



**FEDERAL BAR ASSOCIATION  
SIXTEENTH ANNUAL THURGOOD A. MARSHALL  
MEMORIAL MOOT COURT COMPETITION  
2013 OFFICIAL  
COMPETITION PROBLEM**

## **SIXTHTEENTH ANNUAL THURGOOD A. MARSHALL MEMORIAL MOOT COURT COMPETITION PROBLEM**

Radnor, a state of the United States, has a republican form of government divided into three branches: Judicial, Executive and Legislative. The Supreme Court of Radnor is the highest and only constitutional court of the State, with lower Appellate and Circuit Courts established by statute. All cases, civil and criminal, begin in the Radnor Circuit Court, a court of general jurisdiction.

The Constitution of Radnor was enacted by a constitutional convention, approved by Congress as a condition to admission and ratified by the citizens of Radnor in referendum. The Constitution of Radnor is silent with regards to the right to trial by jury in civil cases. After the admittance of Radnor as a State of the Union, the very first Legislature established by statute the right to trial by jury in most civil cases. Also, under Article III, Section 5 of the Constitution of Radnor, its citizens are protected by law against abusive attacks against their honor, reputation and private or family life. Furthermore, Article III, Section 1 of the Constitution of Radnor states in its pertinent part that the dignity of the human being is inviolable.

Decades of governmental overspending and corruption have rendered the coffers of Radnor nearly empty. As a last attempt to prevent Radnor from defaulting on its financial obligations, the Legislature presented to its citizens a package of reforms and severe budgetary cuts for a vote during November's general elections. The Radnor Fiscal Emergency Plan, as the set of reforms and cuts is named, was presented to the Radnor electorate and garnered 62% of votes in favor of its implementation. As part of the cuts and reform, Radnor eliminated its Appellate Court, eliminated grand jury proceedings, reduced to half the number of Circuit Court Judges and established discretionary-only jurisdiction for the Supreme Court in civil matters. Furthermore, since the Seventh Amendment right to jury trial in civil cases has not been incorporated as to the states and is only recognized in Radnor through statute, the same was repealed effective December

1<sup>st</sup>. The Radnor Legislature, with the assistance of the Judiciary Committee that administers the Judicial Branch, estimated that the expenses saved from eliminating jury trials in civil cases were indispensable for the judiciary to be able to operate efficiently and within its new yearly-appropriated budget.

Gossip Show is a daily tabloid entertainment television news program. Gossip Show is produced by Entertainment Tabloid, Inc. (ETI), incorporated under the laws of Radnor and with its corporate headquarters in Knighton, the state capital. ETI also owns the rights to Gossip Show's name and logo. Gossip Show is broadcasted in the primetime slot of Channel 5, the most viewed channel in Radnor. Channel 5 is owned by Radnor corporation RADTV, a subsidiary of RAD International Group (RADIG). RADIG is a corporation incorporated under the laws of Delaware and with its corporate headquarters in Miami, Florida.

On May 23, Gossip Show broadcasted a segment about Joe Public and his wife Jane Private. Joe Public is a well-known and beloved actor, born and raised in Radnor and most recognized for his role in the Radnor soap opera Wild Flower. He recently married Jane Private, a nurse at a local children's hospital. Jane Private is a naturalized citizen of the United States who has never been exposed to any form of public scrutiny. Before marrying Mrs. Private, Joe Public had sustained a long relationship with one of his Wild Flower costars. The relationship with his Wild Flower costar ended just two weeks before the marriage.

Gossip Show sent Paparazzi Dan to interview Joe Public upon his arrival at Knighton City Hall. Joe Public's bodyguards prevented Paparazzi Dan from getting near Joe Public. Jane Private arrived at City Hall through an employee entrance, away from the cameras, and was photographed but not interviewed. During the May 23 broadcast of Gossip Show, Paparazzi Dan stated that Joe Public's wedding at City Hall looked like a mafia wedding with way too many bodyguards; that Jane Private had been kept away from the public eye as if she was a "stolen hog"; that Joe Public had begun his sexual relationship with Jane Private when she was a minor, a felony in Radnor; that they were marrying because Jane Private was two

months pregnant; and that he just wanted to speak to Joe Public. The segment ended with a plea by Paparazzi Dan to have Joe Public come to Gossip Show and give them an exclusive interview.

Jane Private, who is 18 years old, the legal age to get married without parental consent in Radnor, was very distressed by the segment broadcasted during prime time in the Gossip Show. She received many calls from family and friends asking her whether it was true that she had a sexual relationship with Joe Public when she was a minor and if she was pregnant. She was crying and afraid to step out of the townhouse she now shared with her husband. Jane and Joe were so upset, they cancelled their honeymoon and for a few days could never leave their townhouse since reporters, photographers and paparazzi were stationed in front 24 hours a day.

On May 27, Joe Public decided to appear on Tabloid Zone, Gossip Show's competition, to set the record straight. Jane Private did not accompany her husband during his appearance on Tabloid Zone. During Joe Public's interview on Tabloid Zone, he stated that the information broadcasted in Gossip Show was false. He told the show how he met and started dating his wife, that Jane was not pregnant, and that he never had sexual relations with Jane while she was a minor. Joe Public further stated during the show that the false rumors that were spread about him and his wife were so upsetting they had to cancel their honeymoon, that he has received threats and obscene emails and that some of his very lucrative product endorsement deals had been terminated as a direct result of the attacks from Gossip Show.

On December 2, Joe Public and Jane Private filed a lawsuit against ETI and RADTV before the Radnor Circuit Court. In their suit, Joe and Jane alleged that ETI's May 23 broadcast was defamatory and slanderous under Radnor Law; that the defamatory and slanderous comments made during the broadcast of Gossip Show caused them and continue to cause them great mental pain and anguish; and that Joe Public's professional career has suffered as a result of the slanderous and

defamatory remarks, including the termination of two of his endorsement deals, costing him in excess of 5 million dollars. In support of Joe Public's claim, the services of Image and Marketing Expert were retained. As part of his preliminary evaluation of the case, Expert conducted a survey among 3,000 Radnor residents and found that 80% of those interviewed thought the remarks made about Joe were true.

Jane and Joe further alleged in their Complaint that RADTV was responsible for the content of the shows it aired and for inadequately supervising the productions under contract. Jane and Joe also claimed that they were entitled to heightened protection of their privacy rights as protected by Sections 1 and 5 of Article III of the Constitution of Radnor and, thus, requested that the burden of proof be shifted to Defendants. In other words, that when defamation, libel and/or slander are alleged, Defendants will have the burden of proving that the remarks are true or were reasonably investigated before broadcasting.

Defendants ETI and RADTV answered the Complaint by denying most of the allegations, including the request for declaratory judgment, and filed a counter-request for declaratory judgment. In opposing Plaintiffs' request for declaratory judgment, ETI and RADTV argued that the burden-shifting scheme proposed by Plaintiffs was contrary to clearly established Supreme Court precedents and that said ruling would cause a chilling effect in local media. Defendants, in their request for declaratory judgment, questioned the constitutionality of the section of the Radnor Fiscal Emergency Plan that eliminated civil jury trials. Defendants argued that Radnor cannot abridge their right to trial by jury in civil cases under the Seventh, Fourteenth, Fifteenth and Nineteenth Amendments of the Constitution of the United States, even by popular vote. Furthermore, Defendants ETI and RADTV alleged that under the Fourteenth Amendment to the Constitution of the United States, Radnor cannot deny Defendants their right to a civil jury trial in this case without denying them one of the privileges and immunities granted by their American citizenship and without violating their due process rights.

Eight months after Joe went on Tabloid Zone and one month after Joe and Jane sued ETI and RADTV, Gossip Show aired an “investigative report,” the first of its kind, about Joe Public. As part of the three-part three-day investigative report, Gossip Show aired an interview with a young woman who claimed Joe Public had sexual encounters with her while he was dating one of his Wild Flower costars and that he requested she dress and act as a little girl. The identity of the woman and her name were concealed during the broadcast. Jane Private was so emotionally distraught by the three-part report that her two-month pregnancy was suddenly and spontaneously terminated. This incident, coupled with the media frenzy that was generated after the investigative report started to air, caused her to fall into a deep depression. Jane had to be hospitalized for a week in the psychiatric ward of the local hospital, and she continues to receive out patient treatment for her diagnosed mental illness.

Jane and Joe requested and were granted leave from the court to file an Amended Complaint that includes new causes of action for the defamatory broadcast of the “investigative report” and the emotional damages they suffered as a consequence.

After several irrelevant procedural events, Plaintiffs filed a motion to dismiss Defendants’ request for declaratory judgment as to their Seventh Amendment civil jury trial rights. Joe Public was convinced that a jury would surely find for Defendants, especially in light of Image and Marketing Expert’s survey findings. Plaintiffs claimed that the Seventh Amendment has not been incorporated against the states, that it is not a privilege or immunity of American citizenship, that the residents of Radnor overwhelmingly voted to suppress this statutory right, and that Defendants cannot override the will of the local electorate. Defendants answered Plaintiffs’ motion arguing that the Seventh Amendment right to civil jury trials is both deeply rooted in our nation’s history and fundamental to an American scheme of ordered liberties. After this briefing, the matter was submitted to the Circuit Court.

Several months after the issue was submitted to the Circuit Court, the presiding judge, without being moved by any party, ordered the Amended Complaint be stricken from the record; returned the filed document to Plaintiffs; ordered Plaintiffs to re-file their Amended Complaint without the declaratory judgment request for the shifting of the burden of proof under Sections 1 and 5 of Article III of the Radnor Constitution; and affirmed the section of the Radnor Fiscal Emergency Plan that abolished jury trials in civil cases.

Plaintiffs timely sought reconsideration from the Circuit Court in which they mainly argued that the Court's actions violated Plaintiffs' First Amendment right to petition the government for redress as to the shifting of the burden of proof. Plaintiffs further averred that the Radnor Rules of Civil Procedure did not grant jurisdiction to the Court to choose which causes of action to hear and that they do not contemplate striking from the record a proper cause of action. Plaintiffs respectfully requested the Circuit Court to either grant or deny their request for declaratory judgment, the only actions allowed by the Rules of Civil Procedure.

Defendants also sought timely reconsideration and mainly argued that the Circuit Court was bound by the Fourteenth Amendment to recognize their Seventh Amendment civil jury trial right. The Circuit Court did not issue an Opinion and Order or Judgment in which it explained why it was denying Defendants' request for declaratory relief on this matter. The Circuit Court denied both requests for reconsideration without opinion.

Plaintiffs and Defendants sought discretionary review from the Radnor Supreme Court. In their Certiorari petition, Plaintiffs again argued that the actions of the Circuit Court violated their First and Fourteenth Amendment constitutional rights. Plaintiffs made clear that the only thing they were seeking was for the Circuit Court to hear their arguments and enter a decision accordingly; that this was a matter of law which was properly briefed at the Circuit Court level; and that the Court's only choice was to grant or deny Plaintiffs' declaratory judgment request. Plaintiffs further averred that the Circuit Court's actions were

repugnant to the constitution and, thus, not contemplated by any of the Rules of Civil Procedure.

Defendants, on the other hand, argued that the Circuit Court erred in affirming the section of the Radnor Fiscal Emergency Plan that eliminated civil jury trials. They averred that by denying them their right to trial by jury, the Radnor Legislature was violating their Seventh, Fourteenth, Fifteenth and Nineteenth Amendment rights and that constitutional rights are not subject to vote because once the right is constitutionally granted it takes off the table certain policy choices. Defendants further averred that constitutional rights cannot be abridged due to financial concerns.

The Supreme Court, in a 5 to 4 vote, denied both requests for discretionary review and in doing so, affirmed the Circuit Court's decision.

Without further legal recourse in Radnor, Plaintiffs and Defendants filed separate Certiorari petitions before the Supreme Court of the United States with the following questions:

- a. Are Defendants entitled to civil jury trials under the Seventh, Fourteenth, Fifteenth and Nineteenth Amendments to the Constitution of the United States?
- b. Is the striking of a cause of action and an order to file the Amended Complaint without it a violation of Plaintiffs' First Amendment right to petition the government for redress of grievances?

The Supreme Court consolidated and granted both petitions. As to Defendants' arguments, the Supreme Court granted review only as to their claims under the Seventh and Fourteenth Amendments to the Constitution of the United States.