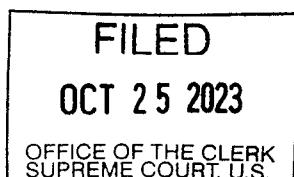


No 23-5911

In The  
**Supreme Court of the United States**



Jeffrey M. Rivard, *Petitioner*,

v.

Susan Smallheer, Brattleboro Reformer, *Respondents*,

**ORIGINAL**

On Petition of a Writ of Certiorari To  
The Vermont Supreme Court

**PETITION FOR WRIT OF CERTIORARI**

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## I. Question Presented

This matter is a US 1<sup>st</sup> Amendment Constitutional issue Freedom of Speech.

The matter is overlooked and misapprehended by Vermont Superior Court Judge Michael R. Kainen in granting a Motion to Strike Jeffrey Rivard v Susan Smallheer, Brattleboro Reformer, is without clarification of standard by Vermont's Statutes Annotated regarding Libel and False Light, by Negligence in view of Journalists Fair Privilege in reporting on Opinions, I believe the ruling is inconsistent from the references of law throughout the nation per Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990) from showing of negligence Gertz v. Robert Welch, Inc, 418 U.S. 323 (1974)

## II. Table of Contents

I.	Question Presented.....	i
II.	Table of Contents.....	ii
III.	Table of Authorities.....	iii, iv
IV.	Petition for Writ of Certiorari.....	1
V.	Opinions Below.....	1
VI.	Jurisdiction.....	1
VII.	Constitutional Provisions Involved.....	1, 2
VIII.	Statement of the Case.....	2

### III. Table of Authorities

#### Precedence

<u>Fair Report Privilege</u> .....	4-5
------------------------------------	-----

#### Cases

<u>Jeffrey Rivard v Susan Smallheer, Brattleboro Reformer</u> 23-AP-149 .....	1,5
---	-----

<u>Pollard v. Lyon (1875)</u> .....	2
-------------------------------------	---

<u>Buckley v. Fitzsimmons</u> 509 U.S. 273 (1993).....	2-3
--	-----

<u>Burke v Sparta</u> 592 S.W.3d 116 (2019).....	4,6
--	-----

<u>Gertz v. Robert Welch, Inc.</u> 418 U.S. 323 (1974).....	5-6
---	-----

<u>Milkovich v. Lorain Journal Co.</u> , 497 U.S. 1 (1990).....	5
---	---

<u>Cornelius v. The Chronicle, Inc</u> (2019) Vermont Supreme Court.....	4,6
--	-----

#### Statutes

<u>28 USC § 1257</u> .....	1
----------------------------	---

## Constitutional Provisions

United States Constitution Amendment I.....1-2

#### IV. Petition for Writ of Certiorari

Jeffrey Rivard, a resident of West Brattleboro, Windham County, Vermont, pro se, respectfully petitions the Court for a writ of certiorari to review judgment of the Vermont Supreme Court.

#### V. Opinions Below

The decision of a 3 Justice Panel of the Vermont Supreme Court now having denied Motion to Reargue, from a Motion to Strike appeal from the Newfane-Windham Unit, Civil Division, Vermont Superior Court by Judge Michael R. Kainen granted May 01<sup>st</sup>, 2023, and is reported to Jeffrey Rivard v. Susan Smallheer, Brattleboro Reformer 23-AP-149 October Term, 2023.

#### VI.

Pro se petition for oral argument to the Vermont Supreme Court was heard and denied “September 2023” term on September 15<sup>th</sup>, 2023. Pro se petitioner invokes the Court’s jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within 90 days of the Vermont Supreme Court’s judgment.

#### VII. Constitutional Provisions Involved

United States Constitution, Amendment I:

#### IV. Petition for Writ of Certiorari

Jeffrey Rivard, a resident of West Brattleboro, Windham County, Vermont, pro se, respectfully petitions this court for a writ of certiorari to review the judgment of the Vermont Supreme Court.

#### V. Opinions Below

The decision of a 3 Justice Panel of the Vermont Supreme Court denying Motion to Reargue, from a Motion to Strike appeal from the Newfane-Windham Unit, Civil Division, Vermont Superior Court by Judge Michael R. Kainen, and is reported to Jeffrey Rivard v. Susan Smallheer, Brattleboro Reformer 23-AP-149 October Term, 2023

#### VI. Jurisdiction

Pro se petition for hearing to the Vermont Supreme Court was denied “October, 2023” term. Pro se petitioner invokes the Court’s jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within 90 days of the Vermont Supreme Court’s judgment.

#### VII. Constitutional Provisions Involved

United States Constitution, Amendment I:

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.

### VIII. Statement of the Case

Pollard v Lyon determines spoken words and remedy, I interpret this to include the interview of Attorney Dana J. Nevins by journalist reporter Susan Smallheer who accepts his description of a “conviction” for domestic assault in the presence of a child, being a trusted source is informed of Vermont’s law Title 13 VSA 1047 as “Offenses committed in the presence of a Child” is a matter for sentencing [Refer Apprendi v. New Jersey 530 U.S. 466 (2000) as cited by Judge Michael R. Kainen within exhibit of the lower court case]. 42 USC 1983 allows for remedy in view of Buckley v Fitzsimmons considering the newspaper publication exaggerating events in an unfair, false, and injurious abridgment by negligently altering the language of official records in a libelous manner which as a matter of public concern grossly skews the narrative against me and omitting all reputable points regarding the police conduct, the prosecutor, and the judicial process. Fact is Susan Smallheer and

Attn Matthew B. Byrne were present April 13<sup>th</sup>, 2023 when Judge Katherine A. Hayes orated the jury verdict form is lost. Susan Smallheer has been at all hearings since the publication and was present for sentencing where the assertion by the prosecutor Dana Nevins was not that a “Child tried to intervene in and stop an assault” as published form the affidavit of Brattleboro Police Officer Craig Winkler who also did not place any such view and in fact indicates the child heard and saw nothing physical just yelling, which is further supported by body camera image and audio that they yelling was from my spouse! There has been no correction to this article to date. The matter being subject to probate law and published online requires remedy by 42USC1983 however, upon notice of serious and clear error, a journalistic correction would have sufficed. Reporter Smallheer and the Brattleboro Reformer refused arguing “free speech”.

Buckley v Fitzsimmons indicates a prosecutor does not enjoy absolute immunity when offering misrepresentations in speaking with the press as it is not a function of the judicial process. This is presented in support of misrepresentation 8.4 from 4.1 communicated to reporter Smallheer whose assertion was she had no official reports for correction of the publication.

Burke v Sparta indicates false light presentations are not protected by fair comment standards. In regards to journalist Smallheer's representations.

This question considers the possible misrepresentation and overlooking exhibits by a Vermont State Judge Michael R. Kainen, who erroneously places a court had come to no finding disproving police records and erroneously asserts the accuracy of a misrepresentation by a Deputy Windham State Attorney Dana John Nevins, used as reference by journalist Susan Smallheer and overlooks a clear misprint or alteration of wording from a police record to a print and arbitrarily grants a Motion to Strike from defendant Attorney Matthew B. Byrne who misrepresented no initiation for correction previous to filing and argued fair comment and Cornelius V Chronicle in granting a Motion to Strike. A lack of accommodations is being provided to pro se movant, who is psychiatrically disabled by vocational standards in view of pace and persistence and occasional unsound mind and/or ability to interpret reality and due to bouts of depression. He, in fact, only needed to read the police affidavit and the newspaper publication from October 28<sup>th</sup>, 2022 regarding a trial held October 27<sup>th</sup>, 2022 for 1370-11-19 WMCR

Gertz v Welch regards the assertion of the defense in Vermont and acceptance by the Vermont Court that the abridgment and altering of language from a public record and used in place of Court finding is an editorial or opinion piece all while citing the Vermont standard allowing scrutiny by the public of police, prosecutors, and the judicial process

Milkovich v Lorain Journal Co is cited because the acceptance by Vermont Court where here the reporter uses the affidavit, knowing the matter is a mental health exculpation from the police public record affidavit and due to the alteration of words from the official public record, and to the recitation during oral argument at Vermont Supreme Court 23-AP-149 Jeffrey Rivard v Susan Smallheer Brattleboro Reformer, found on YouTube where I clearly describe a correction request, a false light and describe every detail of the unfair abridgment. The matter an issue of public concern is not an opinion when a requirement to publish the Truth limits the fair report privilege defense.

Cornelius v Chronicle is a Vermont Court precedent being utilized by the Attorney for award of fees. The matter veers from this case in a reporter is an eyewitness to what he published from the Courthouse. Susan Smallheer is negligent in vetting her source upon notice of 13VSA1047 a Vermont law citation and in the use of an affidavit subject to disproof.

#### IX. Reasons for Granting the Writ

In View of Gertz v Welch and Burke v Sparta, to avoid harming the rights of persons published about in regards to their 1<sup>st</sup> amendment right to expression, to avoid injustices, expenses of litigation, and promote efficiency in matters requiring unnecessary litigation, for instance should a matter of probate or other law require argument, filing, or explanation of a false print, or supervisory review of judicial opinions from lower courts, to maintain the integrity of the judicial process considering it would be reasonable to a 4<sup>th</sup> grader the Judge overlooked "A Child tried to intervene in and stop an Assault" from the publication to the affidavit considering Lent v Huntoon 1983, as I am a stay at home parent, Vermont Supreme Court, to ensure State's inform the public of laws specifying what is libel or false

light Vermont having no such definition in it's statutes or much clarification, to maintain the integrity of the media regarding Truth as defense and disallow frivolous and arbitrary Anti-SLAPP provisions to trump the rights of people who in fact are subject to defamation.

Dated this 02<sup>nd</sup> day of October, 2023

Truly and Respectfully submitted,

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