No.

IN THE

Supreme Court of the United States

PHILIP SNYDER

Petitioner

v.

TENTH PRESBYTERIAN CHURCH

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania for Its Denial of Allocator of the Decision of the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the decision of the Superior Court of Pennsylvania constitute erroneous factual findings and/or misapplication of a properly stated rule of law?

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

Court of Common Pleas of Philadelphia County; *Tenth Presbyterian Church v. Philip Snyder*, Case No. 190703016; Orders entered on February 10, 2020 and November 10, 2021, Opinions issued on August 2, 2020 and April 7, 2022.

Superior Court of Pennsylvania, *Tenth Presbyterian Church v. Philip Snyder*, Case No. 849 EDA 2020; Memorandum issued on October 18, 2020.

Supreme Court of Pennsylvania, *Tenth Presbyterian Church v. Philip Snyder*, Case No. 494 EAL 2021; Order issued May 3, 2022.

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APPENDICES:

TABLE OF AUTHORITIES

Petitioner Philip Snyder respectfully asks that a Writ of *Certiorari* issue to review the Judgment of the Superior Court of Pennsylvania, filed on October 18, 2021.

OPINIONS BELOW

The Order of the Court of Common Pleas of Philadelphia County, issued February 10, 2020, is attached hereto as Appendix "A." The Court's Opinion in support of the said Order is attached hereto as Appendix "B."

The Opinion of the Superior Court of Pennsylvania filed October 18, 2021, affirming in part and reversing in part the Order of the Court of Common Pleas of Philadelphia County is not reported, but available at 840 EDA 2020. A copy is attached hereto as Appendix "C."

The Order of the Court of Common Pleas of Philadelphia County, issued November 10, 2021, is attached hereto as Appendix "D." The Court's Opinion in support of the said Order is attached hereto as Appendix "E."

The Order of the Supreme Court of Pennsylvania filed May 3, 2022 denying Respondent's petition to grant allocator is attached hereto and is available at 494 EAL 2021. A copy is attached hereto as Appendix "F."

JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C § 1257. The decision of the Superior Court of Pennsylvania of which the Petitioner Philip Snyder (hereinafter "Petitioner") seeks review was issued on October 18, 2021. The Supreme Court of Pennsylvania's order denying Petitioner's timely petition for discretionary review was filed on May 3, 2022. This petition is filed within ninety (90) days of the Supreme Court of Pennsylvania's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS, STATUTES, AND POLICIES AT ISSUE

The *United States Constitution, Amendment 1*, provides in pertinent part: "Congress shall make no law respecting… abridging the freedom of speech…"

The *United States Constitution, Amendment 14*, provides in pertinent 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."

The Pennsylvania Constitution, Article 1, Section 7, provides in pertinent part: "The free communication of thoughts and opinions is one of the

invaluable rights of man, and every citizen may freely speak, write and print on any subject…"

STATEMENT OF THE CASE

Petitioner Philip Snyder (hereinafter "Petitioner") was a member of, and served as a deacon at, Respondent Tenth Presbyterian Church (hereinafter "Respondent"), until he was excommunicated in August 2016. In January 2017, Petitioner filed a defamation lawsuit against two of Respondent's leaders, Senior Minister Liam Goligher and Clerk of Session George McFarland. On March 22, 2019, a jury returned a verdict in favor of Respondent and against Petitioner. App. B at **7**.

Thereafter, Petitioner engaged in expressive conduct directly in front of Respondent's property located 1701 Delancey Place, Philadelphia, PA 19103 that Respondent believes implied criminal conduct upon Respondent and its leaders. This conduct included Petitioner picketing Respondent before, during, and after Sunday services at Respondent's property located at 1701 Delancey Place, Philadelphia, PA 19103 with a tall banner that contains five (5) words: "Naked"; "Beatings"; "Lies"; "Rape" and "Threats." App. J at 117. Petitioner would only spend about an hour in front of Respondent (approximately 10:00am to 11:00am) on an average Sunday morning.

Respondent characterized Petitioner's conduct

as "defamatory per se" and "criminal;" however, it was unable to allege that Petitioner threatened violence or committed illegal criminal action against it or its members. App. J at 118. Respondent did not allege that the Petitioner made any specific threat against Respondent, it's leadership, or any of its members. Rather, Respondent merely alleged "upon information and belief" without basis or evidence that Petitioner is "mentally ill" and/or drew speculative assumptions about Petitioner's motive and/or intent. App. J at 118. Respondent further contended that, solely based on a hearsay conversation that Douglas Baker, Administrator of Respondent, had with a retired police captain who was not called as an expert witness, that Petitioner "fits the profile of a mass shooter." App. J at 119. Respondent further alleged that Petitioner has invaded the privacy of Respondent and its members, as well at their right to practice religion. App. J at 120. Respondent did not identify what specific privacy interest Petitioner invaded, nor did it allege that it has been unable to conduct religious services or that its members have been physically prevented from entering its facilities due to Petitioner's actions.

In response to Petitioner's expressive conduct, Respondent concurrently filed a complaint in seeking to permanently enjoy Petitioner from engaging his expressive conduct within one thousand (1,000) feet of any of its properties as well as an emergency motion seeking a preliminary injunction enjoining Petitioner from engaging his expressive conduct within one thousand (1,000) feet of any of its

properties while the Respondent's civil case proceeded. In Petitioner's response to Respondent's emergency motion, Petitioner repeatedly raised the fact that his behavior was speech protected by the First and Fourteenth Amendments of the United States Constitution. See App. G.

The trial court granted Respondent's emergency motion for a preliminary injunction and enjoined Petitioner from engaging in expressive conduct within five thousand (5,000) feet of Respondent's facilities. See Apps. A and B.

Petitioner appealed the trial court's decision to the Superior Court of Pennsylvania. Petitioner preserved his federal constitutional issues by raising them in his Concise Statement of Errors Complained of on Appeal. See App. H.

The Superior Court of Pennsylvania partially affirmed and partially reversed the trial court's decision, applying a "highly deferential" standard which requires only that the trial court had "any apparently reasonable grounds" in granting the injunction. The Superior Court noted the Constitutional issues raised by Petitioner (See App. C at 55–58) but concluded that the Trial Court was warranted in granting the preliminary injunction. The Superior Court did, however, find that the specific ban of expressive conduct within five thousand (5,000) feet of Respondent's facilities was excessive and not narrowly tailored. App. C at 67–68. The Superior Court remanded the matter back to the

trial court.[1] App. C at 71.

Petitioner subsequently filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, preserving his federal constitutional issues. See App. I.

The Supreme Court of Pennsylvania ultimately denied Petitioner's Petition for Allowance of Appeal, necessitating the instant Petition. See App. F.

REASONS WHY *CERTIORARI* SHOULD BE GRANTED

I. Review is warranted because Petitioner's speech is clearly protected under the First and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution.

Petitioner Philip Snyder's (hereinafter "Petitioner") speech, even if construed in the most negative manner possible, as is done by Respondent Tenth Presbyterian Church (hereinafter "Respondent"), is protected under the First and

[1] Upon remand, the trial court vacated its initial order and issued a new order and opinion consistent with the opinion of the Superior Court. The new order/opinion enjoined Petitioner from engaging in expressive conduct within one thousand (1,000) feet of Respondent's facilities. See Apps. D and E. Petitioner has appealed this new order/opinion and the matter is currently being litigated in state court.

Fourteenth Amendments to the United States Constitution. *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 907 (1982); *Cohen v. California,* 403 U.S. 15 (1971); *Org. for a Better Austin v. Keefe,* 402 U.S. 415 (1971); *Thornhill v. Alabama,* 310 U.S. 88 (1940) and also by Article I, section 7 of the Pennsylvania Constitution. *Willing v. Mazzocone,* 393 A.2d 1155 (Pa. 1978); *William Goldman Theaters, Inc. v. Dana,* 173 A.2d 59, 61 (Pa. 1961).

Under the United States Constitution, any system of prior restraint on speech bears a heavy presumption against validity. *New York Times Co. v. United States,* 403 U.S. 713 (1971). *See also, Near v. Minnesota,* 283 U.S. 697 (1931). "A 'prior restraint' is perhaps best defined as "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." *Williams v. Rigg*, 458 F.Supp.3d 468, 476 (S.D. W.Va. 2020) (*quoting Alexander v. United States*, 509 U.S. 544, 550 (1993)). According to the applicable case law, the injunction at issue herein constitutes a "prior constraint." "Temporary restraining orders and permanent injunctions—*i.e.*, court orders that actually forbid speech activities—are classic examples of prior restraints." *Alexander*, 509 U.S. at 550.

This Court refuses to uphold injunctions against speech, even where the state courts have found the activities in question to be "coercive and intimidating, rather than informative." *Org. for a Better Austin v. Keefe,* 402 U.S. at 415. In *Keefe,* the

majority observed that "no prior decisions support the claim that the interest of an individual in being free from public criticism … in pamphlets or leaflets warrants use of the injunctive power of a court." *Id.* at 419. Merely because the speech is intended to influence conduct does not remove it from First amendment protection. *Id.*

This Court has repeatedly held that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. *Williams v. Rigg*, 458 F.Supp.3d at 476 (*citing Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 558–559 (1976)). Accordingly, when a government actor—such as a court—attempts to place limitation on speech, such limitations are subject to "strict scrutiny," as speech is one of the core concerns of the First Amendment to the United States Constitution. *Twitter, Inc. v. Sessions*, 263 F.Supp.3d 803, 809 (N.D. Cal. 2017) (*citing Republican Party of Minnesota. v. White*, 536 U.S. 765, 774–75 (2002)); See also: *Reed v. Gilbert, Arizona,* 576 U.S. 155 (2015) (*citing Ward v. Rock Against Racism*, 491 U.S. 781 (1989)). This contrasts starkly with the highly deferential standard applied by the Superior Court in upholding the Trial Court's Order.

Accordingly, peaceful picketing carried on in a location generally open to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment. *Amalgamated Food Emps v. Logan Valley Plaza,* 458

U.S. 886 (1982). Speech in the form of a boycott, marches, and picketing, which urges action in which listeners are legally permitted to engage, is protected (*NAACP v. Claiborne Hardware,* 458 U.S. at 907), as is peaceful picketing of a business even though the purpose "was concededly to induce customers not to patronize" the business. *Id., (citing Thornhill v. Alabama,* 310 U.S. at 99 88). Consistent with the above, expressive activities have historically been compatible with, if not virtually inherent in, spaces dedicated to general pedestrian passage, such as the sidewalk at issue herein. *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.,* 308 F.3d 1114 (10th Cir. 2002) and *Int'l. Soc'y. for Krishna Consciousness, Inc. v. Lee*. 505 U.S. 672 (1992). Indeed, this Court has specifically stated that the traditional public sidewalk is an "archetype" public forum, *Frisby v. Schultz*, 487 U.S. 474 (1988).

Here, Petitioner's activities are protected by the United States Constitution. According to the Complaint, Petitioner's conduct outside of Respondent's facilities primarily consists of holding a banner that contains five words: "Naked"; "Beatings"; "Lies"; "Rape"; and "Threats." App. C at 117. Petitioner is also alleged to have yelled at and harassed members of Respondent, including calling a Respondent member a "liar" as she walked into Respondent's sanctuary. App. C at 118. Respondent alleges that the banner imputes crimes and dishonesty upon Respondent and its leaders; however, the contents of the banner do not specifically name Respondent or any of the

individuals involved with its administration. App. C at 117.

None of what Petitioner is alleged to have said or done while protesting in front of Respondent's building "rise to the level of true threats or equate to the behavior other courts have found to be sufficient... just because [what Petitioner claims about Respondent] offended [Respondent] or even caused [its parishioners or staff] to feel emotionally disturbed does not mean" Petitioner acted in any way to warrant the abridgment of his freedom of speech. *New Beginnings Ministries v. George*, 2018 WL 11378829 (S.D. Ohio 2016) Simply because Petitioner's "speech is forceful or aggressive," does not permit a court to punish that speech. *Id.*

The Pennsylvania Constitution, which is even more protective of speech than the federal Constitution (*Pennsylvania v. Tate,* 432 A.2d 1382 (Pa. 1981)) also prohibits "prior restraint on Pennsylvanians' right to speak." PA. CONST. art. I, § 7; *William Goldman Theaters, Inc. v. Dana,* 173 A.2d at 61. Accordingly, under Pennsylvania law "peaceful picketing conducted in a lawful manner and for a lawful purpose is lawful, even though it shuts down, bankrupts or puts out of business the company or firm which is picketed." *Tate v. Philadelphia Transport Co.,* 190 A.2d 316, 320 (Pa. 1963).

For instance, in *Willing v. Mazzocone,* a former client of a Philadelphia law firm demonstrated in a pedestrian plaza between office buildings which was

also a well-traveled pedestrian pathway between two court buildings. 393 A.2d at 1155. She wore a sandwich-board sign claiming that the law firm stole money from her and sold her out to an insurance company. *Id.* She also pushed a shopping cart with an American flag, rang a cow bell, and blew a whistle to attract further attention. *Id.* After the firm's partners filed a suit in equity to seek an injunction against the former client's activities, hearings were held, and it was determined that the former client's statements were patently false. *Id.* An injunction, as modified by the Superior Court, prevented the former client from further demonstrating or picketing by uttering statements to the effect that the firm stole money from her and sold her out. *Id.* On appeal, the Pennsylvania Supreme Court reversed, holding that the injunction against the former client violated her "state constitutional right to freely speak her opinion regardless of whether that opinion is based on fact or fantasy." *Id.* at 1158.

Similarly, Petitioner's activities are also protected under Pennsylvania Constitution. Petitioner's speech, which is noted earlier herein, is even less onerous than that attributed to the former client in *Willing* and is similarly as deserving of constitutional protection.

Although *Willing* is directly applicable to these circumstances, Respondent argues that it is distinguishable because Petitioner's actions are uniquely "malicious" when compared to the actions of the former client in *Willing*—who had a subjective

belief as to the truth of her statements. Respondent has never cited any case law in support of this argument, and it is unclear how Respondent infers that Petitioner's actions are malicious and the actions of the party in *Willing* were definitely not. Regardless, there is no law cited suggesting that there is some sort of carve out for motive or intent of any kind, much less "malice." While Respondent alleges that Petitioner "has previously admitted under oath that he knowingly communicated to members with the intent to leave a false and negative impression that Respondent leaders were involved in alleged wrongdoing," (App. J. at 121)[2]—Petitioner's alleged conduct in front of Respondent—which Respondent seeks to enjoin—merely consists of holding a banner consisting of five (5) words, and largely unspecified "yelling" at Respondent's members entering the sanctuary; moreover, *Willing* clearly holds that Pennsylvanians have a constitutional right to engage in expressive conduct, that cannot be enjoined, regardless of the speaker's intent. *See Id.*

In affirming most of the Trial Court's decision, the Superior Court notes that the relevant standard

[2] Upon information and belief, this allegation is based on Petitioner's testimony during his defamation lawsuit against Goligher and George McFarland. Petitioner was questioned regarding a statement he made that was arguably directed towards Goligher. While Petitioner admitted that this statement was made so that "the people would think ill of the current pastors and current leadership[,]" Petitioner vehemently denied that his statements were false.

is "highly deferential" to the Trial Court, *Weeks v. Dept. of Hum. Servs.,* 222 A.2d 722, 727 (Pa. 2019) and requires only the finding of any apparently reasonable ground for the Trial Court's decision. *Turner Constr. v. Plumbers Local 690,* 130 A.3d 47, 66 (Pa. Super. 2015). This standard, while appropriate in other instances, is inappropriate here. Given that the Trial Court's action here functions as a prior restraint, it is subject to "strict scrutiny." *Twitter, Inc. v. Sessions*, 263 F.Supp.3d at 803, 809 (*citing Republican Party of Minnesota. v. White*, 536 U.S. at 774–75). Strict scrutiny requires that government action, in this case the granting of the preliminary injunction, must be the least restrictive means of achieving a compelling state interest. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014) (*citing United States v. Playboy Entm't Group,* 529 U.S. 803, 813 (2000)).

The Superior Court acknowledges relevant constitutional issues, but then almost immediately brushes them aside by devoting several pages of discussion to the testimony of two (2) individuals who, in so many words, subjectively felt intimidated by Petitioner's presence and speech. App. C at 59–64.

The Superior Court discusses the testimony of former church administrator Douglas Baker ("Baker"). Baker testified that he received numerous hearsay complaints from Respondent's members expressing "alarm" at Petitioner's presence. App. C at 59. Despite the existence of these numerous complainants, virtually none were called to testify.

Baker also testified that he filed a police report based on emails from Respondent's members claiming that Petitioner had "made direct threats" against Respondent's senior minister, Liam Goligher ("Goligher"), though the nature of these threats is not elaborated on. App. C at 60. Baker opines that he subjectively felt that Petitioner's behavior was escalating, and Baker was "concerned over [Petitioner's] behavior" after attending active shooter training session. App. C at 61. Baker also alleges that he "understood" (*i.e.* based on rumor) that Petitioner carried a concealed weapon near the property. App. C at 60.

The Superior Court also discusses the testimony of Susan Elzey ("Elzey"), a member of Respondent. Elzey had testified in Petitioner's initial defamation suit. App. C at 62–63. At some point after the verdict in the said initial defamation suit, Petitioner approached Elzey while she was entering Respondent's property, and repeatedly accused Ms. Elzey of lying and being a liar. App. C at 62. Later, Ms. Elezy alleges that Petitioner told her that "God uses human instruments" and that Petitioner saw himself as "God's instrument of justice." App. C at 63. Elzey further alleged that Petitioner claimed that Goligher is the "son of Satan" and that any congregants supporting him were "doing Satan's work." App. C at 63.

After discussing the testimony of these two individuals, and briefly noting that Trial Court "expressed its concern over violent actions taken

against churches," the Superior Court apparently concludes that the foregoing was sufficient for the Trial Court to have granted the preliminary injunction, as it immediately moves on to whether the injunction was narrowly tailored. App. C at 67. While this might be sufficient for the "highly referential" standard citied by the Superior Court, it does not meet the strict scrutiny requirements required by the United States Constitution. *Twitter, Inc. v. Sessions*, 263 F.Supp.3d at 803, 809 (*citing Republican Party of Minnesota. v. White*, 536 U.S. at 774–75).

While preventing violence is obviously an important state interest, none of the cited testimony rises to the level of any actual, tangible threat of violence. The nature of the "direct threats" that Baker alleged prompted his police report are not elaborated on and are never explicitly stated. Regardless, these "direct threats" were not sufficient enough for the police to take any action on them. Indeed, they were not even sufficient enough for Respondent to mention them in its Complaint. See App. J. Baker's opinion that Petitioner's behavior was escalating and worthy of concern is without value and at best pure speculation, as Baker was a church administrator and not a psychologist or a law enforcement officer, and, therefore, lacked the necessary expertise to form such an opinion. Finally, Baker's claim that he understood that Petitioner carried a concealed weapon is unfounded. Baker admits that he never observed Petitioner carrying a weapon. App. C at 62. Even if he had, legally

carrying a firearm is obviously not a crime, nor does it imply an imminent threat. Petitioner is licensed to carry a firearm (App. C at 65), meaning he has undertaken the arduous requirements imposed by the state to obtain his license.[3] Further, Petitioner has even taken the extraordinary measure to voluntarily surrender his firearms to the Pennsylvania State Police to ensure, and demonstrate, that he is no danger to Respondent or anyone else. App. C at 65.

Elzey's claims that Petitioner called her a liar and fancied himself to be an "instrument" of God's justice, similarly, does not rise to the level of an actual threat. There's nothing close to a threat in her testimony, merely an acknowledgement that Petitioner takes his views very seriously. It is important to keep in mind that all the actions that gave rise to this matter have occurred and are occurring in a religious context. All individuals involved are deeply religious—Petitioner's religious convictions are so deep that he relocated from California to Philadelphia to become a member of Respondent. App. E at 77. Given the high levels of religiosity of all involved, it is not abnormal or odd

[3] In order to hold a license to carry a firearm in Pennsylvania, licensees must submit to a background check in which it is verified that they have never been convicted of a violent crime, be an undocumented immigrant, been declared mentally ill by the court, a drug addict or habitual drunkard, a fugitive from justice, been convicted of three separate DUI charges within a five-year period, or are subject to an active protection from abuse order. See generally, 18 Pa. C.S. § 6111.1.

for Petitioner to believe that he was acting as in instrument of God. Indeed, all parties, including Goligher, likely believe themselves to be acting as instruments of God.

There is no evidence that Elzey was fearful of Petitioner. Elzey admits that she approached Petitioner without fear to challenge his protest, and, notably, Petitioner did not respond with any violence or threats. App. C at 63.

The notion that Petitioner would resort to violence, hinted at in the testimony of Baker and Elzey, is baseless speculation, at best, and speaks more to their animus towards Petitioner than it does to Petitioner's alleged aggressive behavior. The only conduct that Petitioner has engaged in, as alleged by Respondent, is holding a sign containing the words "Naked"; "Beatings"; "Lies"; "Rape"; and "Threat", calling a Respondent member a "liar", and knocking on the doors of neighbors to communicate "false and unfounded" allegations. App. C at 117–118, and 123. Respondent has been unable to allege any specific violent threats made by Petitioner against its leadership or its members. Indeed, Petitioner is a productive member of society working as a mechanic and has never been arrested in his fifty-four (54) years of life App. C at 63.[4]

[4] Even taking the very spurious notion that potential violence by the Petitioner at face value, it must be noted Pennsylvania courts have enjoined picketing that threatens violence or jeopardizes public order and safety, that is only in extreme situations such as in *City Line Open Hearth, Inc. v. Hotel, Motel*

The testimony relied upon by the Superior Court does not reasonably establish that there is any actual danger of violence. The "highly deferential" standard articulated by the Superior Court is inappropriate given that Petitioner's conduct is protected speech under the First Amendment. Petitioner's activity is, at worst, intimidating and annoying. As noted earlier herein, coercive and intimidating speech is protected by the U.S. Constitution. *Org. for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

Petitioner's conduct, even if annoying or embarrassing to Respondent and its members, is clearly protected by the State and Federal constitutions. Petitioner has a right to protest on the public streets abutting Respondent's property.

Based on the foregoing, Petitioner respectfully requests that this Court grant his Petition for Writ of *Certiorari*.

Respectfully submitted,

/s/ Faye Riva Cohen
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Dated: July 27, 2022

& Club Emps' Union, 197 A.2d 614 (Pa. 1964), in which striking workers sabotaged equipment, committed acts of vandalism, and threatened others to join their protests.