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I. INTRODUCTION

Is freedom of expression sometimes more important than one's reputation and religious inclusion? Spoiler alert—the Eleventh Circuit Court of Appeals says yes.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech."[1] Defamation law has existed for centuries; however, it was not until the Civil Rights Movement of the 1960s that the Supreme Court of the United States considered defamation law in conjunction with the First Amendment. Since then, the protections of the First Amendment are especially heightened when it comes to published criticism of public officials and public figures. The rationale for this heightened standard is that statements about public officials and public figures are matters of public concern and, as such, should be widely available to the public.

As it relates to discrimination, the First Amendment protects messages conveyed by private individuals or entities. Even when the messages exclude groups on a discriminatory basis, such exclusionary messages are protected by the First Amendment and are, therefore,

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1. U.S. CONST. amend. I.

permitted. In other words, sometimes excluding a certain group is part of conveying a message. In that case, excluding the group is not discrimination, rather it is protected free expression.

In *Coral Ridge Ministries Media, Inc., v. Amazon.com, Inc.*,[2] the Eleventh Circuit Court of Appeals emphasized the importance of free expression when a religious organization was denied the opportunity to participate in Amazon.com, Inc.'s (Amazon) charitable giving program, AmazonSmile.[3] Through the AmazonSmile program, Amazon customers may select Amazon-approved charities of their choice, and a portion of the customers' Amazon purchases will be donated to the selected charities. The court clarified how the First Amendment works in conjunction with defamation and discrimination claims, explaining that the First Amendment not only protects spoken words but also expressive conduct.[4] Adhering to the authority of the First Amendment, the court chose not to force Amazon to donate to an organization that it did not support.[5]

II. FACTUAL BACKGROUND

Defendant AmazonSmile is a nonprofit foundation created by Amazon that donates 0.5% of the revenue from purchases on AmazonSmile's website to eligible charity organizations.[6] Customers shopping on AmazonSmile may select eligible charities to which they would like Amazon to donate a percentage of customers' purchase price.[7] Eligible charities are selected by Amazon using the following criteria: (1) the organizations "must be registered and in good standing with the IRS as a 501(c)(3)" and meet other regulatory criteria; (2) the organizations "must . . . adhere to the AmazonSmile Participation Agreement;" and (3) the "organizations that engage in, support, encourage, or promote intolerance, hate, terrorism, violence, money laundering, or other illegal activities are not eligible to participate."[8] In deciding which organizations to designate as "hate groups," AmazonSmile relies on the Southern Poverty Law Center's (SPLC) Hate Map and discloses on its website that it does so. SPLC's Hate Map defines hate groups as those with "'beliefs or practices that attack or

2. 6 F.4th 1247 (11th Cir. 2021).

3. *Id.* at 1255.

4. *Id.*

5. *Id.*

6. Defendant's Motion to Dismiss First Amended Complaint, Coral Ridge Ministries Media, Inc. v. Amazon.Com, Inc., No. 2:17-cv-00566-MHT-DAB (M.D. Ala 2017).

7. *Id.*

8. *Id.*

malign an entire class of people, typically for their immutable characteristics' whose 'activities can include criminal acts, marches, rallies, speeches, meetings, leafleting or publishing.'"[9]

Plaintiff Coral Ridge Ministries Media, Inc. (Coral Ridge) is a Florida-based evangelical Christian nonprofit media company that is directed by a Florida megachurch and dedicated to sharing the late D. James Kennedy's view of the Christian Gospel.[10] This view includes a literal adherence to biblical passages including statements about homosexuality.[11] Coral Ridge relies on biblical passages in openly opposing what it calls "the homosexual agenda."[12] The SPLC declared Coral Ridge a hate group on its Hate Map because of Coral Ridge's religious beliefs and teaching regarding homosexuality.[13] In January 2017, Coral Ridge applied for membership in the AmazonSmile program, and AmazonSmile deemed Coral Ridge ineligible for the program based on the SPLC's designation of Coral Ridge as a hate group on its Hate Map.[14]

Coral Ridge filed suit in the Middle District of Alabama claiming defamation under Alabama law against the SPLC and discrimination under Title II of the Civil Rights Act against Amazon.[15] The defamation claim was against SPLC for listing Coral Ridge on its Hate Map, and the discrimination claim was against Amazon for allegedly discriminating against Coral Ridge on the basis of religion. Both the SPLC and Amazon moved to dismiss the suit under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. The trial court dismissed both claims. In its order dismissing the claims, the trial court pointed to the First Amendment in dismissing both the defamation claim and the discrimination claim. However, the court's primary reason for dismissing the discrimination claim was that the AmazonSmile program was not covered by Title II of the Civil Rights Act because Amazon is a private entity. Coral Ridge appealed and the case reached the Eleventh Circuit Court of Appeals.[16]

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. Appellant Brief, Coral Ridge Ministries Media, Inc. v. Amazon.Com, Inc., No. 19-14-125 (C.A. 11 2020).

14. Defendant's Motion to Dismiss First Amended Complaint, *Coral Ridge Ministries Media, Inc.*, No. 2:17-cv-00566-MHT-DAB.

15. *Coral Ridge Ministries Media, Inc.,* 6 F.4th at 1247.

16. *Id.* at 1250–51.

The court of appeals affirmed the trial court's dismissal of the complaint.[17]

III. LEGAL BACKGROUND

A. Defamation as it Relates to the First Amendment

To establish a defamation claim under Alabama law, a plaintiff must show: "(1) that the defendant was at least negligent (2) in publishing (3) a false and defamatory statement to another (4) concerning the plaintiff, (5) which is either actionable without having to prove special harm . . . or actionable upon allegations and proof of special harm."[18] However, when the state law is applied to public figures and public officials, the First Amendment imposes additional requirements.[19] These additional requirements include: (1) "the allegedly defamatory statement must be 'sufficiently factual to be susceptible of being proved true or false,' [(2)] the statement must actually be false, [and (3)] a public-figure plaintiff must prove that the defendant made the alleged defamatory statement with 'actual malice.'"[20]

In the 1964 case *New York Times Co. v. Sullivan*,[21] the Supreme Court of the United States determined for the first time how the First Amendment's free expression protections are to be applied in cases where public figures sue their critics for defamation.[22] There, the Court established the "actual malice" requirement.[23] This case was decided during the Civil Rights Movement, and although defamation had been a cause of action for many years, the Supreme Court had never applied the First Amendment's freedom of expression to allegedly defamatory speech. It was not until the New York Times reported on the civil rights protests and police interaction with protesters that the Court carved out First Amendment protections for publishing these stories. In *New York Times*, the Court discussed its previous decisions where it stated that the Constitution does not protect libelous publications, but then made a

17. *Id.* at 1256.

18. *Id.* at 1251–52. (quoting Ex parte Bole, 103 So. 3d 40, 51 (Ala. 2012)).

19. *Id.* at 1252.

20. *Id.* (quoting Milkovich v. Lorain J. Co., 497 U.S. 1, 21 (1990)).

21. 376 U.S. 254 (1964).

22. *Id.* at 256.

23. The "actual malice" requirement has been a topic of debate over the past several years. Critics believe it gives the press too much room for error in reporting about public figures, and supporters believe the requirement does its intended job of keeping the public informed on issues of public concern.

distinction for cases that involve the critique of public officials.[24] The Court highly regarded the First Amendment's protection of open discussion of public issues, which "sometimes [includes] unpleasantly sharp attacks on government and public officials."[25] Further, even untrue statements about public officials are protected by the First Amendment when the statements are not made knowingly or with reckless disregard of the truth.[26] The Court reasoned that erroneous statements are inevitable in open debate.[27] The Court set the precedent that neither factual error nor defamatory speech (nor the combination of both) automatically overrides the First Amendment's free speech protections for publications regarding public officials.[28]

Perhaps most notably, the *New York Times* Court held that public officials may only recover damages under a defamation claim when there is a showing of actual malice on the part of the defendant.[29] The Court defined actual malice as "know[ing] that [the statement] was false or with reckless disregard of whether it was false or not."[30] The actual malice standard is a high threshold, making it difficult for public officials to recover damages in defamation suits.[31]

Three years after *New York Times* was decided, the Supreme Court of the United States in *Curtis Publishing Co. v. Butts*[32] extended First Amendment protections of defamatory criticism about public officials in the same way the First Amendment protects defamatory criticism about public figures. In other words, instead of only applying to officials employed by the government, the actual malice standard was extended to everyone with public notoriety or fame.[33]

In 1968, the Supreme Court of the United States clarified what it takes to meet the "actual malice" requirement in *St. Amant v. Thompson*.[34] Specifically, the Court addressed what constitutes "reckless disregard of whether [the statement] was false or not."[35] In

24. *Id.* at 268.

25. *Id.* at 270.

26. *Id.* at 271.

27. *Id.* at 271–72.

28. *Id.* at 273.

29. *Id.* at 279–80.

30. *Id.* at 280.

31. The New York Times article at issue was about alleged widespread police brutality against Civil Rights Movement protestors. It took an issue as monumental as this for the Court to carve out a rule giving heightened protection to stories like this.

32. 388 U.S. 130 (1967).

33. *Id.* at 134.

34. 390 U.S. 727 (1968).

35. *Id.* at 728.

this case the accusatory statements the defendant made about the public official plaintiff during a televised speech did not meet the actual malice requirement, and the Court stated that in order to act with reckless disregard of the truth, one must have serious doubt about the truthfulness of the statement.[36]

The Supreme Court of the United States expounded upon the element of untruthfulness regarding allegedly defamatory statements about public officials and public figures in *Milkovich*,[37] decided in 1990. The Court determined that when a statement of opinion about a public official or public figure is not able to be proven false, it is protected by the First Amendment.[38] Further, the Court held that when a statement of public concern is proven false, the public official or public figure about which the statement was made must show that it was made with actual malice.[39] In reaching its decision that all opinion-based statements about public officials are not protected by the First Amendment (namely, those which are actually false and made with reckless disregard of the truth), the Court struck a balance between the First Amendment's free speech protections and the protections of one's reputation afforded by defamation law.[40]

B. Pleading Standards for Defamation Claims

In 2016, the United States Court of Appeals for the Eleventh Circuit discussed pleading standards for defamation cases involving public officials and public figures in *Michel v. NYP Holdings, Inc.*[41] There, the court held that the plaintiff must "plead facts giving rise to a reasonable inference that the defendants [made the statements] with actual malice" to successfully state a claim for defamation.[42] A failure to do so results in dismissal of the claim without prejudice giving the opportunity for the defendant to amend the complaint.[43] For example, the court held that the defendant pleading that the allegedly defamatory statements were made with a "blatant reckless disregard for the truth"[44] did not adequately plead that the statements were published with actual malice, because the defendant did not

36. *Id.* at 731.
37. 497 U.S. 1.
38. *Id.* at 19–20.
39. *Id.* at 20.
40. *Id.* at 22–23.
41. 816 F.3d 686 (11th Cir. 2016).
42. *Id.* at 692.
43. *Id.*
44. *Id.* at 693.

"adequately plead that the statements were published with actual malice."[45] The plaintiff must plead facts leading to a reasonable inference that the defendants intentionally avoided learning the truth.[46] In reaching its decision, the court clarified that failure to investigate does not necessarily show the defendant intentionally avoided learning the truth.[47] The court determined that conclusory assertions of the elements of defamation are not adequate for pleading defamation.[48]

Four years after the *Michel* case, the Eleventh Circuit expounded upon the factual allegation standard for pleading in deciding *Berisha v. Lawson*.[49] The test for determining whether the defendant acted with actual malice is subjective.[50] Therefore, there is no clear test for what constitutes actual malice. The subjectivity of actual malice makes it hard to predict what evidence may lead the court to conclude that a statement was made with actual malice.

C. Discrimination as it Relates to the First Amendment

Title II of the Civil Rights Act states in pertinent part, "'[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.'"[51] For purposes of analyzing *Coral Ridge Ministries Media, Inc.*, the relevant part of this statute falls within the meaning of "services, [] privileges, advantages, and accommodations of any place of public accommodation."[52] Just as with alleged defamation, the First Amendment is also applied to alleged discrimination. It is well-established that the First Amendment not only protects spoken word but also expressive conduct.

In the 1995 case *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,*[53] the Supreme Court of United States held that applying a state law prohibiting discrimination based upon sexual orientation to private citizens organizing an event violated the First

45. *Id.* at 701–02.

46. *Id.* at 704.

47. *Id.*

48. *Id.*

49. 973 F.3d 1304 (11th Cir. 2020).

50. *Id.* at 1312.

51. *Coral Ridge Ministries Media, Inc.*, 6 F.4th at 1253 (quoting 42 U.S.C. § 2000a(a) (1964)).

52. 42 U.S.C. § 2000a(a).

53. 515 U.S. 557 (1995).

Amendment.[54] There, the Court reasoned that the petitioners' event was a form of protected expression because they intended to make a collective point, and symbolic acts are protected free speech under the First Amendment.[55] The Court's decision turned on the First Amendment notion that "a speaker has the autonomy to choose the content of his own message."[56] In adhering to that principle, the Court held that the event organizers' ability to choose what message they wished to convey is protected by the First Amendment, thus excluding the Irish-American Gay, Lesbian and Bisexual Group of Boston from the event.[57] The Court also discussed the government's interest in protecting against harmful behavior such as discrimination.[58] In that regard, the Court expressed that the law "is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government."[59] Therefore, the holding in *Hurley* set the precedent that First Amendment protections allow for private citizens to promote a message even when that message is discriminatory.

The Eleventh Circuit Court of Appeals reiterated that expressive conduct is free speech protected under the First Amendment in *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale,*[60] decided in 2018. There, providing food in a public park with the intention of sharing the food with others was an act of political solidarity and was determined to be expressive conduct.[61] The court pointed to precedent stating, "'in determining whether conduct is expressive, we ask whether the reasonable person would interpret it as *some* sort of message, not whether an observer would necessarily infer a *specific* message.'"[62] In holding that the manner in which the organization served food was expressive conduct, the court reasoned that context is important, as it may give meaning to the conduct.[63] There, the court pointed to multiple contextual factors—such as signs, banners, and location of the event—surrounding the serving of the food that would lead a reasonable person to interpret the food sharing as conveying some sort of message, making

54. *Id.*
55. *Id.* at 568.
56. *Id.* at 573.
57. *Id.*
58. *Id.* at 579.
59. *Id.*
60. 901 F.3d 1235 (11th Cir. 2018).
61. *Id.* at 1238.
62. *Id.* at 1240 (quoting Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1270 (11th Cir. 2004)).
63. *Id.* at 1241.

it expressive conduct.[64] In sum, *Fort Lauderdale Food Not Bombs* stands for the proposition that the nature of an activity may be combined with the context of an activity to support a conclusion that the activity is expressive conduct protected by the First Amendment.[65]

Taken together, these cases posit that when conveying a certain message, the First Amendment affords protection for a speaker to tailor that message to get the point across, even when the message is expressive conduct as opposed to spoken word.

IV. COURT'S RATIONALE

In *Coral Ridge Ministries Media, Inc.,* the Eleventh Circuit Court of Appeals was faced with a plaintiff claiming defamation and discrimination and wishing to rid itself of its Hate Group designation with hopes of receiving donations through the AmazonSmile program.[66] Rather than buying into Coral Ridge's defamation and discrimination claims, the Eleventh Circuit Court of Appeals, with Judge Wilson authoring the decision, upheld the trial court's decision to dismiss the case for failure to state a claim upon which relief can be granted.[67] At the heart of both claims was the First Amendment.

A. Coral Ridge's Defamation Claim Against the Southern Poverty Law Center

In reaching its decision, the court first analyzed Alabama's defamation law as applied to public figures.[68] The court began with pointing out the additional requirements the First Amendment imposes when defamation law is applied to public figures including the "actual malice" requirement which the *New York Times* case imposed and the *Berisha* case expounded upon.[69] The additional "actual malice" requirement was the main requirement at issue in the case. In applying the actual malice requirement, the court held that, since Coral Ridge's complaint stated allegations in a conclusory manner and did not allege any facts that would back up that claim, the allegations of defamation were insufficient to state a claim.[70] As such, since Coral Ridge's claim for defamation did not meet the required pleading standard for actual

64. *Id.* at 1241–42.
65. *Id.* at 1245.
66. 6 F.4th at 1251.
67. *Id.* at 1250.
68. *Id.* at 1251–53.
69. *Id.* at 1252.
70. *Id.*

malice, the court affirmed the trial court's dismissal. For Coral Ridge's claim to survive the motion to dismiss, the complaint would have had to allege specific ways in which the SPLC published false information about Coral Ridge knowingly or with reckless disregard of the truth. Therefore, the court set aside Coral Ridge's allegations that the court regarded as purely conclusory—that is, the ones that simply allege the SPLC acted "'with actual malice'" in publishing its Hate Map.[71]

Next, the court turned to Coral Ridge's allegation that the SPLC's definition of hate group is "so far removed from the commonly understood meaning of the term that its designation of Coral Ridge as a hate group is 'intentionally false and deceptive.'"[72] Pointing out that this allegation was close to a mere recital of one of the elements of defamation under Alabama law, the court noted that this allegation was practically conclusory as well. The court reasoned that, regardless of whether the SPLC's definition of hate group is the commonly understood definition or not, the definition is not misleading since it is openly posted on the SPLC's website. Moreover, Coral Ridge did not allege any facts that would point to the SPLC having a subjectively culpable state of mind. Therefore, Coral Ridge did not meet the actual malice requirement. [73]

Finally, the court addressed Coral Ridge's allegation that the SPLC acted with "'reckless disregard [of] the truth'" in posting Coral Ridge on its Hate Map.[74] The court, again, maintained that Coral Ridge did not allege any facts to support this allegation.[75] The court reasoned that Coral Ridge's statement that it "'has never attacked or maligned anyone on the basis of engaging in homosexual conduct'" does not have any bearing on whether the SPLC believed its designation of Coral Ridge as a hate group was proper.[76]

B. Coral Ridge's Discrimination Claim Against Amazon

The court then turned to Coral Ridge's religious discrimination claim against Amazon under Title II of the Civil Rights Act.[77] Coral Ridge asserted that customers, rather than Amazon, donate under the AmazonSmile program. As such, it is the customer—not Amazon—

71. *Id.*
72. *Id.*
73. *Id.* at 1252–53.
74. *Id.* at 1253.
75. *Id.*
76. *Id.*
77. *Id.*

participating in expressive conduct.[78] In disagreeing with this assertion, the court reasoned that the customers are able to select their eligible charity of choice, but it is Amazon who is providing the funds for the donation. The court's analysis of the Title II discrimination claim is rooted in the First Amendment. Specifically, the court agreed with the trial court that forcing Amazon to donate to charities that it does not support would violate the First Amendment. The court's reasoning included a discussion of expressive conduct, stating that if the conduct in question is expressive conduct, it is protected by the First Amendment. Further, it was undisputed that donating money is considered expressive conduct. Looking to the *Fort Lauderdale Food Not Bombs* case, the court reasoned that Amazon's express statement in the AmazonSmile criteria relies on the SPLC when determining which organizations it wishes to support through the AmazonSmile program. This would lead a reasonable person to believe that Amazon is conveying "'*some* sort of message'" through only supporting certain organizations. Therefore, the court determined that Amazon's choice of which organizations to support is expressive conduct and protected under the First Amendment.[79]

Next, the court analogized this case to the *Hurley* case.[80] In doing so, the court pointed out that the private citizens in *Hurley* engaged in expressive conduct because they chose which groups they wanted to participate in their event. The court reasoned that this was similar to the way that Amazon engaged in expressive conduct when choosing not to support Coral Ridge through the AmazonSmile program.[81] Therefore, the First Amendment protects Amazon's expressive conduct in the same way it protected the citizens' expressive conduct in *Hurley*.[82]

Coral Ridge failed on both claims against both defendants. Since Coral Ridge did not properly allege a claim for defamation against the SPLC and its application of the discrimination claim against Amazon violates the First Amendment, the court affirmed the trial court's decision to dismiss the case.[83]

V. IMPLICATIONS

The decision in *Coral Ridge Ministries Media, Inc.* impacts entities that donate profits to charities, charities or organizations wishing to

78. *Id*. at 1254.
79. *Id*. at 1254–55.
80. *Id*. at 1255.
81. *Id.*
82. *Id.*
83. Id. at 1256.

participate in giving programs like AmazonSmile, and individuals who wish to donate to charities through programs like AmazonSmile. In addition, this decision will likely force plaintiffs to write much more detailed allegations for defamation claims in their complaints to avoid being dismissed in the Eleventh Circuit.

The Eleventh Circuit's broad application of the First Amendment could work against charities or organizations wishing to participate in giving programs. In addition to AmazonSmile, giving programs can include percentage nights at restaurants in which a portion of the profits are donated to charities or organizations and gift matching programs in which an entity agrees to match donations for a specified period of time. In sum, giving programs could potentially include any fundraising effort in which an entity donates profits to a charity or organization. If the charity or organization stands for a cause that the entity does not wish to support, according to the *Coral Ridge Ministries Media, Inc.* court, the First Amendment allows the entity to deny support to the organization and this denial is not considered discrimination. As follows, organizations that stand for causes that may be controversial—such as religion, LGBTQ+ rights, or other politically charged causes—may face difficulties in gaining access to giving programs as a result of the *Coral Ridge Ministries Media, Inc.* decision.

There is a notable difference between private entities and public entities regarding discrimination claims. Title II of the Civil Rights Act, as Coral Ridge attempted to utilize it, does not apply to private entities. However, it does apply to public entities. The *Coral Ridge Ministries Media, Inc.* the court determined that Amazon is a private entity, despite its global presence and seemingly limitless financial power and influence. The discrimination portion of the *Coral Ridge Ministries Media, Inc.* decision specifically deals with private entities, like Amazon, and public figures, like Coral Ridge. Therefore, no matter how "public" and influential a private entity may seem, choosing not to donate to a charity on the basis of religious beliefs is not considered discrimination, as Title II of the Civil Rights Act does not apply to private entities. It is worth considering whether, in the future, stateless global empires like Amazon in this technological revolution should be treated like public entities and, therefore, be subject to public entity rules.

On the other hand, the Eleventh Circuit's broad application of the First Amendment protects entities that are selective in the charities they support.[84] As previously mentioned, entities may deny support to organizations on the basis that the organization stands for a cause in

84. Think: fast food chicken chain that is known for its Christian values.

which the entity does not wish to donate money. The *Coral Ridge Ministries Media, Inc.* decision makes clear that this kind of act is not discrimination and is expressive conduct protected by the First Amendment. However, the *Coral Ridge Ministries Media, Inc.* court only addressed donating money raised from profits, so the decision could be interpreted to cover donations of goods or services.

Regarding individual donors, some individuals may feel like Amazon should not be allowed to limit their free expression as customers. In other words, Amazon customers may feel as though it is not Amazon's place to decide which charities they can and cannot donate to through AmazonSmile. However, as the court pointed out, it is Amazon's money—not the customers'—that is being donated. Therefore, Amazon's free expression is at issue, not the customers'. If customers wish to donate to a charity that is not approved to participate in AmazonSmile, they may do so outside of the AmazonSmile program. Therefore, customers' free expression is not at risk as it relates to Amazon's ability to choose which charities may participate in the AmazonSmile program.

When alleging claims of defamation, the *Coral Ridge Ministries Media, Inc.* decision reiterates that there is a high pleading standard in which a public figure plaintiff must allege specific facts—not conclusory assertions—regarding the defendants' actions and the actual malice requirement. As a result of the high pleading standard, plaintiffs must be diligent in claiming defamation in the Eleventh Circuit or else the case is at risk of not surviving a motion to dismiss. Being diligent means alleging concrete facts that point to the defendant knowingly or recklessly disregarding the truth.

It is worth noting that in footnote nine of the *Coral Ridge Ministries Media, Inc.* decision, the court noted that Coral Ridge asked the court to do away with the actual malice requirement. This would upset First Amendment jurisprudence going all the way back to *New York Times v. Sullivan*. In fact, there are many scholarly articles on either side of this discussion. Those in favor of the actual malice requirement are concerned about freedom of the press if the requirement is overturned. Requiring a showing of actual malice for public figures allows the press to publish stories about public figures without having to fear defamation suits if the story is inadvertently wrong. On the other hand, those who want to do away with the actual malice requirement see the requirement as a "free pass" for bad journalism. Their question is: why should journalists be protected for publishing false information? According to those in favor of the requirement, there are plenty of ways in which journalists are held accountable for false journalism, and the actual malice requirement does not promote false journalism. Justice Gorsuch and Justice Thomas have each expressed some desire to

change the law laid down in *New York Times v. Sullivan*, so there is a chance this case may be appealed to the Supreme Court of the United States.