Supreme Court of the United States

No. 20-20

MODEL OPINION SERVICE V. HURRICANEOFLIES

[September 22, 2020]

PER CURIAM.

I. Introduction

At issue in this vitally important case is the viability of court-mandated style guides. Such documents are common, long-standing, and facilitate the orderly administration of justice, which is why versions have been published by practically every court in the United States.

May the Atlantic Commonwealth court system, as part of its style guide, prohibit citations to unofficial reporters? We hold that it may. And when it does so, does such a prohibition facially amount to a First Amendment violation or denial of access to the courts? We hold that it does not, so long as there are equally accessible and effective alternatives.

The Atlantic Commonwealth Supreme Court's actions are perfectly reasonable and authorized by that court's inherent authority to control those appearing before it. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S.Ct. 1178, 531 U.S. ___ (2017).

For these reasons, we affirm.

II. Facts

The Model Opinion Service (the "Service") aims "to enhance access to the courts by providing a public and free way to read and cite the opinions of courts throughout the nation." Pet. for Cert. at 13a. From what we can tell by reviewing the organization's work, the Service compiles opinions issued by the various State courts into one consolidated, consistently formatted repository. The primary benefit offered by the Service, like the more familiar WestLaw or Lexis reporters, is the convenience of centralization.

Unlike WestLaw and Lexis, however, and contrary to the Service's supposed aim, the Service's offerings are often inaccurate. The Service routinely introduces errors in its reporting of decisions that did not exist in the original opinions, such as inaccurately using "*sic*", censoring or otherwise modifying words used in the original opinions, and incorrectly identifying at least one decision as "*per curiam*."[1]

In late August, the Atlantic Commonwealth Supreme Court issued Administrative Order 2020-02. Section Four of the Order provides: "The use of the official citation format is to be strongly suggested in all legal filings in the Unified Court System. The use of plain case docket numbers is to be discouraged and the use of unofficial reporters is unauthorized."

The Atlantic Commonwealth Supreme Court also announced that it would release neutral citation formats for the cases it decides. Those opinions and neutral citation formats are all publicly available and as easy to access as those provided by the Service, though they are not kept in a central repository.

[1] We do not claim infallibility. Our work contains errors as well. *See, e.g.*, *In Re: Pub.L. B.074 (The Police Reform Act of 2015)*, Case No. 16–03, 100 M.S. Ct. 112 (2016) (incorrectly explaining/botching severability analysis). We make this point only to explain the motivation for the Atlantic Supreme Court's action.

Still, feeling that its business was being threatened, the Service filed a complaint -- though the document might perhaps be more accurately described as a whine -- to challenge the Order. The Atlantic Commonwealth Supreme Court dismissed the case. *Model Opinion Service v. Hurricaneoflies*, (2019) Atl. 12, 4.[2]

The Service appealed, pursuing a retaliation claim under the First Amendment to the United States Constitution. We granted review, but dispensed with briefing pursuant to R.P.P.S 5(8). *See Order Granting Certiorari* (Sep. 21, 2020). The record on appeal and the Service's brief was enough for us to decide this case.

III. Issues and Argument Presented

As a practical matter, we reject the Service's framing of the case. The Service claims that the Order "inflicted injury upon the Service by not letting the Service's customer base . . . use the Service." However, much like the Service's work product, this isn't *entirely* accurate. Pet. for Cert. at 13a. At *most,* the Order only prohibits *citations* to the Service's unofficial reporters in briefs. Thus, properly framed, the issue is whether a court may prohibit a citation style in the papers filed before it.

The Service argues that it may not, for several reasons. First, Petitioner points to the long line of cases enforcing the right of meaningful access to the courts. *Id.* at 9; *see e.g.*, *Beauchamp v. Murphy*, 37 F.3d 700 (1st Cir. 1993). Second, the Service argues that the Order was issued in retaliation for the Service's protected activities. Pet. for Cert. at 11. And finally, the Service claims that the

[2] This is an example of the citation format required by the Atlantic Supreme Court. According to the Administrative Order, citations should be to paragraphs, but as the Atlantic opinion had no paragraph numbers, we cite to the page number of the document, as instructed by the court below. It goes without saying that this citation style is not binding on this Court. Still, it was not *too* painful to use it.

Atlantic Commonwealth Supreme Court's actions harmed it. *Id.* at 11-12.

The Commonwealth disagrees with Petitioner for a number of reasons. First, it claims the case is not ripe. Second, it determined that the Service lacks standing to pursue this claim. As to merits, the Atlantic Commonwealth Supreme Court below found no denial of access to the courts because "the ability of prospective plaintiffs to seek legal redress from the Atlantic courts is not meaningfully hindered because there is no standalone right to file whatever one wants with the court in violation of established procedural rules." *Model Opinion Services*, *supra* at 3.

IV. Discussion

As an initial matter, we dispense with the issues of ripeness and standing. The Order has gone into effect, which is enough to allow the issues to crystalize for our resolution. *Horizon Lines v. President Bigg-boss*, Case №s 17–07, 17–08, 101 M.S. Ct 103 (2017). While the Atlantic Commonwealth Supreme Court relied on third-party standing doctrines to conclude that the Service lacks standing, the standing doctrine has been relaxed substantially in the United States Supreme Court, and we permit litigants to bring claims that an action is hypothetically unconstitutional absent a showing of actual injury or controversy. *See, e.g.*, *In re: Presidential Succession Act of 1947*, 20-18 M.S. Ct. (2020). Although all Justices concur in the outcome of the case, which was not in *any way* difficult to resolve, a grant of certiorari was reasonable here given these relaxed standing standards -- and made *necessary* so as to address remarks made by Petitioner's counsel.

Turning to the heart of the Service's claim, we conclude its retaliation claim fails.

At its core, a retaliation claim asserts that a government actor has taken action as a punishment for exercising a constitutional right. *See Rauser v. Horn*, 241 F.3d 330, 333 (3d Cir. 2001). To state a valid claim, the Service must allege that there is an underlying constitutional violation. Here, that claim is the Order unconstitutionally burdens access to the courts. Pet. for Cert. at 10.

To constitute denial of access to the courts, it is not necessary that the courthouse doors are slammed shut -- only that *meaningful* access to the courts has been abridged. *Bounds v. Smith*, 430 U.S. 817 (1977).

We do not take these claims lightly, though it appears Petitioner does. Liberty depends on access to our courts. Frequently these claims are raised by prisoners crying out for humane treatment. *See, e.g.*, *id.* And if they are unable to meaningfully interact with the courts, then their claims will fall on deaf ears. That is not a result of a just society. And it is certainly not the result guaranteed by the Constitution. On that basis, we have held that the government must, in some instances, assist in filing complaints for inmates. *Id.*

But *meaningful access* is not a license to act freely. Courts can, and do, require even *pro se* litigants to meet certain procedural formalities.[3] For example, the 7th Circuit provides a fairly detailed style guide for those appearing before it.

Filing requirements and style guides aren't there because courts are "too [expletive deleted] lazy" to use alternative filing systems or styles. Sep. 20, 2020 Comment by

[3] Perhaps application of procedural formalities *could* lead to an as-applied denial of access to the courts. For example, requiring electronic filing could amount to a constructive denial of an inmate's right of access if they have no means to send the electronic correspondence. But in that instance, the remedy would not be the invalidation of the procedural rule, but instead an accommodation for that inmate.

JacobInAustin. This is not because we are lazy. It is because certain file or document formats are more easily accessible for all of the Justices on this Court and the judges and justices toiling away in the lower courts. For example, we require litigants to file pleadings in plain text or as a document linked on Google Documents.[4] At least three state courts do the same. These citation formats are insisted upon not as an arbitrary hurdle to litigants, but because courts and litigants must be able to efficiently identify and find cases. Put differently, before courts can accommodate Service, it must first do justice.

For these reasons, this Court has squarely held for over a century that all courts "have authority to make and establish all necessary rules for the orderly conducting business in the said courts." *Heckers v. Fowler*, 69 U.S. (2 Wall.) 123 (1864).

Every litigant should familiarize themselves with their specific court's procedures and requirements. This is a hallmark of the United States legal system and a constitutionally required result of federalism. We do not have one judicial system in this country, but many. Each system is free to adopt procedural rules, like the citation requirements issued by the Atlantic Commonwealth, so long as they do not amount to an effective denial of access to the courts.

In this case, compliance with a court's style guide has been likened to rule by "a tyrant." Pet. for Cert. at 12. That's more than a bit dramatic, and an insult to true tyrants who have worked hard to earn that title.

The Atlantic Commonwealth Supreme Court has prohibited citations to a reporter that it has correctly determined is inefficient, and reports opinions incorrectly. In an effort to correct those problems, it has taken the

[4] We have found that alternative methods of submission may also be unreliable for long-term storage.

minor step of declaring that citations to all secondary reporters are unauthorized.[5] If these were the *only* sources of court opinions, or the court banned their *publication*, the First Amendment might be offended.

But here, the Atlantic Commonwealth Supreme Court has not prohibited publication, but merely the use of certain citations in papers filed with it. It has also provided an alternative form for citations that is easily accessible -- perhaps even more accessible than the Service's citation format. Finally, all of the opinions from the Atlantic Commonwealth Supreme Court are likewise available to the public. All of that means the Commonwealth has provided equal or better access—for free—to alternative methods of citing cases.

So maybe litigants are not able to file their documents exactly how they'd like. But they have never been allowed to do that in the first place. Remember, access to the courts is not equivalent to free choice to submit whatever you'd like to a court. It is about whether you can meaningfully interact with the courts at all. It is a dramatically important right. Comparing a style guide to the situation where a prisoner cries into the void for redress, only to be ignored, is incorrect and insulting to those who have truly had this right violated.

Has the Atlantic Commonwealth denied access to the courts by prohibiting citations to unofficial reporters? Not even close. No person or entity is denied access to the courts based on the order of the court below, either based on the actual language of the order or the practical consequences. Compliance with style and filing requirements is an inherent power of that court, part of a long standing practice of all United States courts, and we hold that a court may constitutionally implement such rules.

[5] We also note that they are unauthorized only for cases containing their new citation format, not for all cases, as Petitioner implies.

Competent lawyers should not be surprised by this result. Lawyers comply with a multiplicity of rules, including those that govern our out-of-court conduct. For example, lawyers should refrain from unnecessary litigation publicity. They must also maintain decorum before any tribunal and refrain from making false statements which impugn a judge's integrity. And, of course, they must comply with basic submission requirements that every single court requires in the United States.[6]

These are not idle or hypothetical references -- counsel for Petitioner has violated these rules, and several others, in the course of this litigation. We expect lawyers to advocate with zeal on behalf of their client, but they must also maintain high decorum before a court and when discussing any litigation matter, whether past or present. Even a single violation of these rules is sanctionable; repeated or persistent instances of such unacceptable conduct can result in disbarment. *See, e.g., Order to Show Cause: /u/caribofthedead and associated aliases* (2019-16); *Show Cause: /u/RonPaul20122016* (100-106). Failure to comply with the standards expected of litigants before this Court may result in Petitioner's counsel receiving a personalized lesson in the possible expressions of a Court's inherent authority.

[6] We do not, however, foreclose all as-applied challenges to filing requirements by individual litigants. *See In re B.385: the Death Penalty Abolition Reaffirmation Act,* Case №20–16 101 M.S.Ct. 120 (2020) (explaining the difference between facial and as-applied First Amendment challenges). In such a case a party would have the burden to show constructive denial of access to the courts. Because the Atlantic Commonwealth has issued publicly available resources that effectively accomplish what a private reporter would, we seriously doubt any as-applied challenge would succeed. And obviously the challenging party would have to explain how a citation requirement materially prejudiced their case. However, such a decision is beyond the scope of this appeal.

V. Conclusion

The decision of the Atlantic Commonwealth Supreme Court dismissing the Service's First Amendment claim is **AFFIRMED.**

It is so ordered.

SHOCKULAR, C.J., concurring.

I concur in full with our unanimous decision today. I write separately to address another concern related to the Petitioner's litigation in the media. In their press release, Petitioner accuses the Atlantic Supreme Court of "legislating and lawyering from the bench." This is an insult not just to that court, but to our judicial system as a whole. Our judicial system is made up not of Republican, Democratic, CPP, or NPF judges, but of twenty-two jurists doing their best to come to the correct conclusion in every case before them.

While we all have political beliefs, I firmly believe that no judge in our judicial system is acting based on those beliefs and "legislating from the bench," as Petitioner claims that the entirety of the Atlantic Court—and, I suppose, by extension, the entirety of this Court—is doing. Almost always, that phrase is used to indicate that the speaker disagrees with the court's decision. The allegation, used recklessly as it was here, undermines our judicial system and dismisses or misunderstands the hard work judges do, not only to come to conclusions, but to ensure they set personal biases, which we all have, aside in reaching those conclusions. It has no basis in reality.

While the press piece mentioned is certainly within Petitioner's First Amendment rights, making hyperbolic and inaccurate comments like the ones I have highlighted above is behavior unbecoming a member of the Bar of this or any Court. It was unfair to the judges in this case, who took much time and great care in addressing a frivolous claim,[7] and it is unfair to our system of justice as a whole.

[7] I do not mean to imply that claims based on access to the court are frivolous. As we explained in the Per Curiam decision above, this is a core right of our system. I only mean to imply that *this* claim is frivolous.

JJEagleHawk, J., concurring.

I fully join the Court's decision. I write separately to note that I would have no issue with issuing a show cause order to Petitioner's counsel /u/JacobInAustin, and believe we still should.

I do not believe that an attorney should be called to the mat, so to speak, for bringing a good faith (but ultimately losing) case.[8] All legal practitioners, including the judiciary, have been affected by the sudden qualitative and quantitative reduction in practicing lawyers occasioned by the events of June 23, 2018. We have responded to these events by applying a *pro se* pleading standard to submissions. Losing cases, and even the occasional frivolous case, are a somewhat acceptable byproduct of that treatment, and often a learning opportunity for a well-intentioned litigant.

However, it does not follow that relaxed decorum standards should also result from these events. Moreover, even if the decorum standards *were* relaxed hypothetically, they would not relax so far as to accommodate an enrolled and admitted attorney accusing a sitting judge of being "too [expletive deleted] lazy" to use anything but the *litigant's* preferred citation format. Such comments are unprofessional and unacceptable no matter what standard is applied, and they cannot be salvaged by designating such comments as "meta" or by literally substituting "expletive deleted" for an actual expletive. Such "workarounds" miss, entirely, the point -- the comment never should have been made in the first place, and having been made, should have been immediately deleted and an apology issued. Professional decorum standards, as the main opinion notes, apply not just in the courtroom.

[8] This is good for /u/JacobInAustin, as they lose a *lot* of cases.

This is not some lofty expectation unattainable by only the most exceptionally learned legal minds; *pro se* litigants are held to these same decorum standards. /u/JacobInAustin may see themselves as Rick Sanchez, and us Justices as a bunch of idiot Mortys, but that sort of posture with *any* judge can result in you spending the rest of your life in prison. Fortunately, here, our cases usually involve lower stakes and standards; unfortunately for /u/JacobInAustin, they are not so *much* lower that calling judges lazy *in a courtroom* thread will go unnoticed or unchallenged, and they likely cannot (I hope) blame their remarks on paranoid schizophrenia.

I trust and hope that /u/JacobInAustin will read the unanimous *per curiam* ruling above as the warning it is intended to be. In the event that they do not heed this warning in the future, I imagine I will not be the only voice calling for an on-the-record explanation.

Cheatem, J., concurring, joined by Dobs, J.

I join the Court's decision in full. I write separately only to note that I believe this case is, and was, entirely devoid of merit. Accordingly, while the Court does an admirable job of discussing the many legal failings of the Petitioner's claims, a reasoned decision here is unnecessary. Furthermore, I wish to register my belief that, for the same reasons, we ought not to have granted *certiorari* in the first instance. Indulging petitioners in this manner, particularly those who insult the courts before which they practice, only encourages their behavior.