SAMPLE CASE BRIEF

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NEAR V. MINNESOTA, 283 U.S. 697 (1931) [complete name of case, citation, date]
decision by Supreme Court of United States [name of court issuing the opinion]

FACTS: J. M. Near published the *Saturday Press* in Minneapolis. In a series of articles he charged, in substance, that a Jewish gangster was in control of gambling, bootlegging and racketeering in the city, and that the city government and its law enforcement agencies and officers were not energetically performing their duties.

A Minnesota statute (referred to as a "gag law" provided for the abatement, as a public nuisance, of a "malicious, scandalous and defamatory newspaper, magazine or other periodical."

Near was cited as being in violating of this law and brought into court. An injunction was issued by a district court that halted all activity of the *Saturday Press*. Near was prohibited from ever publishing the newspaper again unless he could convince the court that he could operate a newspaper free of objectionable material.

Near appealed this ruling. The Minnesota Supreme Court upheld the constitutionality of the law, holding that under its broad police power the state could regulate public nuisances, including defamatory and scandalous newspapers. The U. S. Supreme Court granted Near's petition for certiorari.

LEGAL QUESTION: Is the action by the state of Minnesota against the newspaper (a prior restraint) a violation of Near's Fourteenth Amendment rights, which guarantees that "no state shall deprive any person of life, liberty or property, without due process of law"?

DECISION: Yes. (5-4, Chief Justice Hughes wrote the majority opinion.)

COURT'S RATIONALE: The Minnesota statute is not designed to redress the wrongs of the individuals who have been attacked by Near. Instead, it is directed at suppression of the offending newspaper or periodical and puts the publisher under an effective suppression. The object of the law is not punishment but suppression, and not only of the offending issue but of all future issues as well. The statute is not consistent with the conception of liberty of the press as it has been historically conceived and guaranteed.

It is true that the principle as to immunity from previous restraint is stated too broadly; this immunity is <u>not</u> absolutely unlimited. But the limitation has been recognized only in exceptional cases. These cases include (1) certain utterances during wartime, (2) the publication of obscene matter, (3) or material that incites acts of violence and the overthrow by force of orderly government.

However, there are occasions in which limiting freedom of the press to only freedom of prior restraint is not enough. Punishment after publication can impose a kind of prior restraint upon the individual. A citizen must have the right to criticize government — without fear of punishment.

DISSENTING OPINION: (written by Justice Butler, joined by Justices Van Devanter, McReynolds and Sutherland)

The dissent argued that the majority decision gave freedom of the press too broad a meaning and scope. Justice Butler argued that the Minnesota statute applied only to those engaged in the business of *regularly* and *customarily* publishing "malicious, scandalous and defamatory

newspapers," not to newspapers in general. The Minnesota statute was passed as part of the state's police powers, and there exists in the Minnesota a state of affairs that justifies this measure for the preservation of peace and good order.

SIGNIFICANCE OF THE CASE: The case establishes the precedent that the press is to be protected against prior restraint by the government except in exceptional situations. It was also the first case involving newspapers in which the Supreme Court applied the provisions of the First Amendment against states through the language of the Fourteenth Amendment (incorporation of free press guarantees into those liberties that states may not abridge without due process of law).