ORIGINAL

23-1274
No. _____

In the
Supreme Court of the United States

BRIAN PHILIP MANOOKIAN,
Petitioner,

v.

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR WRIT OF CERTIORARI

BRIAN MANOOKIAN
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May 16, 2024

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QUESTIONS PRESENTED

The Tennessee Supreme Court disbarred Brian Manookian for truthful statements, the majority made out-of-court and about other attorneys, and further increased his disciplinary punishment without notice:

1. Does such action violate the First Amendment to the U.S. Constitution?
2. Does disbarring Mr. Manookian without notice violate the Fourteenth Amendment as stressed by the dissent in *Manookian v. TBPR*?

PARTIES TO THE PROCEEDING

Petitioner is Brian Philip Manookian ("Manookian"), who was the petitioner-appellant in the Tennessee Supreme Court.

Respondent is the Tennessee Board of Professional Responsibility of the Supreme Court of Tennessee ("TBPR"), which was the respondent-appellee in the Tennessee Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Both parties are either natural born persons or governmental agencies whose identities do not impact this Rule. Neither party has any parent company or publicly held company that owns 10 percent of more of its stock.

LIST OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *In Re: Brian Philip Manookian*, Docket No. 2017-2805-5-WM (Disciplinary District V of the Board of Professional Responsibility) (Hearing Panel Report and Recommendation issued May 20, 2020);
- *Brian P. Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee*, No. 20-833-I (Chancery Court for Davidson County Tennessee) (judgment issued October 4, 2021 affirming the recommendation of the Hearing Panel); and
- *Brian Philip Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee*, No. M2022-00075-SC-

R3-BP (Tenn. Supreme Ct.) (decision issued February 16, 2024 affirming in part and reversing in part the Chancery Court's affirmation of the Hearing Panel's recommendation).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Brian Philip Manookian, respectfully seeks a writ of certiorari to review the judgment of the Tennessee Supreme Court.

OPINIONS BELOW

The opinion of the Tennessee Supreme Court appears at App. 1-146 and has been designated for publication but is not yet reported. The opinion of the Chancery Court appears at App. 149-193 and is unpublished. The opinion of the Disciplinary Hearing Panel appears at App. 194-254 and is unpublished.

JURISDICTION

The Tennessee Supreme Court entered judgment on February 16, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourteenth Amendment to the U.S. Constitution provides "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Tennessee Board of Professional Responsibility ("TBPR") is a government licensing and disciplinary board comprised of Tennessee-licensed attorneys and staffed by full-time disciplinary counsel. Among other things, it investigates and prosecutes complaints of attorney misconduct in the state. Brian Manookian was first licensed to practice law in Tennessee in 2007.

Beginning in 2017, following Mr. Manookian's subpoena to the TBPR in an unrelated case, the TBPR began levying complaints against Mr. Manookian based on his out-of-court speech to and about other lawyers. Those complaints took the form of four complaints.

First, Mr. Manookian was disciplined for an in-court filing that contained a truthful, factual statement summarizing the nature of a still-public, unsealed, non-confidential case of a former client—a case that is available publicly to anyone with an internet connection—regarding which the client at issue neither testified nor even complained.[1] That footnote stated as follows:

> Mr. Manookian's prior experience with Mr. Gideon's adult children is limited to having successfully represented his adult son in a matter involving Mr. Gideon's adult son exchanging sexually graphic

[1] A.R. 2020–21. References to the Appellate Record are made in the form of A.R. X.

> emails with a much older man for the sexual gratification of the older man.[2]

Second, Mr. Manookian was disciplined for sending a letter—outside of court—that "quote[d] portions of recorded statements Mr. Manookian attribute[d] to Mr. Steve North," a retired Judge, regarding Judge Thomas Brothers,[3] which included opinions that the Hearing Panel found Mr. Manookian quoted "recklessly."[4]

> Preliminary to lengthier phone call conducted at the gratuitous request of Retired Davidson County Circuit Court Judge Steve North, wherein Ret. Judge North states and opines upon personal knowledge, having served on the bench with Judge Tom Brothers and being the brother of Phillip North, that: Judge Tom Brothers is "corrupt" and has been for some time, that Judge Tom Brothers' "corruption" arises out of his financial needs; that Judge Tom Brothers' "corruption" has long resulted, and continues to result, in preferable, "corrupt" treatment for certain Nashville--based companies, which benefit from consistent, "corrupt" favorable rulings in Judge Brothers' courtroom, to the exclusion of justice; that such "corruption" has, and continues to, materially benefit, among others, C.J.

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[2] *Id.* at ¶ 15.
[3] A.R. at 2000.
[4] A.R. at 2018.

> Gideon and his firm, in his representation of certain "corrupt" clients; as well as lengthy disclosure and dissertation on Phillip North, all of which is material to the supposed grievances in Phillip North's "Motion for Third Round of Sanctions."[5]

Third, Mr. Manookian was disciplined for sending an email—outside of court—to Attorney C.J. Gideon regarding Laura Gideon.[6] The email was as follows:

> Clarence-
>
> I hear Laura is working at WME. What a fantastic opportunity; particularly given her history of academic failure and alcohol and substance abuse.
>
> I happen to have some very close friends at WME. I will make it a point to see what I can do regarding her prospects there.
>
> I am reminded that it is good for us to keep apprised of each other's lives and the things we can do to influence them.[7]

Fourth, Mr. Manookian was disciplined for sending a string of emails the Board found offensive—outside of court—to Attorney Phillip North.[8]

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[5] A.R. 253 ¶ 126.
[6] A.R. at 1992 (citing Trial Ex. 4 at Ex. 1).
[7] A.R. at 52–53, ¶ 10.
[8] A.R. at 1993.

> I've had a chance to review your most recent non-substantive motion. I applaud you on finally filing something other than a "me-too, piggy-back" motion on Gideon Cooper's effort; if not your actual scholarship. Putting pen to paper is a great first step, Phillip! If you keep at it, you never know what you might achieve!
>
> With that said, are you really arguing that you need pleadings unsealed because you claim to not have access to materials (1) that are not only publicly available by definition, but (2) were also previously served on you, and (3) are therefore in your actual possession?
>
> If so, I'm happy to provide you with the documents you claim to need. Just let me know and I'll send them over. If you think otherwise you risk the in-person embarrassment we all tried to downplay last Friday in court when you withdrew your last non-substantive motion on this topic while staring at your feet.[9]

The Board further alleged that, on June 22, 2018, Mr. Manookian wrote an email to Attorney Phillip North that stated:

> Your tacky, dishonest tactics continue unabated in this case. I see you've sunk to the "bogus certificate of service" and "hold the mail game." That is

[9] A.R. at 251–52, ¶ 121.

> embarrassing, even for you and your firm. The irony implicit in seeking sanctions against me (for simply agreeing to allow you to seek testimony about your own character at your own request) via a motion that you dishonestly certified is, no doubt, lost on you...
>
> I am disappointed, but not surprised, by your attempt to serve this sanctionable piece of garbage less than one business day before a response would have been due.[10]

The Board further alleged that, on August 4, 2018, Mr. Manookian wrote an email to Mr. North that stated:

> I see that my email and attachments are being repeatedly opened at the IP address associated with the consumer Comcast cable account for 109 Menees Lane, Madison, Tennessee. That address is the residential property where you have consistently lived with your parents (other than for a brief period of time from 1984-1986 where you rented unit 602 at the Capitol Towers on Gay Street) until the North Family Trust essentially gifted you the property for $10.00. Upon investigation, this gifted piece of property in North Nashville, given to you for $10 by your parents, represents the

[10] A.R. at 252, ¶ 123.

> sole piece of real property you own at 68 years of age. Further confirming that you have read my email, records additionally reflect that Mona Dale Cornwell North -- the woman for whom you left your wife and two minor daughters (Nicki and Neely) -- has registered a Jeep Grand Cherokee (VIN: 1 C4RJFLG4JC274818, TN License Plate E66307) at the same address your parents gave you and where my email is being viewed. Please simply reply and confirm your brother Steve North's voice.[11]

Based upon these out-of-court statements the Tennessee Supreme Court disbarred Mr. Manookian.

REASONS FOR GRANTING THE PETITION

I. The Tennessee Supreme Court erred in disbarring Mr. Manookian because all of his statements are protected by the First Amendment.

With rare exceptions, "[r]egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Regan v. Time, Inc.*, 468 U.S. 641, 648–49, 104 S. Ct. 3262, 3267, 82 L. Ed. 2d 487 (1984).

> "From 1791 to the present," however, the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never

[11] A.R. at 253–54, ¶ 130.

> "include[d] a freedom to disregard these traditional limitations." *Id.*, at 382–383, 112 S.Ct. 2538. These "historic and traditional categories long familiar to the bar," *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991) (KENNEDY, J., concurring in judgment)—including **obscenity**, *Roth v. United States*, 354 U.S. 476, 483, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957), **defamation**, *Beauharnais v. Illinois*, 343 U.S. 250, 254–255, 72 S.Ct. 725, 96 L.Ed. 919 (1952), **fraud**, *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976), **incitement**, *Brandenburg v. Ohio*, 395 U.S. 444, 447–449, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (per curiam), and **speech integral to criminal conduct**, *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498, 69 S.Ct. 684, 93 L.Ed. 834 (1949)—are "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942).

United States v. Stevens, 559 U.S. 460, 468–69, 130 S. Ct. 1577, 1584, 176 L. Ed. 2d 435 (2010) (emphases added).

Although the above categories are something less than exhaustive—for instance, fighting words and child pornography also represent unprotected categories of speech—there is no serious doubt that Manookian's out-of-court speech at issue in this case does not fall into any unprotected category, and the Board has never seriously contended otherwise. Instead, the Board argued—and the Hearing Panel held (or, more accurately, copied-and-pasted what the Board had argued)—that: "It is well settled that lawyers do not have unfettered First Amendment rights when it comes to attorney speech."[12] Of course, this conclusion is meaningless; nobody, including Manookian, ever argued that lawyers' First Amendment rights are "unfettered." Instead, Manookian argued that the government's authority to police and punish attorney speech is heavily restricted by the First Amendment and is subject to well-established constraints.

In 1991, the U.S Supreme Court held quite clearly, in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054, 111 S. Ct. 2720, 2734, 115 L. Ed. 2d 888 (1991), that:

> At the very least, our cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and that **First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the**

[12] A.R. at 2011.

> **practice of law**. *See, e.g., In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978); *Bates v. State Bar of Arizona*, supra.

Id. (emphasis added).

Thereafter, in 2018, the U.S. Supreme Court also made clear beyond dispute that there is no such thing as a "professional speech" exception to the First Amendment at all, holding instead that: "this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'" *See Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371–72, 201 L. Ed. 2d 835 (2018) 2371–72

A. The government may not retaliate against truthful, out-of-court statements about a lawyer simply because the speaker is an attorney and the government finds the statements "offensive."

To be sure, it is true that Manookian's out-of-court speech can be characterized as offensive—even hateful. "But in the sense relevant here, that is viewpoint discrimination: Giving offense is a viewpoint." *Matal v. Tam*, 137 S. Ct. 1744, 1763, 198 L. Ed. 2d 366 (2017). Further, "[s]peech deemed hateful and offensive is not only still protected by the First Amendment, it is the speech most in need of First Amendment protection." *McGlone v. Metro. Gov't of Nashville*, 749 F. App'x 402, 406 (6th Cir. 2018) (quoting *Texas v. Johnson*, 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) ("If there is a

bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.")). This principle is unwavering.

Thus, regardless of the government's distaste for the content of the Manookian's out-of-court speech, Manookian's "nasty" emails receive the same protection as, for instance, hateful congregants who picket a military funeral, causing extreme emotional injury to a grieving father. *Snyder v. Phelps*, 562 U.S. 443, 456, 131 S. Ct. 1207, 1217–18, 179 L. Ed. 2d 172 (2011) ("Westboro's choice to convey its views in conjunction with Matthew Snyder's funeral made the expression of those views particularly hurtful to many, especially to Matthew's father. The record makes clear that the applicable legal term 'emotional distress'—fails to capture fully the anguish Westboro's choice added to Mr. Snyder's already incalculable grief. But Westboro conducted its picketing peacefully on matters of public concern at a public place adjacent to a public street. Such space occupies a 'special position in terms of First Amendment protection.'").

Beyond being the law, there are enormously important policy reasons that demand strict adherence to this principle. Most prominently: The government cannot be trusted to police the content of speech in a manner that is evenhanded and does not favor the government's own preferred speakers or viewpoints.

"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because

society finds the idea itself offensive or disagreeable." *Texas*, 491 U.S. at 414. By necessity, adherence to this requirement—even within the context of speech by licensed professionals regarding matters concerning their licensure—also "allows speech that many find concerning—even dangerous." *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 871 (11th Cir. 2020) (invalidating ban on gay conversion therapy on First Amendment grounds). *See also id.* at 866 ("'professional speech' is not a traditional category of speech that falls within an exception to normal First Amendment principles. We have already rejected the suggestion that the government's ability to regulate entry into a profession entitles it to regulate the speech of professionals.").

The U.S. Supreme Court has repeatedly made clear, its "decisions demonstrate that state action to punish the publication of truthful information seldom can satisfy constitutional standards." *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97 at 102 (1979).

And with respect to embarrassing information in particular—the central allegation in this case—it bears emphasizing that "[t]he dominant purpose of the First Amendment was to **prohibit** the widespread practice of governmental suppression of embarrassing information." *New York Times Co. v. United States*, 403 U.S. 713, 723–24 (1971) (emphasis added) (Douglas, J., concurring). *See also Grosjean v. American Press Co.*, 297 U.S. 233, 250, 56 S.Ct. 444, 80 L.Ed. 660 (1936) (government action constituting "a deliberate and calculated device . . . to limit the circulation of information" is unconstitutional). *Cf. Delloma v. Consolidation Coal Co.*, 996 F.2d 168, 172

(7th Cir. 1993) ("permitting recovery for tortious interference based on truthful statements would seem to raise significant First Amendment problems."); *Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003) ("although economic damage might be an intended effect of Mishkoff's expression, the First Amendment protects critical commentary when there is no confusion as to source, even when it involves the criticism of a business.").

Put another way: "Those who seek to censor or burden free expression often assert that disfavored speech has adverse effects." *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 at 577 (2011). "But 'the fear that people would make bad decisions if given truthful information' cannot justify content-based burdens on speech." *Id.* (citation omitted). The government's claims based on Manookian's admittedly truthful statements—regardless of their capacity to embarrass or offend—are afforded the full protection of the First Amendment.

B. The First Amendment protects truthful statements by an attorney summarizing a prior publicly-filed case by that lawyer.

Mr. Manookian was disbarred for accurately summarizing a previous case in which he rerepeated a client. It was undisputed that the referenced lawsuit at issue was a public judicial record that had not been sealed and was accessible via the clerk's website to anyone with an internet connection, including the news media. As a result, the record of the case was and remains definitionally public. *See, e.g., Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979) ("once the

truthful information was 'publicly revealed' or 'in the public domain' the court could not constitutionally restrain its dissemination.") (quoting *Oklahoma Pub. Co. v. District Court*, 430 U.S. 308, 311-12 (1977); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 830-31, 834-42 (1978) (holding unconstitutional a statute that forbade the news media from disclosing truthful information regarding ethical investigations of judges, even though confidentiality served legitimate state interests). *Cf. Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–95, 95 S. Ct. 1029, 1046, 43 L. Ed. 2d 328 (1975) ("interests in privacy fade when the information involved already appears on the public record."); *The Fla. Star v. B.J.F.*, 491 U.S. 524, 535, 109 S. Ct. 2603, 2610, 105 L. Ed. 2d 443 (1989) ("punishing the press for its dissemination of information which is already publicly available is relatively unlikely to advance the interests in the service of which the State seeks to act.").

Consequently, this Court—like any other—may take judicial notice of the case at any time. *See, e.g., Davis v. City of Memphis*, No. W2016-00967-COA-R3-CV, 2017 WL 634780, at *8, n. 7 (Tenn. Ct. App. Feb. 16, 2017) ("A Tennessee court would have been authorized to take judicial notice of the federal court's order under the circumstances presented here.") (citing *Hoback v. City of Chattanooga*, 492 S.W.3d 248, 255 n.3 (Tenn. Ct. App. 2015) (noting that the court was authorized to take judicial notice of records from the appellant's separate lawsuit in federal district court); *Rowe v. Hamilton Cnty. Bd. of Educ.*, No. E2014–01978–COA–R3–CV, 2015 WL 4197059, at *6 (Tenn. Ct. App. July 13, 2015) (no perm. app. filed) (recognizing the trial court's discretion to take judicial

notice of a previous lawsuit brought by the litigant in federal district court when considering the issue of res judicata); *City of Chattanooga v. Tenn. Regulatory Auth.*, No. M2008–01733–COA–R12–CV, 2010 WL 2867128, at *3 (Tenn. Ct. App. July 21, 2010) ("We may take judicial notice of our Court's records and of records from other cases advancing a similar claim of relief and involving the same parties or in collateral cases presenting similar or related issues.")). *See also Indiana State Dist. Council of Laborers v. Brukardt*, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at *9 (Tenn. Ct. App. Feb. 19, 2009) ("Tennessee law allows for judicial notice (TRE 201) of public records.").

Given this context, as applied to the circumstances of this case, the First Amendment precludes liability. As Virginia's Supreme Court explained in a similar setting:

> The VSB argues that it can prohibit an attorney from repeating truthful information made in a public judicial proceeding even though others can disseminate this information because an attorney repeating it could inhibit clients from freely communicating with their attorneys or because it would undermine public confidence in the legal profession. Such concerns, however, are unsupported by the evidence. **To the extent that the information is aired in a public forum, privacy considerations must yield to First Amendment protections. In that respect, a lawyer is no more**

> **prohibited than any other citizen from reporting what transpired in the courtroom.** Thus, the circuit court did not err in concluding that the VSB's interpretation of Rule 1.6 violated the First Amendment.

Hunter v. Virginia State Bar ex rel. Third Dist. Comm., 285 Va. 485, 503, 744 S.E.2d 611, 620 (2013) (emphasis added).

The instant case—one involving disclosure of information about a lawsuit contained in a public judicial record—compels the same conclusion. Consequently, because accurately characterizing public judicial records is speech that is fiercely protected by the First Amendment, *see Hunter*, 285 Va. at 503; *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (holding that "the creation and dissemination of information are speech within the meaning of the First Amendment."); *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 793, n.1 (2011) ("Whether government regulation applies to creating, distributing, or consuming speech makes no difference."); *Sandvig v. Sessions*, 315 F. Supp. 3d 1, 15 (D.D.C. 2018) ("The Supreme Court has made a number of recent statements that give full First Amendment application to the gathering and creation of information.") (collecting cases); *Project Veritas v. Ohio Election Comm'n*, 418 F. Supp. 3d 232, 253 (S.D. Ohio 2019) ("The Supreme Court has generally recognized that 'the creation and dissemination of information are speech within the meaning of the First Amendment.'") (quoting *Sorrell*, 564 U.S. at 570). *Cf. Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978)

("There is an undoubted right to gather news 'from any source by means within the law'") (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681–82 (1972)), the First Amendment precludes liability.

II. The Tennessee Supreme Court's decision to increase Mr. Manookian's punishment to disbarment under its "inherent authority", without notice, and outside of its own promulgated rules of procedure is violative of the Fourteenth Amendment as stressed in the dissent.

The dissent in this case accurately summarizes the due process violation accorded Mr. Manookian.

CONCLUSION

For all of the reasons above the Court should grant this Petition.

Respectfully submitted,

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