

No. 23-172

8/18/2023

In The
Supreme Court of the United States

—————♦—————
CYNTHIA L. POLLICK,

Petitioner,

v.

ANTHONY P. TROZZOLILLO,

Respondent.

—————♦—————
**On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania**

—————♦—————
PETITION FOR WRIT OF CERTIORARI

—————♦—————
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—————♦—————
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SUPREME COURT, U.S.

QUESTION PRESENTED

Whether the complete sealing of a judicial record violates the First and Fourteenth Amendments since it restrains speech and conflicts with precedent by hiding judicial actions and inhibiting Petitioner from speaking out about the court's actions and the public learning why a plaintiff's civil rights lawyer was sanctioned and imprisoned in a divorce proceeding in violation of the Constitution and legal precedent.

PARTIES TO THE PROCEEDING

Petitioner Cynthia L. Pollick was the Plaintiff in the trial court and Appellant in the Superior Court of Pennsylvania. Respondent Anthony P. Trozzolillo was Defendant in the trial court and Appellee in the Superior Court of Pennsylvania.

STATEMENT OF RELATED PROCEEDINGS

- *Pollick v. Trozzolillo*, 20 FC 40119, Court of Common Pleas of Lackawanna County, order sealing the judicial record entered on 3/10/2021.
- *Pollick v. Trozzolillo*, 991 MDA 2021, Superior Court of Pennsylvania, affirming entered on 11/7/2022.
- *Pollick v. Trozzolillo*, 573 MAL 2022, Supreme Court of Pennsylvania, denying Petition for Allowance of Appeal entered on 5/23/2023.
- *Pollick v. Trozzolillo*, No. 23-132, Supreme Court of the United States, Petition of Writ of Certiorari filed on 8/8/2023.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests a writ of certiorari to review the order of the Supreme Court of Pennsylvania.

OPINIONS BELOW

The denial of the petition for allowance of appeal of the Supreme Court of Pennsylvania is reproduced at App. 1. An excerpt of Petitioner's Allowance of Appeal in the Supreme Court of Pennsylvania showing her preservation of the issue of sealing is at App. 2-3. The affirmance opinion of the Superior Court of Pennsylvania is reproduced at App. 4-14. The trial court's opinion sealing the judicial record is reproduced at App. 15-18. An excerpt of the public docket showing all entries listed as "Entry Blocked from Public Viewing" is reproduced at App. 19-21.

JURISDICTION

The Supreme Court of Pennsylvania issued its order on May 23, 2023. (App. 1). This Court has jurisdiction under 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States 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.” U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “ . . . 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.” U.S. Const. amend. XIV.

INTRODUCTION

The complete sealing of a judicial record offends the First and Fourteenth Amendments. When a divorce proceeding lands one of the litigants in prison, the public should be allowed to access the judicial record to examine why a judicial proceeding caused such devastating harm to the moving party and the public. A divorce should never take away a litigant’s freedom or occupation when divorcing a lawyer and silence her voice because the judicial record was sealed for his benefit yet caused her to lose her profession as a plaintiff’s civil rights trial lawyer while Respondent still has his career as a civil defense trial lawyer.

STATEMENT OF THE CASE

Petitioner, Cynthia L. Pollick, brought a divorce complaint in the Court of Common Pleas of Lackawanna County against Anthony P. Trozzolillo¹ on January 24, 2020, after a seven-year relationship with three (3) years of marriage. Both parties were practicing lawyers with Petitioner being a solo practitioner concentrating on constitutional and civil rights law dependent on settlements and trial victories for income while Respondent was employed by a Philadelphia-based law firm with a steady stream of income as a W2 employee performing civil defense work. (R. 171a, 176a, 528a, 553a, 599a, 609a-610a, 721a, 739a-740a).

The marriage was Petitioner's first while Respondent's third. (R. 133a-134a). Petitioner was 50 years old while Respondent was 57. (R. 160a). The parties were married on January 7, 2017. (R. 143a). Based on 2019 tax returns, Respondent made six figures and almost twice the amount Petitioner made as a solo proprietor. The divorce litigation did not move until a judge was assigned in September 2020 because of the pandemic. The first status, court appearance was on October 6, 2020. (R. 92a). On July 20, 2021, the trial court entered a divorce decree – less than one year since the first status hearing of October 6, 2020.

¹ Respondent's mother's maiden name was Maria "Gigi" Genovese.

On March 10, 2021, the trial court sealed the entire divorce judicial record against Petitioner's wishes. (App. 15-18).

On July 20, 2021, after only four (4) hearings where the parties were present, the trial court granted a divorce decree and provided zero to Petitioner in the distribution of martial property with no alimony awarded to her, the lower earning spouse. The trial court altered Petitioner's 2019 IRS tax returns and "added back" proper deductions to make Petitioner's income appear similar to Respondent's six figure salary. (7/20/21 Equitable Distribution Op. pg. 6).

Instead of allowing the parties to depart without punishment, the trial court sanctioned Petitioner, who was forced to proceed *pro se*, \$26,950.00 in attorney fees, which was reduced to a money judgment on July 26, 2021. (R. 970a, App. 19). The divorce cost Petitioner, the moving party, \$26,950.00 to obtain a divorce decree. (App. 19).

Petitioner filed an appeal of the final judgment, and while that matter was pending, on March 22, 2022, Respondent filed a writ of execution on the \$26,950.00 divorce judgment for attorney fees. Through that writ of execution, Respondent wiped out Petitioner's law practice account of \$20,318.94, and closed her business line of credit that Petitioner relied on to survive as a solo practitioner. The writ of execution caused Petitioner's line of credit to become due immediately in the amount of approximately \$50,000.00.

On April 12, 2022, the trial court held a contempt hearing, and found Petitioner in contempt of not paying the \$26,950 judgment, and ordered her imprisonment if the judgment was not satisfied by April 22, 2022. Petitioner filed an appeal of the after-judgment contempt finding on April 22, 2022. Regardless of appealing the after-judgment contempt finding since it was a judgment and not an order; and Petitioner did not have the ability to pay anyway, the trial court issued a bench warrant for Petitioner's arrest, and she was imprisoned on April 25, 2022 until September 15, 2022, housed in solitary confinement upon entry in the Lackawanna County Prison.

On September 15, 2022, Petitioner was finally released from prison after almost five (5) months with the majority of time housed in solitary confinement with only a ½ hour to shower and use the phone a day with no outside time at all. Upon release from prison, Petitioner learned that DeNaples² took and owned her

² Louis DeNaples has a 1978 federal fraud conviction related to a federal program and in 2008 “ . . . a grand jury . . . accused DeNaples of lying to the board about his relationship with a pair of reputed mobsters . . . ” <https://www.poconorecord.com/story/business/2008/01/31/denaples-rags-to-riches-story/52649681007/>; <https://www.poconorecord.com/story/news/2008/01/30/mount-airy-owner-denaples-charged/52650299007/>. As noted by the Pocono Record, “ . . . that case has long provided fodder for speculation about DeNaples’ alleged ties to the underworld.” *Id.* Recently, the book, “The Life We Chose, William “Big Billy” D’Elia and the Last Secrets of America’s Most Powerful Mafia Family”, was published and details William D’Elia’s representation that Louis DeNaples was tied to organized crime.

leased Audi 2020, which the illegal seizure is currently being litigated by the leasing company. See *VM Credit Leasing Ltd. v. Lackawanna County and DeNaples Auto Parts*, 23-CV-378 (M.D. Pa. 2023). Petitioner walked out of prison with no car, no money, no active credit cards and no active Pennsylvania law license since she could not pay the annual Pennsylvania attorney registration fee or the minimum balances on her credit cards while in prison.

On November 7, 2022, the Superior Court affirmed the trial court. On May 23, 2023, the Supreme Court of Pennsylvania denied Petitioner's Allowance of Appeal.

REASONS FOR ALLOWANCE OF THE WRIT

The trial court decision conflicts with the First and Fourteenth Amendments by suppressing speech and denying public access to a divorce judicial record that imprisoned one of the litigants and cost her career as a plaintiff's civil rights trial lawyer and warrants this Court's review to decide an important federal question.

I. THE STATE TRIAL COURT VIOLATED THE FIRST AND FOURTEENTH AMENDMENTS WHEN IT SEALED THE ENTIRE JUDICIAL RECORD AND RESTRAINED PETITIONER'S FREE SPEECH

“Prior restraint upon speech suppresses the precise freedom which the First Amendment sought to protect against abridgment.” *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 181, 89 S. Ct. 347, 21 L.Ed.2d 325 (1968). “Any prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity. . . . Respondent thus carries a heavy burden of showing justification for the imposition of such a restraint. He has not met that burden. . . .” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 558, 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976) (cleaned up).

“The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.’ *Id.* at 559. ‘A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it at least for the time.’” *Id.*

This Court emphasizes the need for open and transparent judicial proceedings. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S. Ct. 2735, 92 L.Ed.2d 1 (1986). “The value of openness lies in the fact that people not actually attending trials can have

confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enterprise Co. v. Superior Court of Cal.*, 464 U.S. 501, 507, 104 S. Ct. 819, 78 L.Ed.2d 629 (1984). This requirement is no different in civil proceedings, and more important when one of the litigants is *pro se* and jailed for almost five (5) months by her attorney ex-husband.

In *Press-Enterprise Co.*, this Court held, ". . . the absence of a jury, long recognized as 'an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge,' . . . makes the importance of public access to a preliminary hearing even more significant. 'People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.'" *Press-Enterprise Co.*, 478 U.S. at 12 (cleaned up).

"As important as the actual prevention of judicial abuse or perjury at such hearings is the preservation of the appearance of justice. Secret hearings – though they be scrupulously fair in reality – are suspect by nature. Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." *United States v.*

Cianfrani, 573 F.2d 835, 851 (3d Cir. 1978), *overruled on other grounds*, *Gannett Co. v. DePasquale*, 443 U.S. 368, 99 S. Ct. 2898, 61 L.Ed.2d 608 (1979).

The entire judicial record of Petitioner's divorce proceeding is sealed from the public and Petitioner cannot speak about what occurred in the divorce proceeding and how she received nothing yet her ex-husband earned a six-figure salary. Petitioner cannot show how the divorce cost her the ability to be a plaintiff's civil rights trial lawyer because she was wrongfully imprisoned for almost five (5) months and now drowning in debt with her Audi 2020 being taken by Louis DeNaples. After being released from prison, Petitioner was without her car or an active credit card and had to walk from prison to shelter. Petitioner's business line of credit ended because her ex-husband took her entire law practice account of \$20,318.94 through a 3/22/22 writ of execution on the 7/26/21 divorce judgment.

The divorce imprisonment caused Petitioner to lose her ability to practice law and ruined her solo proprietor business she had for over 20 years. Petitioner cannot discuss the fact that the trial judge penalized her for filing for divorce and cost her \$26,950.00 to obtain when the proceeding lasted less than a year once a judge was assigned and she obtained the relief sought – a divorce decree.

"In view of this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth

Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison." *In re Oliver*, 333 U.S. 257, 273, 68 S. Ct. 499, 92 L.Ed. 682 (1948).

Respondent did not establish the heavy burden of proving that a blue collar³ divorce required restraining Petitioner's speech when it caused her to be wrongfully imprisoned and destroyed her business. The secret divorce proceeding was suspect by nature since the docket was sealed from public view and Petitioner was prohibited from speaking out about it. See *United States v. Cianfrani, supra*. All that the public can see is that every single document filed in the divorce between two lawyers is "Entry Blocked from Public Viewing". "Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." *Id.* Nowhere on the divorce judicial docket does it show that the divorce caused the lower earning spouse to be imprisoned.

³ The trial judge coined the divorce a "blue collar" divorce without any discovery and concluding there were only two (2) martial assets – wife's increased value of her self-employed pension (SEP account) and husband's 401K earned during the marriage, which was more than Petitioner's increase in value. Yet Respondent had rental income and Petitioner purchased a 2018 Jeep for her mother/employee during the marriage. (R. 188a, 756a).

“Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.” *In re Oliver*, 333 U.S. at 270.

As noted by this Court, “[o]ne need not wholly agree with a statement made on the subject by Jeremy Bentham over 120 years ago to appreciate the fear of secret trials felt by him, his predecessors and contemporaries. Bentham said: “ . . . suppose the proceedings to be completely secret, and the court, on the occasion, to consist of no more than a single judge, – that judge will be at once indolent and arbitrary: how corrupt soever his inclination may be, it will find no check, at any rate no tolerably efficient check, to oppose it. Without publicity, all other checks are insufficient: . . . ” *Id.*

Since there was no publicity, inspection or discussion surrounding Petitioner’s entire divorce proceeding that resulted in her imprisonment, Petitioner’s First and Fourteenth Amendments rights of free speech and liberty were violated and this Court must vacate the order sealing the entire judicial record of this divorce. Due to the imprisonment, Petitioner lost her liberty, property and was not treated equally under the law like every other divorcee.

This secret divorce ruined the life of one of the two lawyers. Respondent has not missed a beat while Petitioner, who initiated the divorce, lost all she had acquired after practicing law as a solo practitioner for over 20 years. Sealing an entire judicial proceeding is impermissible and prohibiting the harmed party from speaking out cannot be tolerated in the light of the transparent world of today.

This petition should be granted because sealing an entire judicial record offends the First Amendment, especially when the divorce results in the moving party being wrongfully imprisoned on a divorce judgment for attorney fees and the community losing a plaintiff's constitutional, civil rights trial lawyer since after being released from divorce imprisonment of almost five (5) months, Petitioner's leased car was taken, she had to walk to shelter and her business became insolvent. Consequently, Petitioner must rely on the public bus system for transportation in a community that does not cater to public transportation since there is no 24/7 access to all areas or a train service similar to New York City subway.

II. THE ENTIRE JUDICIAL RECORD OF A DIVORCE CANNOT BE SEALED FROM THE PUBLIC

"That the common law right to inspect public records extends to judicial records is clear." *United States v. Mitchell*, 551 F.2d 1252, 1258 (DC Cir. 1976). "What we said then remains equally true today: 'Any attempt

to maintain secrecy, as to the records of this court, would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access . . . ’” *Id.*

“‘Judicial records belong to the American people; they are public, not private, documents.’ . . . And ‘[t]he public’s right of access to judicial records is a fundamental element of the rule of law.’ . . . ‘The public has an interest in transparent court proceedings that is independent of the parties’ interests.’ . . . This right ‘serves to *promote trustworthiness of the judicial process, to curb judicial abuses*, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.’” *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 519 (5th Cir. 2022) (cleaned up) (emphasis added). “Publicly available information cannot be sealed. In so holding, we align with the Supreme Court and our sister circuits.” *Id.* at 520.

“Sealing judicial records and blocking public access require a ‘stricter balancing test.’ . . . To decide whether something should be sealed, the court must undertake a ‘document-by-document,’ ‘line-by-line’ balancing of ‘the public’s common law right of access against the interests favoring nondisclosure.’ . . . ‘Under both standards, the working presumption is that judicial records should not be sealed.’ . . . ‘[C]ourts should be ungenerous with their discretion to seal judicial records. . . .’ . . . And, to the extent that any sealing is necessary, it must be ‘congruent to the need.’” *Id.* at 521 (cleaned up).

Respondent did not seek to seal certain documents, but rather the entire judicial record, which the court granted.⁴ The judicial record should be available to the public. All the public sees are “Entry Blocked from Public Viewing” for each and every single document in the divorce. (App. 20-21).

The online and courthouse docket does not list any document but rather pages of “Entry Blocked from Public Viewing”. The public nor Petitioner are able to decipher what was filed on any given date when reviewing the public docket. It is as if the only thing that occurred in this divorce proceeding was Petitioner being sanctioned \$26,950 through a judgment and a divorce decree. The sealing of an entire judicial proceeding was unwarranted and suspect since there was no document-by-document approach to sealing and the harmed party, who lost being a trial lawyer due to the divorce imprisonment, was silenced and cannot speak about her dire financial and occupational situation.

⁴ Petitioner attempted to appeal the Superior Court’s sealing of its entire judicial record from the public to the Supreme Court of Pennsylvania, but was met with resistance since the Supreme Court of Pennsylvania refused to even docket the appeal, which resulted in additional money penalties to Petitioner, the lower earning spouse, when sealing a judicial record is interlocutory. (App. 20). “We believe that the district court order closing the pre-trial suppression hearing and sealing the record was a ‘final decision’ as to intervenors, and thus appealable to this court within the ‘collateral order’ doctrine of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949)”; see *Cianfrani*, 573 F.2d at 845.

III. PETITIONER'S FIRST AMENDMENT RIGHT TO FREE SPEECH CANNOT BE JUDI- CIALLLY SEALED

"It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions,' and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.' The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.'" *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269, 84 S. Ct. 710, 11 L.Ed.2d 686 (1964) (cleaned up). "From 1791 to the present, 'the First Amendment has 'permitted restrictions upon the content of speech in a few limited areas.'" *Counterman v. Colorado*, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023).

"The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513, 89 S. Ct. 733, 21 L.Ed.2d 731 (1969). "To have full force and effect, the First Amendment may not be trimmed just because of appealing circumstances; the regulation of

speech-connected activities must be carefully restricted.” *United States v. Scarfo*, 263 F.3d 80, 91 (3d Cir. 2001).

“The framers designed the Free Speech Clause of the First Amendment to protect the ‘freedom to think as you will and to speak as you think.’” *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023). “As these cases illustrate, the First Amendment protects an individual’s right to speak his mind regardless of whether the government considers his speech sensible and well intentioned or deeply ‘misguided,’ . . . , and likely to cause ‘anguish’ or ‘incalculable grief’”. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023) (cleaned up).

Here, Petitioner is silenced by the sealing of the entire judicial record of a divorce that took less than a year for a divorce decree to be issued yet cost Petitioner more than \$20,318.94 to obtain and caused her to be imprisoned for being unable to pay the divorce judgment of attorney fees of \$26,950.00. The divorce imprisonment continues to have aftereffects and may result in Petitioner’s suspension or disbarment from the practice of law since discipline is being sought because of it.

Upon release from divorce imprisonment on 9/15/22, Petitioner did not have one active credit card after 51 years of good credit or her leased vehicle. The 4/25/22–9/15/22 divorce imprisonment caused Petitioner to be administratively suspended as a lawyer because she could not pay the annual attorney registration fee while in prison. Petitioner deserves the

right to speak about the judicial process that ruined her life.

As noted by this Court, “[t]he First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands.” *Id.* Consequently, there is no doubt Petitioner should be free to speak about a divorce that cost her career as a trial lawyer businesswoman and ruined her good credit after 51 years of creating it.

Here, Petitioner cannot speak about a divorce from a fellow lawyer that cost her trial career yet his trial career still exists. The First Amendment demands that judicial records be open for inspection and litigants not silenced because of what was done to them by that very judicial officer. The sealing of Petitioner’s divorce proceeding erodes the public’s faith in the judicial system since one party was rewarded while the other was driven out of the legal profession and all that remains:

“Entry Blocked from Public Viewing”;
“Entry Blocked from Public Viewing”;
“Entry Blocked from Public Viewing” . . .

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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