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1. *Hustler Magazine v. Falwell, 485 U.S. 46*
   Client/Matter: -None-

Hustler Magazine v. Falwell

Supreme Court of the United States

December 2, 1987, Argued ; February 24, 1988, Decided

No. 86-1278

Reporter
485 U.S. 46; 108 S. Ct. 876; 99 L. Ed. 2d 41; 1988 U.S. LEXIS 941; 56 U.S.L.W. 4180; 14 Media L. Rep. 2281

Hustler Magazine and Larry C. Flynt, Petitioners v. Jerry Falwell

Prior History: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Disposition: *797 F. 2d 1270*, reversed.

Core Terms

parody, public figure, damages, intentional infliction of emotional distress, cartoon, outrageous, emotional distress, emotional, offensive, Magazine, libel, first time, jury found, caricature, inflict

Case Summary

Procedural Posture

Petitioner magazine sought review of the judgment of the United States Court of Appeals for the Fourth Circuit, affirming an award of monetary damages to respondent, a nationally known minister, for intentional infliction of emotional distress arising from the publication of an advertisement parody.

Overview

Respondent brought suit against petitioner for libel, slander, and intentional infliction of emotional distress arising from the publication of his caricature in an ad parody. The jury awarded damages on the intentional infliction of emotional distress charge, and the court of appeals affirmed the award. Petitioner sought certiorari claiming the damages were inconsistent with the *First Amendment*. On review, the Court found that respondent, as a public figure, was required to show that the statements published in the advertisement parody were made with actual malice or reckless disregard of the truth. The Court found that the award of damages was inconsistent with the Court's longstanding refusal to allow damages just because a particular form of speech may have had an adverse emotional impact on the audience. The judgment of the Court of Appeals was accordingly reversed.

Outcome

The judgment was reversed because respondent was required to show that petitioner acted with malice or recklessness in publication of statements in an advertisement parody.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN1 The freedom to speak one's mind is not only an aspect of individual liberty -- and thus a good unto itself -- but also is essential to the common quest for truth and the vitality of society as a whole.

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Torts > Intentional Torts > Defamation > General Overview

Torts > ... > Defamation > Public Figures > Voluntary Public Figures

HN2 The U.S. Supreme Court has consistently ruled that a public figure may hold a speaker liable for the damage to reputation caused by publication of a defamatory falsehood, but only if the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not.

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Constitutional Law > ... > Freedom of Speech > Defamation > Public Figures

Torts > ... > Defamation > Public Figures > Voluntary Public Figures

HN3 Even though falsehoods have little value in and of themselves, they are nevertheless inevitable in free debate, and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted chilling effect on speech relating to public figures that does have constitutional value.

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Torts > Intentional Torts > Defamation > General Overview

HN4 Generally speaking the law does not regard the intent to inflict emotional distress as one which should receive much solicitude, and it is quite understandable that most if not all jurisdictions have chosen to make it civilly culpable where the conduct in question is sufficiently outrageous. But in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the *First Amendment*.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Torts > Intentional Torts > Defamation > General Overview

HN5 Outrageousness in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression. An outrageousness standard thus runs afoul of the Court's longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience.

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > General Overview

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN6 The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the *First Amendment* that the government must remain neutral in the marketplace of ideas.

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN7 It is firmly settled that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Criminal Law & Procedure > ... > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > Elements

HN8 Speech that is vulgar, offensive, and shocking is not entitled to absolute constitutional protection under all circumstances.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN9 The Supreme Court has long recognized that not all speech is of equal *First Amendment* importance.

Torts > Intentional Torts > Defamation > General Overview

Torts > Intentional Torts > Intentional Infliction of Emotional Distress > General Overview

HN10 Public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications without showing in addition that the publication contains a false statement of fact which was made with "actual malice," i.e., with knowledge that the statement was false or with reckless disregard as to whether or not it was true.

Lawyers' Edition Display

Decision

First Amendment held to prohibit public figure from recovering damages for intentional infliction of emotional

distress as result of parody, absent showing of false statement of fact which was made with actual malice.

Summary

A magazine of nationwide circulation, parodying a series of liquor advertisements in which celebrities speak about their "first time," published an advertisement parody--labeled on the bottom, in small print, as an "ad parody not to be taken seriously"--in which a nationally known minister and commentator on politics and public affairs was presented as recalling, in a supposed interview, that his "first time" was during a drunken incestuous rendezvous with his mother in an outhouse. The minister, claiming that the publication of the ad parody entitled him to damages for libel, invasion of privacy, and intentional infliction of emotional distress, brought a diversity action against the magazine and its publisher in the United States District Court for the Western District of Virginia. The District Court directed a verdict for the magazine on the invasion-of-privacy claim, and the jury found for the magazine on the libel claim based on its finding that the ad parody could not reasonably be understood as describing actual facts or events. However, the jury found for the minister on the emotional distress claim and awarded him substantial compensatory and punitive damages, and the District Court denied the magazine's motion for judgment notwithstanding the verdict. In affirming the District Court's judgment with regard to the emotional distress claim, the United States Court of Appeals for the Fourth Circuit held (1) that in the context of such a claim, the rule of *New York Times Co. v Sullivan (1964) 376 US 254, 11 L Ed 2d 686, 84 S Ct 710*--which held that, under the *First Amendment to the Federal Constitution*, defendants may be held liable for defamation of public figures only if the defamatory falsehood was published with "actual malice"--is satisfied if it is found that the defendant's intentional or reckless misconduct caused the distress complained of, and does not require a public figure to prove the defendant's knowledge of falsity or reckless disregard of the truth; and (2) that it is irrelevant whether the ad parody was a constitutionally protected statement of opinion rather than a statement of fact, since the only issue on this claim is whether the publication was sufficiently outrageous to constitute intentional infliction of emotional distress (*797 F2d 1270*).

On certiorari, the United States Supreme Court reversed. In an opinion by Rehnquist,Ch. J., joined by Brennan, Marshall, Blackmun, Stevens, O'Connor, and Scalia, JJ., it was held (1) that the free speech guaranties of the *First Amendment* prohibit public figures and public officials from recovering for the tort of intentional infliction of emotional distress by reason of the publication of a caricature, such as the ad parody in question, unless it is shown that the publication contains a false statement of fact which was made with actual malice, that is, with knowledge that the statement was false or with reckless disregard as to whether it was true; and (2) that the minister in question thus could not recover for intentional infliction of emotional distress, since (a) he is a public figure, and (b) the Supreme Court accepted the jury's finding that the ad parody could not reasonably be understood as describing actual facts.

White, J., concurred in the judgment, expressing the view (1) that the decision in *New York Times Co. v Sullivan, supra*, had little to do with this case since the ad parody in question was found to contain no assertion of fact, but (2) that the judgment below penalizing the ad parody could not be squared with the *First Amendment*.

White, J., did not participate.

Headnotes

LAW §948 > TORTS §3 > free speech -- defamation of public figure -- intentional infliction of emotional distress -- > Headnote:

[1A][1B][1C][1D][1E][1F]

Under the free speech guaranties of the *Federal Constitution's First Amendment*, public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications caricaturing them unless they show that the publication contains a false statement of fact which was made with "actual malice," that is, with knowledge that the statement is false or with reckless disregard as to whether it is true; a state's interest in protecting public figures from emotional distress is not sufficient to deny *First Amendment* protection to speech that is patently offensive and is intended to inflict emotional injury where that speech could not reasonably have been interpreted as stating actual facts about the public figure involved; while a bad motive such as intent to inflict emotional distress may be deemed controlling for purposes of tort liability in other areas of the law, the *First Amendment* prohibits such a result in the area of public debate about public figures; nor may such a publication be excluded

from *First Amendment* protection on the basis of its "outrageousness," since such a standard has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the juror's tastes, views, or dislike of a particular expression, and would thus violate the rule against allowing damages to be awarded because the speech in question may have an adverse impact on the audience; thus, where a magazine published a parody of liquor advertisements which presented a nationally known minister and political commentator as recalling, in a supposed interview, that his "first time" was during a drunken incestuous rendezvous with his mother in an outhouse, the minister could not recover damages from the magazine on a claim for intentional infliction of emotional distress, given that (1) the minister is a public figure for purposes of *First Amendment* law, and (2) the Supreme Court accepts the finding of the jury in the case that the ad parody could not reasonably be understood as describing actual facts about the minister or actual events in which he participated.

TORTS §3 > state law -- intentional infliction of emotional distress -- > Headnote:

LEdHN[2A] [2A]***LEdHN[2B]*** [2B]

Under Virginia law, in an action for intentional infliction of emotional distress, a plaintiff must show that the defendant's conduct (1) is intentional or reckless; (2) offends generally accepted standards of decency or morality; (3) is causally connected with the plaintiff's emotional distress; and (4) caused emotional distress that was severe.

LAW §925 > freedom of expression -- flow of ideas -- > Headnote:

LEdHN[3] [3]

At the heart of the freedom-of-expression guaranties of the *Federal Constitution's First Amendment* is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.

LAW §925 > freedom of expression -- false ideas -- > Headnote:

LEdHN[4] [4]

The freedom-of-expression guaranties of the *Federal Constitution's First Amendment* recognize no such thing as a false idea.

LAW §960 > criticism of public figures -- > Headnote:

LEdHN[5] [5]

One of the prerogatives of American citizenship under the *Federal Constitution's First Amendment* is the right to criticize public persons and measures.

LAW §948 > freedom of expression -- defamation of public figure -- > Headnote:

LEdHN[6] [6]

Under the guaranties of freedom of expression in the *Federal Constitution's First Amendment*, public figures may recover for libel or defamation only when they can prove both that the statement in question is false and that the statement was made with the requisite level of culpability, that is, with knowledge that it is false or with reckless disregard whether it is false.

LAW §925 > public debate -- unadmirable motives -- > Headnote:

LEdHN[7] [7]

In the world of debate about public affairs, many things done with motives that are less than admirable are protected by the *First Amendment to the Federal Constitution*.

LAW §925 > offensive speech -- government neutrality -- > Headnote:

LEdHN[8] [8]

The fact that society may find speech offensive is not a sufficient reason for suppressing it, and if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection, for it is a central tenet of the *Federal Constitution's First Amendment* that the government must remain neutral in the marketplace of ideas; however, these principles are subject to limitations.

LAW §948 > freedom of expression -- public figure -- > Headnote:

LEdHN[9A] [9A]***LEdHN[9B]*** [9B]

A minister who (1) is the host of a nationally syndicated television show, (2) was the founder and president of a political organization formerly known as the Moral

Majority, (3) is the founder of a university, and (4) is the author of several books and publications is a "public figure" for purposes of the freedom-of-expression guaranties of the *Federal Constitution's First Amendment*.

APPEAL §1462 > review of jury findings -- > Headnote:

LEdHN[10] [10]

In accordance with its custom, the United States Supreme Court--reviewing on certiorari the judgment of a Federal Court of Appeals in a case in which a nationally known minister seeks damages for intentional infliction of emotional distress as a result of a magazine's publication of an advertisement parody in which the minister is presented as recalling, in a supposed interview, that his "first time" was during a drunken incestuous rendezvous with his mother in an outhouse--will accept the finding of the jury that the parody could not reasonably be described as describing actual facts about the minister or actual events in which he participated, which finding the Court of Appeals intepreted as stating that the parody was not reasonably believable.

Syllabus

Respondent, a nationally known minister and commentator on politics and public affairs, filed a diversity action in Federal District Court against petitioners, a nationally circulated magazine and its publisher, to recover damages for, *inter alia*, libel and intentional infliction of emotional distress arising from the publication of an advertisement "parody" which, among other things, portrayed respondent as having engaged in a drunken incestuous rendezvous with his mother in an outhouse. The jury found against respondent on the libel claim, specifically finding that the parody could not "reasonably be understood as describing actual facts . . . or events," but ruled in his favor on the emotional distress claim, stating that he should be awarded compensatory and punitive damages. The Court of Appeals affirmed, rejecting petitioners' contention that the "actual malice" standard of *New York Times Co. v. Sullivan, 376 U. S. 254*, must be met before respondent can recover for emotional distress. Rejecting as irrelevant the contention that, because the jury found that the parody did not describe actual facts, the ad was an opinion protected by the *First Amendment to the Federal Constitution*, the court ruled that the issue was whether the ad's publication was sufficiently outrageous to constitute intentional infliction of emotional distress.

Held: In order to protect the free flow of ideas and opinions on matters of public interest and concern, the *First* and *Fourteenth Amendments* prohibit public figures and public officials from recovering damages for the tort of intentional infliction of emotional distress by reason of the publication of a caricature such as the ad parody at issue without showing in addition that the publication contains a false statement of fact which was made with "actual malice," *i.e.*, with knowledge that the statement was false or with reckless disregard as to whether or not it was true. The State's interest in protecting public figures from emotional distress is not sufficient to deny *First Amendment* protection to speech that is patently offensive and is intended to inflict emotional injury when that speech could not reasonably have been interpreted as stating actual facts about the public figure involved. Here, respondent is clearly a "public figure" for *First Amendment* purposes, and the lower courts' finding that the ad parody was not reasonably believable must be accepted. "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression, and cannot, consistently with the *First Amendment*, form a basis for the award of damages for conduct such as that involved here. Pp. 50-57.

Counsel: Alan L. Isaacman argued the cause for petitioners. With him on the briefs was David O. Carson.

Norman Roy Grutman argued the cause for respondent. With him on the brief were Jeffrey H. Daichman and Thomas V. Marino.*

Judges: REHNQUIST, C. J., delivered the opinion of the Court, in which BRENNAN, MARSHALL,

* Briefs of amici curiae urging reversal were filed for the American Civil Liberties Union Foundation et al. by Harriette K. Dorsen, John A. Powell, and Steven R. Shapiro; for the Association of American Editorial Cartoonists et al. by Roslyn A. Mazer and George Kaufmann; for the Association of American Publishers, Inc., by R. Bruce Rich; for Home Box Office, Inc., by P. Cameron DeVore and Daniel M. Waggoner; for the Law & Humanities Institute by Edward de Grazia; for the Reporters Committee for Freedom of the Press et al. by Jane E. Kirtley, Richard M. Schmidt, David Barr, and J. Laurent Scharff; for

BLACKMUN, STEVENS, O'CONNOR, and SCALIA, JJ., joined. WHITE, J., filed an opinion concurring in the judgment, *post*, p. 57. KENNEDY, J., took no part in the consideration or decision of the case.

Opinion by: REHNQUIST

Opinion

[*47] [***47] [**877] CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

[1A] [1A]Petitioner Hustler Magazine, Inc., is a magazine of nationwide circulation. Respondent Jerry Falwell, a nationally known minister who has been active as a commentator on politics and public affairs, sued petitioner and its publisher, petitioner Larry Flynt, to recover damages for invasion of [*48] privacy, libel, and intentional infliction of emotional distress. The District Court [**878] directed a verdict against respondent on the privacy claim, and submitted the other two claims to a jury. The jury found for petitioners on the defamation claim, but found for respondent on the claim for intentional infliction of emotional distress and awarded damages. We now consider whether this award is consistent with the *First* and *Fourteenth Amendments of the United States Constitution*.

The inside front cover of the November 1983 issue of Hustler Magazine featured a "parody" of an advertisement for Campari Liqueur that contained the name and picture of respondent and was entitled "Jerry Falwell talks about his first time." This parody was modeled after actual Campari ads that included interviews with various celebrities about their "first times." Although it was apparent by the end of each interview that this meant the first time they sampled Campari, the ads clearly played on the sexual double entendre of the general subject of "first times." Copying the form and layout of these Campari ads, Hustler's editors chose respondent as the featured celebrity and drafted an alleged "interview" with him in which he states that his "first time" was during a drunken incestuous rendezvous with his mother in an outhouse. The Hustler parody portrays respondent and his mother as drunk and immoral, and suggests that respondent is a hypocrite who preaches only when he is drunk. In small print at the bottom of the page, the ad contains the disclaimer, "ad parody -- not to be taken seriously." The magazine's table of contents also lists the ad as "Fiction; Ad and Personality Parody."

Soon after the November issue of Hustler became available to the public, respondent brought this diversity action in the United States District Court for the Western District of Virginia against Hustler Magazine, Inc., Larry C. Flynt, and Flynt Distributing Co. Respondent stated in his complaint that publication of the ad parody in Hustler entitled [*49] him to recover damages for libel, invasion of privacy, and intentional infliction of emotional distress. The case proceeded to trial. [1] At the close of the evidence, the District Court granted a directed verdict for petitioners on the invasion of privacy claim. The jury then found against respondent on the libel claim, specifically finding that the ad parody could not "reasonably be understood as describing actual facts about [respondent] or actual events in which [he] participated." App. to Pet. for Cert. C1. The jury ruled for respondent on the intentional infliction of emotional distress claim, however and stated that he should be awarded [***48] $ 100,000 in compensatory damages, as well as $ 50,000 each in punitive damages from petitioners. [2] Petitioners' motion for judgment notwithstanding the verdict was denied.

LEdHN[2A] [2A]On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the judgment against petitioners. *Falwell v. Flynt, 797 F. 2d 1270 (CA4 1986)*. The court rejected petitioners' argument that the "actual malice" standard of *New York Times Co. v. Sullivan, 376 U. S. 254 (1964)*, must be met before respondent can recover for emotional distress. The court agreed that because respondent is concededly a public figure, petitioners are "entitled to the same level of *first amendment* protection in the claim for intentional infliction of emotional distress that they received in [respondent's] claim for libel." *797 F. 2d, at 1274*. But this does not mean that a literal application of the actual malice rule is appropriate in the context of an emotional distress claim. In the court's view, the *New York Times* decision emphasized the constitutional importance not

Richmond Newspapers, Inc., et al. by Alexander Wellford, David C. Kohler, Rodney A. Smolla, William A. Niese, Jeffrey S. Klein, W. Terry Maguire, and Slade R. Metcalf; and for Volunteer Lawyers for the Arts, Inc., by Irwin Karp and I. Fred Koenigsberg.

[1] While the case was pending, the ad parody was published in Hustler magazine a second time.

[2] The jury found no liability on the part of Flynt Distributing Co., Inc. It is consequently not a party to this appeal.

of the falsity of the statement or the defendant's disregard for the truth, but of the heightened level of culpability embodied [**879] in the requirement of "knowing . . . or reckless" conduct. Here, the *New York* [*50] *Times* standard is satisfied by the state-law requirement, and the jury's finding, that the defendants have acted intentionally or recklessly. [3] The Court of Appeals then went on to reject the contention that because the jury found that the ad parody did not describe actual facts about respondent, the ad was an opinion that is protected by the *First Amendment*. As the court put it, this was "irrelevant," as the issue is "whether [the ad's] publication was sufficiently outrageous to constitute intentional infliction of emotional distress." *Id., at 1276*. [4] Petitioners then filed a petition for rehearing en banc, but this was denied by a divided court. Given the importance of the constitutional issues involved, we granted certiorari. *480 U.S. 945 (1987)*.

[1B] [1B]This case presents us with a novel question involving *First Amendment* limitations upon a State's authority to protect its citizens from the intentional infliction of emotional distress. We must decide whether a public figure may recover damages for emotional harm caused by the publication of an ad parody offensive to him, and doubtless gross and repugnant in the eyes of most. Respondent would have us find that a State's interest in protecting public figures from emotional distress is sufficient to deny *First Amendment* protection to speech that is patently offensive and is intended to inflict emotional injury, even when that speech could not reasonably have been interpreted as stating actual facts about the public figure involved. This we decline to do.

[***49] ***LEdHN[3]*** [3] ***LEdHN[4]*** [4]At the heart of the *First Amendment* is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. ***HN1*** "The [*51] freedom to speak one's mind is not only an aspect of individual liberty -- and thus a good unto itself -- but also is essential to the common quest for truth and the vitality of society as a whole." *Bose Corp. v. Consumers Union of United States, Inc., 466 U. S. 485, 503-504 (1984)*. We have therefore been particularly vigilant to ensure that individual expressions of ideas remain free from governmentally imposed sanctions. The *First Amendment* recognizes no such thing as a "false" idea. *Gertz v. Robert Welch, Inc., 418 U. S. 323, 339 (1974)*. As Justice Holmes wrote, "When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ." *Abrams v. United States, 250 U. S. 616, 630 (1919)* (dissenting opinion).

LEdHN[5] [5]The sort of robust political debate encouraged by the *First Amendment* is bound to produce speech that is critical of those who hold public office or those public figures who are "intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large." Associated Press v. Walker decided with *Curtis Publishing Co. v. Butts, 388 U. S. 130, 164 (1967)* (Warren, C.J., concurring in result). Justice Frankfurter put it succinctly in *Baumgartner v. United States, 322 U. S. 665, 673-674 (1944)*, when he said that [**880] "one of the prerogatives of American citizenship is the right to criticize public men and measures." Such criticism, inevitably, will not always be reasoned or moderate; public figures as well as public officials will be subject to "vehement, caustic, and sometimes unpleasantly sharp attacks," *New York Times, supra, at 270*. "The candidate who vaunts his spotless record and sterling integrity cannot convincingly cry 'Foul!' when an opponent or an industrious reporter attempts [*52] to demonstrate the contrary." *Monitor Patriot Co. v. Roy, 401 U. S. 265, 274 (1971)*.

LEdHN[6] [6]Of course, this does not mean that any speech about a public figure is immune from sanction in the form of damages. Since *New York Times Co. v. Sullivan, supra*, ***HN2*** we have consistently ruled that a public figure may hold a speaker liable for the damage to reputation caused by publication of a defamatory falsehood, but only if the statement was made "with

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[3] ***LEdHN[2B]*** [2B]

Under Virginia law, in an action for intentional infliction of emotional distress a plaintiff must show that the defendant's conduct (1) is intentional or reckless; (2) offends generally accepted standards of decency or morality; (3) is causally connected with the plaintiff's emotional distress; and (4) caused emotional distress that was severe. 797 F. 2d, at 1275, n. 4 (citing *Womack v. Eldridge*, 215 Va. 338, 210 S. E. 2d 145 (1974)).

[4] The court below also rejected several other contentions that petitioners do not raise in this appeal.

knowledge that it was false or with reckless disregard of whether it was false or not." *Id., at 279-280*. False statements of fact are particularly valueless; they interfere with the truth-seeking function of the marketplace of ideas, and they cause damage to an individual's reputation that cannot easily be repaired by counterspeech, however persuasive or effective. See *Gertz, 418 U. S., at 340, 344, n. 9*. [***50] But ***HN3*** even though falsehoods have little value in and of themselves, they are "nevertheless inevitable in free debate," *id., at 340*, and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted "chilling" effect on speech relating to public figures that does have constitutional value. "Freedoms of expression require " breathing space.'" *Philadelphia Newspapers, Inc. v. Hepps, 475 U. S. 767, 772 (1986)* (quoting *New York Times, 376 U. S., at 272*). This breathing space is provided by a constitutional rule that allows public figures to recover for libel or defamation only when they can prove both that the statement was false and that the statement was made with the requisite level of culpability.

Respondent argues, however, that a different standard should apply in this case because here the State seeks to prevent not reputational damage, but the severe emotional distress suffered by the person who is the subject of an offensive publication. Cf. *Zacchini v. Scripps-Howard Broadcasting Co., 433 U. S. 562 (1977)* (ruling that the "actual malice" standard does not apply to the tort of appropriation of a right of publicity). In respondent's view, and in the view of the [*53] Court of Appeals, so long as the utterance was intended to inflict emotional distress, was outrageous, and did in fact inflict serious emotional distress, it is of no constitutional import whether the statement was a fact or an opinion, or whether it was true or false. It is the intent to cause injury that is the gravamen of the tort, and the State's interest in preventing emotional harm simply outweighs whatever interest a speaker may have in speech of this type.

[1C] [1C] ***LEdHN[7]*** [7]***HN4*** Generally speaking the law does not regard the intent to inflict emotional distress as one which should receive much solicitude, and it is quite understandable that most if not all jurisdictions have chosen to make it civilly culpable where the conduct in question is sufficiently "outrageous." But in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the *First Amendment*. In *Garrison v. Louisiana, 379 U. S. 64 (1964)*, we held that even when a speaker or writer is motivated by hatred or ill-will his expression was protected by the *First Amendment*:

"Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak [**881] out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth." *Id., at 73*.

Thus while such a bad motive may be deemed controlling for purposes of tort liability in other areas of the law, we think the *First Amendment* prohibits such a result in the area of public debate about public figures.

Were we to hold otherwise, there can be little doubt that political cartoonists and satirists would be subjected to damages awards without any showing that their work falsely defamed its subject. Webster's defines [***51] a caricature as "the deliberately distorted picturing or imitating of a person, literary style, etc. by exaggerating features or mannerisms for satirical effect." Webster's New Unabridged Twentieth [*54] Century Dictionary of the English Language 275 (2d ed. 1979). The appeal of the political cartoon or caricature is often based on exploration of unfortunate physical traits or politically embarrassing events -- an exploration often calculated to injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided. One cartoonist expressed the nature of the art in these words:

"The political cartoon is a weapon of attack, of scorn and ridicule and satire; it is least effective when it tries to pat some politician on the back. It is usually as welcome as a bee sting and is always controversial in some quarters." Long, The Political Cartoon: Journalism's Strongest Weapon, The Quill, 56, 57 (Nov. 1962).

Several famous examples of this type of intentionally injurious speech were drawn by Thomas Nast, probably the greatest American cartoonist to date, who was associated for many years during the post-Civil War era with Harper's Weekly. In the pages of that publication Nast conducted a graphic vendetta against William M. "Boss" Tweed and his corrupt associates in New York City's "Tweed Ring." It has been described by one historian of the subject as "a sustained attack which in its passion and effectiveness stands alone in the history of American graphic art." M. Keller, The Art and Politics of Thomas Nast 177 (1968). Another writer explains

that the success of the Nast cartoon was achieved "because of the emotional impact of its presentation. It continuously goes beyond the bounds of good taste and conventional manners." C. Press, The Political Cartoon 251 (1981).

Despite their sometimes caustic nature, from the early cartoon portraying George Washington as an ass down to the present day, graphic depictions and satirical cartoons have played a prominent role in public and political debate. Nast's castigation of the Tweed Ring, Walt McDougall's characterization of presidential candidate James G. Blaine's banquet with the millionaires at Delmonico's as "The Royal [*55] Feast of Belshazzar," and numerous other efforts have undoubtedly had an effect on the course and outcome of contemporaneous debate. Lincoln's tall, gangling posture, Teddy Roosevelt's glasses and teeth, and Franklin D. Roosevelt's jutting jaw and cigarette holder have been memorialized by political cartoons with an effect that could not have been obtained by the photographer or the portrait artist. From the viewpoint of history it is clear that our political discourse would have been considerably poorer without them.

[1D] [1D] ***LEdHN[8]*** [8]Respondent contends, however, that the caricature in question here was so "outrageous" as to distinguish it from more traditional political cartoons. There is no doubt that the caricature of respondent and his mother published in Hustler is at best a distant cousin of the political cartoons described above, and a rather poor relation at that. If it were possible by laying down a principled standard to separate the one from the other, public discourse [***52] would probably suffer little or no harm. But we doubt that there is any such standard, and we are quite sure that the pejorative description " [**882] outrageous" does not supply one. ***HN5*** "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression. An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience. See *NAACP v. Claiborne Hardware Co., 458 U. S. 886, 910 (1982)* ("Speech does not lose its protected character . . . simply because it may embarrass others or coerce them into action"). And, as we stated in *FCC v. Pacifica Foundation, 438 U. S. 726 (1978)*:

HN6 "The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. [*56] For it is a central tenet of the *First Amendment* that the government must remain neutral in the marketplace of ideas." *Id., at 745-746*.

See also *Street v. New York, 394 U. S. 576, 592 (1969)* ***HN7*** ("It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers").

Admittedly, these oft-repeated *First Amendment* principles, like other principles, are subject to limitations. We recognized in Pacifica Foundation, that ***HN8*** speech that is " vulgar,' offensive,' and shocking'" is "not entitled to absolute constitutional protection under all circumstances." *438 U. S., at 747*. In *Chaplinsky v. New Hampshire, 315 U. S. 568 (1942)*, we held that a state could lawfully punish an individual for the use of insulting " fighting' words -- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Id., at 571-572*. These limitations are but recognition of the observation in *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U. S. 749, 758 (1985)*, that ***HN9*** this Court has "long recognized that not all speech is of equal *First Amendment* importance." But the sort of expression involved in this case does not seem to us to be governed by any exception to the general *First Amendment* principles stated above.

[1E] [1E]We conclude that ***HN10*** public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publications such as the one here at issue without showing in addition that the publication contains a false statement of fact which was made with "actual malice," i.e., with knowledge that the statement was false or with reckless disregard as to whether or not it was true. This is not merely a "blind application" of the *New York Times* standard, see *Time, Inc. v. Hill, 385 U. S. 374, 390* [***53] *(1967)*, it reflects our considered judgment that such a standard is necessary to give adequate "breathing space" to the freedoms protected by the *First Amendment*.

[*57] ***[1F]*** [1F] ***LEdHN[9A]*** [9A] ***LEdHN[10]*** [10]Here it is clear that respondent Falwell is a "public figure" for

purposes of *First Amendment* law. [5] The jury found against respondent on his libel claim when it decided that the Hustler ad parody could not "reasonably be understood as describing actual facts about [respondent] or actual events in which [he] participated." App. to Pet. for Cert. C1. The Court of Appeals interpreted the jury's finding to be that the [**883] ad parody "was not reasonably believable," *797 F. 2d, at 1278*, and in accordance with our custom we accept this finding. Respondent is thus relegated to his claim for damages awarded by the jury for the intentional infliction of emotional distress by "outrageous" conduct. But for reasons heretofore stated this claim cannot, consistently with the *First Amendment*, form a basis for the award of damages when the conduct in question is the publication of a caricature such as the ad parody involved here. The judgment of the Court of Appeals is accordingly *Reversed*.

JUSTICE KENNEDY took no part in the consideration or decision of this case.

Concur by: WHITE

Concur

JUSTICE WHITE, concurring in the judgment.

As I see it, the decision in *New York Times v. Sullivan, 376 U. S. 254 (1964)*, has little to do with this case, for here the jury found that the ad contained no assertion of fact. But I agree with the Court that the judgment below, which penalized the publication of the parody, cannot be squared with the *First Amendment*.

References

16A Am Jur 2d, Constitutional Law 510, *511*; 38 Am Jur 2d, Fright, Shock, and Mental Disturbance 4- 7, 40- 42; *50 Am Jur 2d, Libel and Slander 298- 302*12 Am Jur Pl & Pr Forms (Rev), Fright, Shock, and Mental Disturbance, Forms 21-26; 16 Am Jur Pl & Pr Forms (Rev), Libel and Slander, Forms 24, 94, 311-31414 Am Jur Proof of Facts 2d 49, Defamation with Actual Malice; 45 Am Jur Proof of Facts 2d 249, Intentional Infliction of Emotional Distress by Employer5 Am Jur Trials 921, Showing Pain and Suffering; 19 Am Jur Trials 499, Defamation; 23 Am Jur Trials 479, Determining the Medical and Emotional Bases for DamagesUSCS, *Constitution, Amendment 1*US L Ed Digest, Constitutional Law 948, 960; Torts 3Index to Annotations, Emotional Injury; Freedom of Speech and Press; Intentional ,Wilful, and Wanton Acts; Libel and Slander; New York Times Rule Annotation References: Progeny of New York Times v Sullivan in the Supreme Court. *61 L Ed 2d 975*. Constitutional aspects of libel and slander. *28 L Ed 2d 885*.Modern status of intentional infliction of mental distress as independent tort; outrage. *38 ALR4th 998*.Civil liability for insulting or abusive language--modern status. *20 ALR4th 773*.Who is a "public figure" in light of *Gertz v Robert Welch, Inc. (1974) 418 US 323, 41 L Ed 2d 789, 94 S Ct 2997*. *75 ALR3d 616*.

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[5] ***LEdHN[9B]*** [9B]

Neither party disputes this conclusion. Respondent is the host of a nationally syndicated television show and was the founder and president of a political organization formerly known as the Moral Majority. He is also the founder of Liberty University in Lynchburg, Virginia, and is the author of several books and publications. Who's Who in America 849 (44th ed. 1986-1987).