

ARIZONA SUPREME COURT HOLDS STATEMENTS BY RADIO TALK SHOW HOST REGARDING POLITICAL FIGURE ARE PROTECTED BY THE FIRST AMENDMENT

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Harris v. Warner

Arizona Supreme Court

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The Arizona Supreme Court issued an opinion today discussing the First Amendment's limitations on defamation claims in a case involving a radio host who made allegedly defamatory statements regarding a political figure.

Daniel McCarthy, a "Republican political hopeful," sued James T. Harris and iHeartMedia, Inc., after Harris discussed his observations of McCarthy on his radio show, which was broadcast on a radio station owned by iHeartMedia. McCarthy alleged that Harris's statements were defamatory. Harris and iHeartMedia moved to dismiss, arguing that the statements were rhetorical hyperbole and that they were protected by the First Amendment.

The trial court found that the majority of the statements were not defamatory. It also acknowledged that the statements addressed a public concern and that McCarthy was a public figure. However, it found that a handful of statements were defamatory and therefore potentially actionable. The court explained that one set of statements, when taken together with their context, could be construed as a factual description that McCarthy uses violence to achieve political objectives. Another statement claimed that McCarthy had created a new political party, and a final two statements involved political fundraising and finances that the court said could be capable of being proven true or false. Harris and iHeartMedia sought special action review, which the court of appeals declined. The Arizona Supreme Court accepted review.

The Court began its opinion by reviewing defamation law in Arizona and its recent decision in *Rogers v. Mroz*. It explained that in matters of public concern the assertion must be provable as false and the statement must be reasonably perceived as stating actual facts and not imaginative expression or rhetorical hyperbole.

The Court proceeded to examine each statement carefully. It easily concluded that the statements that McCarthy was violent and a finance-related statement that McCarthy did not believe in himself enough to invest were not actionable because they would be readily recognized as "rhetorical political invective or mere hyperbole." The Court also explained that Harris's commentary was full of personal and subjective impressions, so it lacked any objective criteria to measure its falsity.

The Court then concluded there was nothing defamatory about claiming McCarthy created a new party because it would not change McCarthy's reputation. It also concluded that the remaining statement regarding campaign finances was not defamatory. In that statement, Harris had said McCarthy was nowhere close to contributing the amount of money he claimed he would put in his campaign. The Court explained that although the statement was provable as false, the context of the statement "does not impeach his integrity."

Finally, the Court discussed the context of Harris's show and the importance of political speech. It did not suggest that the First Amendment provides a categorical protection to anything on a political talk show, but given the context and the statements at issue, it found that none of the allegedly defamatory statements were actionable.

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[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Following his clerkship, Justin has handled over 75 appeals, successfully arguing before the Arizona Court of Appeals, Arizona Supreme Court, and U.S. Court of Appeals for the Ninth Circuit. Justin has spoken at many seminars on appellate preservation topics and is recognized as a *Southwest Super Lawyers* Rising Star and Best Lawyers Ones to Watch in the area of Appellate Practice. He currently serves as the Chair of the Appellate Group at JSH.

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