

A reporter writing an article about a politician offered the politician's estranged daughter \$10,000 for information about the politician. The daughter agreed and provided the reporter with the information he sought. Subsequently, the daughter's information appeared in a newspaper article by the reporter, but the reporter refused to pay the daughter.

The daughter sued the reporter in state court for breach of contract on the basis of generally applicable state contract law. The reporter has moved to dismiss the action solely on the ground that the daughter's lawsuit violates the freedom of the press clause of the First Amendment.

Is the court likely to grant the reporter's motion to dismiss?

- A. No, because the daughter is not a state actor. (42%)
- B. No, because the First Amendment does not shield reporters from generally applicable state-law claims. (56%)
- C. Yes, because state contract law as applied to the reporter inhibits freedom of the press without a compelling government interest. (0%)
- D. Yes, because the politician is a public figure and any information about him is in the public domain. (0%)

Incorrect

Correct answer B

56% Answered correctly

01 min, 16 secs Time Spent

2023 Version

Explanation:

First Amendment freedoms

Expression	Right to communicate information & ideas through speech or conduct
Association	Right to form or participate in any group or organization
Press	Right to publish truthful information
Religion	Free exercise – right to practice religion or no religion without government interference Establishment – prohibits government from favoring particular religion or religion generally

The **First Amendment** freedom of the press—applicable to states through the Fourteenth Amendment—protects the right of the press to publish lawfully obtained and truthful information about matters of public concern. However, this right **does not shield the press** (eg, reporters) from **generally applicable laws**—even if such laws **incidentally affect** the press's ability to **gather and report news**. That is because the press has the same level of First Amendment protection as the general public.

Here, the reporter offered to pay the daughter for information about the politician, and the daughter provided the reporter with the information. The reporter then refused to pay the daughter, so she sued him for breach of contract under the state's generally applicable contract law. Since the First Amendment does not shield reporters from generally applicable state-law claims, the court is *unlikely* to grant the reporter's motion to dismiss.

(Choice A) The First Amendment applies only to state action. Although the daughter is not a state actor, the First Amendment applies to her lawsuit because it requires a state court to apply state law—which *is* a state action. However, the First Amendment will not shield the reporter from her state-law claim.

(Choice C) Laws that target freedom of the press are unconstitutional unless the government proves that such restrictions are necessary to achieve a compelling government interest (ie, satisfies strict scrutiny). But generally applicable laws (as seen here) are not subject to strict scrutiny, even if the law *as applied* inhibits the freedom of the press.

(Choice D) The fact that the politician is a public figure and information about him is in the public domain is irrelevant in determining whether the daughter's lawsuit violates the freedom of the press.

Educational objective:

The First Amendment protects the right of the press to publish lawfully obtained, truthful information about matters of public significance. However, this right does not shield the press from generally applicable laws—even if such laws incidentally affect the press's ability to gather and report news.

References

Cohen v. Cowles Media Co., 501 U.S. 663, 670 (1991) (holding the First Amendment does not forbid the application of generally applicable laws to the press that incidentally affect its ability to gather and report news).

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