

# Sarah Palin loses libel suit against New York Times

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A jury in Manhattan ruled Tuesday against right-wing former vice presidential candidate Sarah Palin on Tuesday in her defamation suit against the *New York Times*. The decision of the nine-member jury was unanimous. A day earlier, the judge hearing the case, Jed Rakoff, had announced, in response to a motion from the *Times*' lawyers, that he would dismiss the case if the jury ruled in Palin's favor.

Palin's suit was in response to a *Times* editorial from 2017 that had mistakenly linked her to the mass shooting in Arizona back in 2011. That attack killed six and gravely injured others, including Gabrielle Giffords, who was then a Democratic member of Congress from the state.

The editorial had cited, as an example of inflammatory political rhetoric, a map circulated by Palin's political action committee that placed crosshairs over a number of Democratic-held congressional districts, including that represented by Giffords. There was no evidence, however, that the gunman had seen or been influenced by the Palin-sponsored ad.

Palin, the former governor of Alaska who was chosen by John McCain as his presidential running mate in 2008, has remained a significant figure in right-wing circles in recent years, although eclipsed by Donald Trump and his close acolytes.

The lawsuit faced the difficulty of meeting the high standard set by the famous 1964 Supreme Court decision in *New York Times Company v. Sullivan*. That precedent stated that, in the case of public figures, the plaintiff must prove that the newspaper or other media company acted with "actual malice," including proof by "clear and convincing evidence" of a reckless disregard of the truth.

In the Palin case, the *Times* argued that the offending language had been inserted at the last minute, in error and not with actual malice, by James Bennet, who was then the editor of the editorial page. The paper pointed to the

fact that the error was corrected within hours, with an accompanying apology by Bennet.

The *Sullivan* precedent has shielded the press and other media from expensive libel actions brought by politicians and other public figures. It is worth briefly revisiting the context of the case. L. B. Sullivan, the police commissioner of Montgomery, Alabama, brought a successful libel action against the *New York Times* because the newspaper had published an advertisement backing Martin Luther King Jr. and specific civil rights struggles that contained several factual inaccuracies. A local Alabama court awarded Sullivan \$500,000, but the *Times* appealed, eventually to the Supreme Court in Washington D.C., which ruled unanimously in its favor, establishing the "actual malice" precedent in relation to public officials or candidates for public office.

Before the high court decision in the 1960s, there had been \$300 million in outstanding libel claims brought against news organizations, in a conscious effort by Southern authorities to chill reporting and commentary on the mass civil rights movement of the period. The court decision invalidated these attacks on press freedom.

The *Sullivan* ruling came during what could be termed the high-water mark of postwar American liberalism, the last gasp of social and legal reforms that were granted by US capitalism as it grew increasingly entangled in Vietnam and other imperialist adventures, paralleled by its deepening economic crisis and decline.

The *Sullivan* precedent has been under increasing attack in recent years. The aim of Palin and her wealthy backers is to remove or seriously compromise the standard set in this case of 58 years ago. If the precedent is overruled, an enormously powerful voice of big business like the *Times* would have to pause before deciding whether to challenge equally well-funded opponents such as Palin. It would be forced to spend large sums on legal costs.

For smaller publications and other media, on the other hand, especially left-wing media without resources, let alone the billions available to the *Times*, the overturning of *Sullivan* would have a far more immediate impact, virtually illegalizing the publication of views that antagonize the ruling elite and its political representatives.

In the present case, Palin pronounced herself “disappointed” with both the verdict and the judge’s announcement, and said that she was planning her next legal steps. If she appeals to the US Court of Appeals, a reversal in the case of a unanimous jury verdict is considered very unlikely. She can try to get a hearing before the right-wing majority in the Supreme Court, but her case might not be considered strong enough by the judicial faction which is inclined to overturn the *Sullivan* decision.

At least two Supreme Court justices have gone on record questioning the scope of *Sullivan*. Clarence Thomas and Neil Gorsuch have suggested that in the era of the massive expansion of publishing made possible by the Internet, the standard set by the 1964 decision appears “outdated” and should be revisited. At least two more justices would have to join in agreeing to hear a case that challenges the precedent. One possible outcome from the right-wing majority currently on the Court is a narrowing of the definition of “public figure,” so that lesser-known individuals could sue without having to meet the high bar of “actual malice” on the part of the news outlet.

There is no question that the internet, and social media as a whole, have had a democratizing effect, with the usual ruling class “gatekeepers” now able to be challenged online. The attempts to narrow the precedent set by the 1964 decision are part of a counterattack by the ruling elite in preparation for confrontation with the working class.



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