**Headline:** Trump Keeps Escalating His War on the First Amendment, and He’s Losing the Fight

**Teaser:** Our constitutional rights can never be taken for granted.

By Bill Blum

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**[Article Body:]**

Donald Trump is at war with the First Amendment and the free press. The war is on full display nearly every day in his [rage-filled press conferences](https://www.washingtonpost.com/lifestyle/style/its-5-oclock-do-you-know-where-your-president-is/2020/04/20/0083e8dc-8199-11ea-8013-1b6da0e4a2b7_story.html) on the COVID-19 pandemic, in which he regularly condemns the “fake news” media and bashes reporters who dare to ask the slightest probative questions about his handling of the ongoing public-health crisis.

Trump’s war is also longstanding. And it is waged not only on television and in [angry tweets](https://www.washingtonpost.com/lifestyle/media/a-history-of-the-trump-war-on-media--the-obsession-not-even-coronavirus-could-stop/2020/03/28/71bb21d0-f433-11e9-8cf0-4cc99f74d127_story.html) and at [campaign rallies](https://www.rev.com/blog/transcripts/donald-trump-new-hampshire-rally-february-10-2020) (which have been put on hold because of the coronavirus), but also in courtrooms across the country in the form of defamation lawsuits designed to shame, silence and punish his critics.

The latest victim of the president’s intimidation-by-litigation strategy is TV station [WJFW](https://www.wjfw.com/), an NBC affiliate located in Price County in the rural reaches of northern Wisconsin. On April 13, Trump’s principal reelection campaign committee—Donald J. Trump for President, Inc., headquartered in New York City—[sued the station](https://assets.donaldjtrump.com/2017/web/hero_images/As_filed_Complaint_against_WJFW-NBC.pdf) in the county’s circuit court. The suit alleges that the station had libeled the campaign and harmed the reputation of the president by airing an anti-Trump attack ad produced by Priorities USA Action, a pro-Democratic Super PAC.

Entitled “[Exponential Threat](https://www.youtube.com/watch?v=bkMwvmJLnc0),” the ad features audio and video clips of Trump downplaying the severity of the virus and disavowing any responsibility for his administration’s slow and incompetent response to the virus overlaid against a graph displaying the exponential rise in the number of COVID-19 cases in the U.S. since January.

The lawsuit contends that the ad stitched together Trump’s statements about the virus in a false, misleading, deceptive and malicious manner to make it appear that he had called the virus a “hoax.” According to the complaint, Trump never termed the virus itself a hoax, but instead said at a [rally](https://www.rev.com/blog/transcripts/donald-trump-charleston-south-carolina-rally-transcript-february-28-2020) in Charleston, South Carolina, on February 28, that the Democrats were perpetrating a hoax by politicizing his record on the virus.

The lawsuit comes on the heels of [other recent threats](https://apnews.com/8a039c55f8ac75e85cbd318637f45f27) made by the Trump campaign to take legal action against TV outlets in Florida, Michigan, Minnesota and Pennsylvania for broadcasting the same ad.

The president’s campaign committee has also been busy suing print media. In March, the committee [sued the Washington Post](https://tinyurl.com/yaytrqjd) for defamation allegedly arising from opinion columns written by journalists [Greg Sargent](https://www.washingtonpost.com/opinions/2019/06/13/trump-just-invited-another-russian-attack-mitch-mcconnell-is-making-one-more-likely/) and [Paul Waldman](https://www.washingtonpost.com/opinions/2019/06/20/trump-i-can-win-reelection-with-just-my-base/) in June 2019 on the possibility of renewed foreign collusion in the 2020 election. And in February, Trump’s 2016 campaign committee [sued the New York Times](https://assets.documentcloud.org/documents/6786742/Trump-v-NYT-Draft-Complaint.pdf), claiming defamation stemming from an op-ed about Russian collusion written in March 2019 by Max Frankel, who had served as the paper’s executive editor from 1986-94.

Sadly, the president’s latest round of defamation revenge is part of a pattern that dates back to his formative days as a real-estate developer and publicity-seeking huckster in New York City.

As detailed in a [2016 study](https://www.medialaw.org/component/k2/item/3470-donald-j-trump-is-a-libel-bully-but-also-a-libel-loser) published by the Media Law Resource Center, Trump filed his first major libel suit in 1984, when he took the Chicago Tribune and architecture columnist Paul Gapp to court, claiming that he had sustained $500 million in damages as a result of an article Gapp had written, maligning Trump’s plans to build a 150-story skyscraper in lower Manhattan. The case was [dismissed](https://casetext.com/case/trump-v-chicago-tribune-co) the following year after the presiding judge determined Gapp’s article was a constitutionally protected expression of opinion.

The Media Law Resource Center study also [summarizes](https://www.medialaw.org/component/k2/item/3470-donald-j-trump-is-a-libel-bully-but-also-a-libel-loser) Trump’s failed defamation lawsuit against writer Timothy O’Brien and the Time Warner Book Group, Inc. Now a [senior columnist with Bloomberg Opinion](https://www.bloomberg.com/opinion/authors/ARLcTFc8V4s/timothy-l-obrien), O’Brien asserted in a 2005 book—[*TrumpNation: The Art of Being the Donald*](https://www.amazon.com/TrumpNation-Donald-Timothy-L-OBrien-ebook/dp/B0169GGSJU)—that Trump wasn’t actually a billionaire. O’Brien’s estimate of Trump’s net wealth so rankled the future president that he demanded [“a whopping $5 billion in damages.”](https://www.medialaw.org/component/k2/item/3470-donald-j-trump-is-a-libel-bully-but-also-a-libel-loser) Like the lawsuit against Gapp, the case was eventually [dismissed](https://www.courtlistener.com/opinion/2318710/trump-v-obrien/).

In addition, the [study](https://www.medialaw.org/component/k2/item/3470-donald-j-trump-is-a-libel-bully-but-also-a-libel-loser) chronicles [Trump’s case against comedian Bill Maher](https://www.cnn.com/2013/02/06/showbiz/trump-bill-maher-suit/index.html). Trump targeted Maher in 2013 for a disparaging joke he told on NBC’s *Tonight Show*, in which he offered to donate $5 million to charity if Trump could prove he was not “the spawn of his mother having sex with an orangutan.” After Trump sent a copy of his birth certificate to Maher and the comedian refused to pay up, Trump sued Maher for breach of contract in California. Trump voluntarily [withdrew the case](https://www.reuters.com/article/entertainment-us-usa-trump-lawsuit-idUSBRE9310PL20130402) eight months later, however. Although his then-spokesperson, Michael Cohen, [told Politico](https://www.politico.com/story/2013/04/donald-trump-bill-maher-lawsuit-089530) that Trump planned to amend and renew the lawsuit, he never did.

Like most of Trump’s past defamation forays, the president’s latest round of defamation lawsuits seems destined to crash and burn. The cases will falter for one simple reason: they are utterly devoid of legal merit.

Under the Supreme Court’s landmark 1964 ruling in [*New York Times Co. v. Sullivan*](https://www.oyez.org/cases/1963/39), criticism of public officials is entitled to stringent First Amendment protections. As the great liberal Justice William Brennan wrote for a unanimous court in *Sullivan*, the Constitution embodies our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks…”

Public officials, Brennan instructed, must be precluded from recovering damages for allegedly defamatory statements related to official conduct unless they prove that the statements are made with “actual malice”—that is, that they are made with the knowledge that they are false or with “reckless disregard” of whether they are true or false.

In [subsequent](https://www.oyez.org/cases/1966/37) [cases](https://www.oyez.org/cases/1987/86-1278), the Supreme Court extended *Sullivan*’s “actual malice” holding to defamation lawsuits initiated by “public figures” and [business entities](https://supreme.justia.com/cases/federal/us/466/485/#tab-opinion-1955501) that have obtained public-figure status, such as Trump’s political campaign committees.

*Sullivan* is one of the Supreme Court’s most consequential decisions, providing the press with the safeguards needed to keep the public informed and hold the rich and powerful to account. Among the court’s current members, only [Clarence Thomas](https://www.nytimes.com/2019/02/19/us/politics/clarence-thomas-first-amendment-libel.html) has gone on record to suggest that *Sullivan* be reconsidered.

Why, then, does the president persist? The answer, it appears, is purely political.

At a [rally in Fort Worth, Texas](https://www.youtube.com/watch?v=K9PCPtcsgnc), in February 2016, Trump told a throng of cheering red-meat followers, “I think the media is among the most dishonest groups of people I’ve ever met. They’re terrible. … If I become president, oh, do they have problems. They’re going to have such problems.”

And then [he added](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/26/donald-trump-says-hell-open-up-libel-laws/), in a veiled reference to *Sullivan*:

“One of the things I’m going to do if I win, and I hope we do, and we’re certainly leading, is I’m going to open up our libel laws so when they write purposely negative and horrible and false articles, we can sue them and win lots of money. We’re going to open up those libel laws so that when the New York Times writes a hit piece, which is a total disgrace, or when the Washington Post, which is there for other reasons, writes a hit piece, we can sue them and win money instead of having no chance of winning because they’re totally protected.”

As of now, the president is losing his war on the First Amendment and the free press. But as Trump’s improbable rise to power confirms, the future remains uncertain. If we have learned anything in the Trump era, it is that our constitutional rights can never be taken for granted.