

***Nutty Georgetown Law Prof Chris Brummer's
Injunction Against Website Tossed, Unlawful Prior
Restraints on Speech Cited***

“Meet Chris Brummer, Curious Georgetown Law Prof Who
Knows NO Law.”

November 17, 2018 at 12:11 PM



An appeals court in New York has ruled that an injunction against an online tabloid that targeted a Georgetown law professor Chris Brummer with criticism was an unlawful prior restraint on speech.

A court-ordered injunction preventing a financial news blog from posting critical comments about a Georgetown law professor was too broad and constituted an unlawful prior restraint on speech, a New York State appeals court ruled Thursday.

The New York State Appellate Division, First Department vacated a preliminary injunction and temporary restraining order enjoining online tabloid TheBlot from posting articles about Christopher Brummer. That injunction also required the site to remove previous articles about Brummer.

But the injunction, issued by a lower court in June 2017, went too far, the First Department ruled.

“The speech at issue, as offensive as it is, cannot reasonably be construed as truly threatening or inciting violence against plaintiff,” reads the opinion, which clarifies that TheBlot still may be found to have libeled Brummer.

Brummer did not respond to requests for comment Friday. Tom Fini, an attorney with New York firm Catafago Fini who represented defendant Benjamin Wey, on Friday called the ruling “a major victory for free speech.”

The case dates back to 2014, when Brummer, a finance law expert, sat on an appellate panel in the Financial Industry Regulatory Authority that heard the appeals of two stockbrokers who had been banned from associating with any FINRA-regulated firms—Talman Harris and William Scholander. TheBlot, a site owned by Wey, vigorously defended Harris and Scholander and attacked Brummer.

“The attacks on plaintiff have included—in addition to name-calling, ridicule and various scurrilous accusations—juxtapositions of plaintiff’s likeness to graphic images of the lynching of African Americans, and statements that the banning of Harris, who is African American, constituted a ‘lynching,’” the appellate court’s opinion reads. (Brummer and Scholander are also African American.)

Brummer sued, arguing that the blog posts amounted to threats against him and constitute libel. The lower court agreed and last year issued an injunction against TheBlot.

The case attracted the attention of several First Amendment advocates,

including University of California, Los Angeles School of Law professor Eugene Volokh, who filed an amicus brief on behalf of Wey and TheBlot's right to publish inflammatory material about Brummer, who in 2016 was nominated to the Commodity Futures Trading Commission by President Barack Obama. ([His nomination was withdrawn last year.](#))

"I think the appellate court got it extremely right," said Volokh in an interview Friday, adding that courts cannot enjoin such a broad array of comments. "Ultimately, the well-settled legal rule [about prior restraint] was applied here."

Both Volokh and the appellate court opinion concluded that the lynching comments that appeared on TheBlot were a reference to FINRA's treatment of Harris and not a direct threat to Brummer.

"While this analogy is incendiary and highly inappropriate, plaintiff has not established that any reasonable viewer would have understood the posts as threatening or calling for violence against him," the opinion reads.

LAW.COM News: <https://www.law.com/2018/11/16/georgetown-law-profs-injunction-against-antagonist-website-tossed/?slreturn=20181016173321>