

2005 N.Y. LEXIS 1260, \*

Courtroom Television Network LLC, Appellant, v. The State of New York, et al.,  
Respondents.

No. 88

COURT OF APPEALS OF NEW YORK

2005 N.Y. LEXIS 1260

**June** 16, 2005, Decided

**NOTICE:** [\*1] THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE NEW YORK REPORTS.

**PRIOR HISTORY:** Courtroom TV Network, LLC v. State, 8 A.D.3d 164, 779 N.Y.S.2d 74, 2004 N.Y. App. Div. LEXIS 8662 (N.Y. App. Div. 1st Dep't, 2004)

**DISPOSITION:** Order affirmed, with costs.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff, a media company, filed a complaint against defendants, the State and a county district attorney, seeking a declaratory judgment that N.Y. Civ. Rights Law § 52 was unconstitutional and enjoining the prosecutor's office from enforcing it. The New York Supreme Court granted summary judgment to defendants. The media company appealed as of right pursuant to N.Y. C.P.L.R. 5601 (b)(1).

**OVERVIEW:** N.Y. Civ. Rights Law § 52 prohibited audio-visual coverage of most courtroom proceedings. The media company argued that the statute denied it the right of access to trials guaranteed by the First Amendment to the United States Constitution and N.Y. Const. art. I, § 8. The court of appeals held that there was no First Amendment or N.Y. Const. art. I, section 8, right to televise a trial. The court of appeals held that the media possessed the same right of access as the public so that they could report what people in attendance have seen and heard. Thus, the press had no right to information about a trial superior to that of the general public. N.Y. Civ. Rights Law § 52 did not prevent the press, including television journalists, from attending trials and reporting on the proceedings. What they could not do under the statute was bring cameras into the courtroom. This was not a restriction on the openness of court proceedings but rather on what means could be used in order to gather news. The media's access was thus guaranteed.

**OUTCOME:** The order was affirmed, with costs.

**CORE TERMS:** courtroom, televise, broadcast, cameras, media, right of access, fair trial, constitutional right, televised, coverage, audio-visual, attend, remain open, outweigh, ban, independent right, photograph, televising, jurors, audiovisual, state

constitutional right, governmental interest, state constitutional, legislative process, statutory scheme, motion pictures, general public, special right, public right, television

### LexisNexis(R) Headnotes

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

**HN1** There is no First Amendment or N.Y. Const. art. I, § 8 right to televise a trial.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN2** See N.Y. Civ. Rights Law § 52.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

**HN3** The First Amendment to the United States Constitution guarantees the press and the public a right of access to trial proceedings. Without the right to attend trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN4** Though the public acquires information about trials chiefly through the press and electronic media, the press is not imbued with any special right of access. Rather, the media possesses the same right of access as the public so that they may report what people in attendance have seen and heard. Thus, the press has "no right to information about a trial superior to that of the general public, nor any right to information greater than the public.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN5** N.Y. Civ. Rights Law § 52 does not prevent the press, including television journalists, from attending trials and reporting on the proceedings. What they cannot do under the statute is bring cameras into the courtroom. This is not a restriction on the openness of court proceedings but rather on what means can be used in order to gather news. The media's access is thus guaranteed. But it does not extend to a right to televise those proceedings. There is a long leap . . . between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN6** While the Supreme Court has revisited the effects of televised coverage of trials, concluding that such broadcasts are not a per se violation of fair trial rights, it has never deviated from its holding that there is no constitutional right to have live witness testimony recorded and broadcast.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN7** N.Y. Const. art. I, § 8 does not provide a right to televise trials.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Criminal Law & Procedure > Trials

**HN8** In New York, the press, like the public, has a right of access to criminal proceedings.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Fair Trial

**HN9** The primary governmental interest, both State and Federal, is guaranteeing that the defendant receives a fair trial. Consistent with that interest, the court must be concerned with the defendant, jurors, witnesses, attorneys, and the public at large.

Governments > Courts

**HN10** All court proceedings are presumptively open to the public, but when this would jeopardize the right of the accused to a fair trial, the competing interests must be balanced and reconciled as far as possible. The governmental interests of the right of a defendant to have a fair trial and for the trial court to maintain the integrity of the courtroom outweigh any absolute First Amendment or N.Y. Const. art. I, § 8 right of the press or the public to have access to trials.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN11** The New York State Constitutional right of the press to attend a trial is the same as that of any citizen. The fact that petitioners are in the business of disseminating news gives them no special right or privilege, not possessed by other members of the public. Since the only rights they assert are those supposedly given every citizen to attend court sessions, N.Y. Jud. Law § 4, they are in no position to claim any right or privilege not common to every other citizen.

Governments > Courts

**HN12** See N.Y. Jud. Law § 4.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN13** There is no additional or broader protection under N.Y. Const. art. I, § 8, than under the First Amendment insofar as access to court proceedings is concerned.

Governments > Courts

**HN14** In New York State, the decision whether or not to permit cameras in the courtroom is a legislative prerogative.

Governments > Courts

**HN15** A state constitutional rule expanding the rights of the media in New York to include the right to photograph and broadcast court proceedings would derail what is, and always has been a legislative process.

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Freedom of the Press

Governments > Courts

**HN16** N.Y. Civ. Rights Law § 52 is constitutional under both the First Amendment to the United States Constitution, and N.Y. Const. art. I, § 8.

**COUNSEL:** David Boies, for appellant. Caitlin J. Halligan, for State respondents.

Janet L. Zaleon, for respondent Morgenthau. National Press Photographers Association, et al.; New York State Association of Criminal Defense Lawyers; Richard J. Sexton, Esq.; New York State Bar Association; New York State Defenders Association; Clear Channel Communications, Inc.; ABC, Inc., et al., amici curiae.

**JUDGES:** Opinion by Judge G.B. Smith. Chief Judge Kaye and Judges Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

**OPINIONBY:** G.B. SMITH

**OPINION:**

G.B. SMITH, J.:

The primary issue on this appeal is whether Civil Rights Law section 52, which bans audio-visual coverage of most courtroom proceedings, n1 violates the Federal or State Constitution. We agree with the Supreme Court and the Appellate Division that **HN1** there is no First Amendment or article I, section 8 right to televise a trial.

- - - - - Footnotes - - - - -

N1 Civil Rights Law § 52 provides in part: **HN2** "No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the

televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state ...."

- - - - - End Footnotes- - - - - **[\*2]**

On September 5, 2001, Court Television Network LLC ("**Court TV**") filed a complaint against the State and Robert Morgenthau in his official capacity as District Attorney of New York County seeking a declaratory judgment that Civil Rights Law § 52 is unconstitutional and enjoining the prosecutor's office from enforcing it. n2 On July 15, 2003, Supreme Court granted summary judgment to defendants stating:

"...the Court declines to establish a constitutional rule in New York granting the media a right to televise court proceedings. The record is consistent with the traditional approach of New York courts to public access questions, giving great weight to fair trial concerns. The record also is consistent with New York's statutory scheme which guarantees public trials, but gives primacy to fair trial rights. Moreover, to the extent any changes to the statutory scheme have been put into experimental use, these were initiated and reviewed by the Legislature. A state constitutional rule expanding the rights of the media in New York to include the right to photograph and broadcast court proceedings would derail what is, and always has been, a legislative process. **[\*3]** "

(1 Misc. 3d 328, 769 N.Y.S.2d 70 [2003]supra, ). The Appellate Division affirmed. **Court TV** appeals as of right on constitutional grounds pursuant to CPLR 5601(b)(1).

- - - - - Footnotes - - - - -

n2 Since there is no pending action by the District Attorney of Manhattan against **Court TV**, there is no justiciable issue before us, and the case against the District Attorney should be dismissed.

- - - - - End Footnotes- - - - -

**Court TV** asserts that Section 52 denies it the right of access to trials guaranteed by the First Amendment to the United States Constitution and article I, section 8 of the New York State Constitution. **Court TV** argues further that most states permit televised trials, that New York stands alone in having an "absolute ban" on televised trials and that the evidence supporting access to information for the general public far outweighs any attendant problems of having cameras in the courtroom. New York

State counters that there is no First Amendment right to televised trials, and that the concerns of **[\*4] Court TV** are more appropriately directed to the Legislature than to the courts. The State additionally argues that allowing cameras in the courtroom is a discretionary policy determination that may be made by the Legislature.

## I. First Amendment

**HN3** The First Amendment to the United States Constitution guarantees the press and the public a right of access to trial proceedings. Without the right to attend trials, "which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated'" (*Richmond Newspapers Inc. v Virginia*, 448 U.S. 555, 580, 65 L. Ed. 2d 973, 100 S. Ct. 2814 [1980]; see also *Globe Newspaper Co. v Sup. Ct. County of Norfolk*, 457 U.S. 596, 605, 73 L. Ed. 2d 248, 102 S. Ct. 2613 [1982]; *Press-Enterprise Co. v Sup. Ct. California Riverside County*, 464 U.S. 501, 510, 78 L. Ed. 2d 629, 104 S. Ct. 819 [1984] ["Press Enterprise I"]; *Press-Enterprise Co. v Sup. Ct. of California Riverside County*, 478 U.S. 0, 1, 478 U.S. 1, 92 L. Ed. 2d 1, 106 S. Ct. 2735 [1986] ["Press Enterprise II"]).

**HN4** Though the public acquires information about trials chiefly through the press and electronic media, the press is not imbued with any special **[\*5]** right of access. Rather, the media possesses "the same right of access as the public . . . so that they may report what people in attendance have seen and heard" (*Richmond Newspapers*, 448 U.S. at 573). Thus, the press has "no right to information about a trial superior to that of the general public" (*Nixon v Warner Comm. Inc.*, 435 U.S. 589, 609, 55 L. Ed. 2d 570, 98 S. Ct. 1306 [1978]), nor any right to information greater than the public (see *Houchins v KQED, Inc.*, 438 U.S. 1, 15, 57 L. Ed. 2d 553, 98 S. Ct. 2588 [1978]).

Civil Rights Law § 52 **HN5** does not prevent the press, including television journalists, from attending trials and reporting on the proceedings. What they cannot do under the statute is bring cameras into the courtroom. This is not a restriction on the openness of court proceedings but rather on what means can be used in order to gather news. The media's access is thus guaranteed. But it does not extend to a right to televise those proceedings (*Westmoreland v CBS, Inc.*, 752 F.2d 16, 23 [2d Cir 1984]). "There is a long leap . . . between a public right under the First Amendment to attend trials and a public right under the **[\*6]** First Amendment to see a given trial televised" (*id.*).

*Estes v Texas*, 381 U.S. 532, 14 L. Ed. 2d 543, 85 S. Ct. 1628 [1965] is the seminal case on televising a trial. Five Justices concurred in the Court's holding that defendant had been denied due process because of the televising and broadcasting of his trial and held there was no constitutional right of the press to have access to the courtroom during a trial. The Court listed a number of concerns about the presence of cameras at the trial, including the prejudicial impact of pretrial publicity on the jurors, the impact on the truthfulness of the witnesses, responsibilities placed on the trial judge to assure a fair trial and the impact on the defendant. The Court wrote, "A defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or nationwide arena" (381 U.S. at 549; see also *Sheppard v Maxwell*, 384 U.S. 333, 355, 16 L. Ed. 2d 600, 86 S. Ct. 1507 [1966]). The Court did acknowledge that "the ever-advancing techniques of public communication and the adjustment of

the public to its presence may bring about a change in the effect of telecasting upon the fairness of [\*7] criminal trials" (381 U.S. at 552).

Today, television has become a "commonplace . . . affair in the daily life of the average person" (id. at 595, Harlan, J., concurring). **HN6** While the Supreme Court has revisited the effects of televised coverage of trials, concluding that such broadcasts are not a per se violation of fair trial rights, it has never deviated from its holding that "there is no constitutional right to have [live witness] testimony recorded and broadcast" (Chandler v Florida, 449 U.S. 560, 569, 66 L. Ed. 2d 740, 101 S. Ct. 802 [1981], quoting Nixon v Warner Communications, 435 U.S. 589, 610, 55 L. Ed. 2d 570, 98 S. Ct. 1306 [1978]). n3

- - - - - Footnotes - - - - -

n3 We note that after Chandler, no Federal Circuit Court has opined that the Federal Constitution guarantees the media a right to televise trials (see e.g. Westmoreland v CBS, Inc., 752 F.2d 16 at 24; Whiteland Woods LP v Township of West Whiteland, 193 F.3d 177, 181 [3d Cir. 1999] [press has no absolute right of access to a criminal trial]; Edwards, 785 F.2d 1293, 1295, supra, [First Amendment does not guarantee a positive right to televise or broadcast criminal trials]; Conway v US, 852 F.2d 187, 188-189 [6th Cir. 1988][no First Amendment right to televise judicial proceedings]; United States v Kerley, 753 F.2d 617, 621 [7th Cir. 1985][“exclusion of cameras from Federal courtrooms is constitutional”]; Rice v Kempker, 374 F.3d 675, 678 [8th Cir. 2004][“we hold that the First Amendment does not protect the use of video cameras or any other cameras or, for that matter, audio recorders in the execution chamber”]; California First Amendment Coalition v Woodford, 299 F.3d 868, 877 [9th Cir. 2002] [reaffirms First Amendment right of access to attend executions]; Combined Comm. Corp. v Finesilver, 672 F.2d 818, 821 [10th Cir. 1982][“The First Amendment does not guarantee the media a constitutional right to televise inside a courthouse”]; United States v Hastings, 695 F.2d 1278, 1280 [11th Cir. 1983][right of access does not extend to “the right to televise, record, photograph and broadcast Federal trials”]).

- - - - - End Footnotes- - - - - [\*8]

Thus, it is clear that the Federal Constitution does not require courtrooms to be open to televise court proceedings.

## II. The New York State Constitution

**HN7** The New York State Constitution, similarly, does not provide a right to televise trials. Article 1, section 8 states, "Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." **Court TV** argues that Civil Rights Law § 52 is an unlawful "restraint on the press." It concedes, however, that this court has not "explicitly" recognized "a state constitutional right to public and press access to trial court proceedings." While we have in certain circumstances interpreted article I, § 8 more broadly than its Federal

counterpart (see *O'Neill v Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 530-532, 523 N.E.2d 277, 528 N.Y.S.2d 1, then Judge Kaye concurring), we decline to do so here.

**HN8** In New York, the press, like the public, has a right of access to criminal proceedings (see *Matter of Westchester Rockland Newspapers v Leggett*, 48 N.Y.2d 430, 437-438, 399 N.E.2d 518, 423 N.Y.S.2d 630 [\*9] [1979]; *Matter of Gannett v De Pasquale*, 43 N.Y.2d 370, 376, 372 N.E.2d 544, 401 N.Y.S.2d 756 [1977]; *Matter of Assoc. Press v Bell*, 70 N.Y.2d 32, 38, 510 N.E.2d 313, 517 N.Y.S.2d 444 [1987]). This includes access to pretrial hearings ("We conclude, therefore, that the public and the press may have a First Amendment right of access to pretrial suppression hearings"[id.]). Any exception to a public trial should be narrowly construed (*Westchester Rockland Newspapers Inc. v Leggett*, 48 N.Y.2d, at 443; *People v Hinton*, 31 N.Y.2d 71, 75-76, 286 N.E.2d 265, 334 N.Y.S.2d 885 [1972]"["While we reaffirm today the inherent discretionary power of the trial court to close the courtroom, we need only point out that the discretion be sparingly exercised and then, only when unusual circumstances necessitate it"] [citation omitted]).

**Court TV** relies on courtroom closure cases to suggest that New York has granted the press broader rights than those provided under the First Amendment. But even if the right to access was the equivalent of a right to televise courtroom proceedings, which it is not, our cases do not support appellant's assertions.

Even prior to *Estes*, New York did not recognize any independent right [\*10] of the press beyond that of the public to have access to the court. In *United Press Assocs. v Valente* (308 N.Y. 71, 84-85, 123 N.E.2d 777 [1954]), this Court held that the press had no independent right to request that the courtroom remain open separate from defendant's right to make either a request for the court to remain open or closed. In fact, our approach to courtroom closure has been comparable to the Federal analysis. In imposing such a restraint on the press, the government must show that there is a legitimate governmental interest which outweighs any constitutional right of access by the press and public (see *New York Times Co. v United States*, 403 U.S. 713, 715, 29 L. Ed. 2d 822, 91 S. Ct. 2140 [1971], Black, J. concurring [government has the burden of proving that governmental interest outweighs the constitutional right]).

**HN9** The primary governmental interest, both State and Federal, is guaranteeing that the defendant receives a fair trial (see *Estes v Texas*, supra; *Matter of Westchester Rockland Newspapers Inc. v Leggett*, supra). Consistent with that interest, the court must be concerned with the defendant, jurors, witnesses, [\*11] attorneys and the public at large (see *Waller v Georgia*, 467 U.S. 39, 45-46, 81 L. Ed. 2d 31, 104 S. Ct. 2210 [1984]; *People v Ramos*, 90 N.Y.2d 490, 497-498, 685 N.E.2d 492, 662 N.Y.S.2d 739 [1997]).

In *Westchester Rockland Newspapers Inc. v Leggett*, this Court stated, **HN10** "All court proceedings are presumptively open to the public, but when this would jeopardize the right of the accused to a fair trial, the competing interests must be balanced and reconciled as far as possible" (48 N.Y.2d 430, 438, 399 N.E.2d 518, 423 N.Y.S.2d 630, supra). The governmental interests of the right of a defendant to have a fair trial and for the trial court to maintain the integrity of the courtroom outweigh any absolute First Amendment or article I, section 8 right of the press or the public to

have access to trials.

This Court has clearly and unequivocally held that **HN11** the state constitutional right of the press to attend a trial is the same as that of any citizen. "The fact that petitioners are in the business of disseminating news gives them no special right or privilege, not possessed by other members of the public. Since the only rights they assert are those supposedly given 'every citizen' to attend court sessions (Judiciary Law § 4 [\*12] n4 ), they are in no position to claim any right or privilege not common to 'every [other] citizen'" (see *United Press Assocs. v Valente*, 308 NY 71, 85 [1954]). The Valente court held that the press had no independent right to request that the courtroom remain open separate from defendant's right to make either a request for the court to remain open or closed. Thus, under New York State law the press has no right separate from the public to challenge the judge's order to close the courtroom.

- - - - - Footnotes - - - - -

n4 Judiciary law § 4--Sittings of courts to be public-**HN12** The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, seduction, abortion, rape, assault with intent to commit rape, criminal sexual act, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.

- - - - - End Footnotes- - - - - [\*13]

In *Johnson Newspaper Corp. v Melino* (77 N.Y.2d 1, 8, 564 N.E.2d 1046, 563 N.Y.S.2d 380 [1990]), this Court held that there is no broader protection for the press under the State Constitution article I, section 8, than under the United States Constitution with respect to right of access to judicial proceedings. Even though Johnson specifically addressed disciplinary proceedings which are traditionally closed, and **Court TV** petitions this court for a ruling on trials which are presumptively open, Johnson does guide this Court in that it addressed whether or not article I, section 8 gives greater rights than the First Amendment. Johnson also refused to find that there was a greater protection for the press than for the public to have access to the court.

Together, Valente and Johnson hold that **HN13** there is no additional or broader protection under State Constitution, article I, section 8, than under the First Amendment insofar as access to court proceedings is concerned. n5 Thus, we conclude that Civil Rights Law § 52 withstands State constitutional challenge.

- - - - - Footnotes - - - - -

n5 Because we conclude that Civil Rights Law § 52 does not affect a Federal or State constitutional right, we need not consider **Court TV's** argument that the State's law should be analyzed under a strict scrutiny standard. Even if we were to consider section 52 under a constitutional lens, however, it would pass constitutional muster.

This Court concludes that the statute is narrowly tailored to serve the governmental interests at issue, namely insuring that criminal defendants receive fair trials (see *Sheppard v Maxwell*, supra), that witnesses are forthcoming in their testimony, (see *People v Hinton*, supra), that the trial court has control of the courtroom and that the integrity of the trial is maintained (see *People v Ramos*, 90 N.Y.2d at 504.

- - - - - End Footnotes- - - - -

**[\*14]**

### III. The Legislative Prerogative

**HN14** In New York State, the decision whether or not to permit cameras in the courtroom is a legislative prerogative. The Legislature may and has, under our State Constitution, experimented with rules regarding audiovisual broadcasts of trial proceedings.

Beginning in 1987 with the enactment of Judiciary Law § 218, the Legislature has on four occasions temporarily permitted certain courtroom broadcasts. Specifically, Judiciary Law § 218 permitted the Chief Judge of the State to "authorize an experimental program in which presiding trial judges, in their discretion, may permit audio-visual coverage of civil and criminal proceedings, including trials" subject to certain conditions and restrictions. n6 Judiciary Law § 218 contained sunset provisions upon which the statute, if not extended, would automatically expire. It also required the Chief Administrator of the Courts to hold public hearings on audio-visual coverage and to issue reports "evaluating the efficacy of the program [of audio-visual coverage] and whether any public benefits accrue from the program, any abuses that **[\*15]** occurred during the program," with recommendations for future legislation (Judiciary Law § 218 [9][c]). After each experiment, lasting approximately two to three years, the Legislature reviewed the findings and reports on audiovisual equipment in the courtroom, all of which recommended cameras in the courtroom, and, after each review, rejected the recommendation. On June 30, 1997, the Legislature and Governor allowed Judiciary Law § 218 to sunset. Thus, the ban on televised trials contained in Civil Rights Law § 52 resumed as of July 1, 1997, a ban which continues to the present. Despite the technological improvements to audiovisual equipment, which renders its presence in courtrooms less obtrusive, the Legislature has not seen fit since 1997 to amend section 52 or reenact section 218.

- - - - - Footnotes - - - - -

N6 When Judiciary Law § 218 was in effect, the court system itself exercised control over the means of access to proceedings made available to broadcast media under the Rules of the Chief Administrator of the Courts (22 NYCRR 131).

- - - - - End Footnotes- - - - - **[\*16]**

We will not circumscribe the authority constitutionally delegated to the Legislature to

determine whether audio-visual coverage of courtroom proceedings is in the best interest of the citizens of this state. **HN15** "A state constitutional rule expanding the rights of the media in New York to include the right to photograph and broadcast court proceedings would derail what is, and always has been a legislative process" (3 Misc 3d 328, 375, 771 N.Y.S.2d 863 [2003]supra ).

For all of the foregoing reasons, we hold that Civil Rights Law § 52 **HN16** is constitutional under both the First Amendment to the United States Constitution, and article I, section 8 of the New York State Constitution.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

Order affirmed, with costs. Opinion by Judge G.B. Smith. Chief Judge Kaye and Judges Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

Decided June 16, 2005

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