiff to show malice." *New York Times Co. v. Sullivan*, 376 U.S. 254, 280-281, *In re Coleman v. MacLennan*, 78 Kan. 711. Where are the considerations in this quote from *Sullivan* for the citizens who are confronted with the need to ascertain the facts, in order to deliberate in terms of their obligations to our democracy, when there appears in this to be no concern for what is true and what is false. Here specifically are those "human costs wrought by the principle of an autonomous, unregulated press," as Lee Bollinger alluded to above.

"The remedy for speech that is false is speech that is true. This is the ordinary course in a free society . . . to the uninformed, the enlightened: to the straight-out lie, the simple truth." *U.S. v. Alvarez*, 567 U.S. 709, 727, *In re Whitney v. California*, 274 U.S. 357, 377 (1927). Where are we to find the truth and enlightenment in respect to something that is happening in today's world if it is not published in a newspaper or any other publication that purports to be informative? Or when,

if it is published, there is reason to believe that it is not true? The average citizen has no way of reaching a person in Ukraine to know what exactly is happening there in order to determine if the press is telling him or her the truth. Or reach someone at the U.S. House of Representatives to find out what precisely is in a bill being proposed since the press has omitted this information in their abbreviated news item. This information is, of course, the reason a newspaper is published and a citizen purchases one – an offer and a consideration effectively. An offer of true information and a consideration for that true information.

"Perjured testimony 'is at war with justice' because it can cause a court to render a 'judgement not resting on truth.'" *Alvarez*, at 720, *In re Michael*, 326 U.S. 224, 227 (1945). Truth is not only the foundation of our justice system it is also the foundation of our entire system of government. In every institution within our government the *fundamental intellectual process* is a requirement if there are to be effective decisions. Honest factual information must first be acquired and then deliberated on. Consequently, honest factual information must be as prevalent as can be expected by means of the division of labor.

The opinion in *New York Times v. Sullivan* is in conflict with this fundamental intellectual process. The First Amendment speech and press clause cannot simply be considered entirely a matter of free expression where misinformation and disinformation are also considered a matter of expression. A careful reading of the opinion will find numerous terms that relate to

expression such as the following or their equivalent – opinions, recital of grievances, a protest of claimed abuse or criticism of official conduct. In fact, the entire opinion can be characterized by the "erroneous statement is inevitable in free debate." Supra, 271. The First Amendment was not meant for only one purpose. It was meant to conform to the fundamental intellectual process where there is a guarantee of factual information and the deliberative process.

In respect to the factual component of the speech and press clause of the First Amendment, a small-town 18th Century paper made it clear what the people generally considered the press to be. "A source from which the people learn the circumstances of our country, its various interests, and relations. Here too public men and measures are scrutinized. Should any man or body of men dare to form a system against our interests, by this means it will be unfolded to the great body of the people, and the alarm instantly spread through every part of the continent. In this way only, can we know how far public servants perform the duties of their respective stations." Levy, supra, 291.

A passage also from Levy's book gives a very clear understanding of the deliberative component of the First Amendment speech and press clause. "But truth is a mischievous, often illusory, standard that defies knowledge and understanding. It cannot always be proved. What is not a fact may be an untruth or a nontruth, an opinion at the very best, and the political opinions of men notoriously differ." Levy, supra, 201. Here then is the opinion in *Alvarez*, at 718, where

there is no "general exception to the First Amendment for false statements," and "comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation the First Amendment seeks to guarantee." *Sullivan*, at 271. A deliberative process that is "uninhibited, robust and wide open." Supra, 270.

By dividing the speech and press clause in terms of factual information, that is intended as a publication of news events in respect to world, national and state occurrences, and those ideas that are a part of the deliberative process, that will include the "erroneous statement" that "is inevitable in free debate" which, when subject to the marketplace of ideas, its falsity will be revealed, we are then reunited with the universal, fundamental intellectual process.

In respect to this natural division in terms of fact and deliberation, that has a clear conformance with the intellectual process, freedom of expression, as used in *New York Times v. Sullivan*, is not an accurate terminology since it was used in such a manner as, noted above, to conflate the deliberative process with the lies that were the basis of the litigation. In fact, "freedom of expression," as defined by the *Sullivan* opinion, is a term that confuses the search for an answer to the requirement that the press be prevented from publishing dishonest information, which has contributed to the citizen's lack of faith in the media.

If we divide the First Amendment, in respect to speech and press, into two components, it should be understood realistically that there is, on the one hand, the factual component, that is truly little more than raw data. In this respect, a particular piece of data that is false and presented as the truth, is little more than a fiction, which is defined in Black's Law Dictionary as something that is "not real." This then begs the question whether the First Amendment can be employed to safeguard something that is no more than an illusion? On the other hand, there is the deliberative component of the First Amendment that finds value in "[t]hat erroneous statement (that) is inevitable in free debate." *Sullivan*, at 271. In these terms there is a conformance with the fundamental intellectual process since on the one hand we have factual information that must be true if there is to be an effective solution, and the deliberation process that is the means by which we arrive at that solution.

CONCLUSION

The political rights of citizens in respect to redistricting criteria, and their knowledge of an incumbent in terms of prior and subsequent elections should not be dismissed by the Court simply because they can be affected by redistricting or can affect the redistricting process inadvertently when they are upheld by the Court.

The fundamental intellectual process, must be utilized as a template in respect to the First Amendment – the intellectual process where there is a division between factual information, which requires truthful information from publications that purport to print truthful information, and are held accountable due to the fact that the First Amendment does not protect a fiction that is printed as a true fact, and the deliberative process which is clearly defined by the opinion in *New York Times v. Sullivan*.

Respectfully submitted
to the Honorable Court,

JOHN T. MORRIS
5703 Caldicote St.
Humble, Texas 77346
832-978-8943
Johnmorris1939@hotmail.com