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Punitive Damages in Private Speech Defamation: *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*

I. INTRODUCTION

Since its landmark decision in *New York Times Co. v. Sullivan*,¹ the United States Supreme Court has struggled to define the interplay between two conflicting interests—the common law right to recover for defamation and the constitutional right of free speech. *New York Times* held that a libel plaintiff cannot recover damages unless the defendant acted with actual malice.² The Court has applied the actual malice standard to defamation actions involving public officials,³ public figures,⁴ and matters of public concern.⁵

In *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*,⁶ the Court found the distinction between private and public matters significant enough to alter the balance between freedom of speech and state defamation law, and held that plaintiffs in private speech cases can recover presumed⁷ and punitive damages without proving actual malice.⁸

The Court's objective in adopting a lower standard for private speech cases was to properly balance state interests in protecting private reputations with first amendment free speech values.⁹ The Court found that the lower standard served the "substantial" state interest in private speech cases without significantly harming the "reduced" first amendment interest.¹⁰

1. 376 U.S. 254 (1964).

2. *Id.* at 279-80.

3. *Id.*

4. *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155 (1967) (plurality opinion).

5. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) (requiring actual malice to obtain punitive and presumed damages, but not compensatory damages).

6. 105 S. Ct. 2939, 2945 (1985).

7. Presumed damages are damages for injuries that have not been proved. Whether *Dun & Bradstreet's* holding regarding presumed damages was appropriate is not within the scope of this note.

8. 105 S. Ct. at 2948.

9. The first amendment reads in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." U.S. CONST. amend. I.

10. 105 S. Ct. at 2946, 2948.

Thus, states are not constitutionally required to follow the actual malice standard. However, analysis of the Court's balancing test developed in prior decisions and employed in *Dun & Bradstreet*¹¹ demonstrates that the Court's private concern distinction does not warrant reducing the standard of proof when awarding punitive damages.

II. BACKGROUND

A. *The New York Times Case*

Prior to *New York Times*, states were free to determine fault standards and damages in defamation actions.¹² *New York Times* began the Court's examination of "the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action."¹³ The Court held that a defamed public official could not recover any damages without showing that the statement had been made with actual malice—defined as "knowledge that it was false or with reckless disregard of whether it was false or not."¹⁴ The Court subsequently applied the actual malice standard to actions brought by public figures who, though not public officials, had thrust themselves into the public eye.¹⁵

B. *The Gertz Case*

*Gertz v. Robert Welch, Inc.*¹⁶ presented the Court with an opportunity once again to extend *New York Times*. Unlike prior decisions, the plaintiff in *Gertz* was neither a public official nor a public figure.¹⁷ *Gertz* was an attorney representing a victim's family in an action against a police officer convicted of murder.

11. The Court applied the following balancing test: "To make this determination, we must employ the approach approved in *Gertz* and balance the State's interest in compensating private individuals for injury to their reputation against the First Amendment interest in protecting this type of expression." *Id.* at 2944-45.

12. See *New York Times*, 376 U.S. at 256; Watkins & Schwartz, *Gertz and the Common Law of Defamation: Of Fault, Nonmedia Defendants, and Conditional Privileges*, 15 TEX. TECH L. REV. 823, 824 (1984).

13. 376 U.S. at 256.

14. *Id.* at 280.

15. *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155 (1967) (plurality opinion).

16. 418 U.S. 323 (1974).

17. In *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 31-32 (1971) (plurality opinion), the plaintiff was a private citizen involved in a matter of public interest. However, the *Gertz* Court found that plurality decision "unacceptable." *Gertz*, 418 U.S. at 346.

The defendant published an article alleging that Gertz had ties to communism and a criminal record.

In deciding whether the *New York Times* actual malice standard applied to this private figure case, the Court made clear that protecting the press's first amendment rights is not the only factor to be considered. The state interest in compensating those harmed by defamatory statements also must be weighed.¹⁸ The Court had adopted the stringent *New York Times* standard for cases involving public plaintiffs to protect first amendment freedoms. However, the *Gertz* Court held that the state interest in compensating private individuals for injury to reputation was greater than its interest in compensating public figures. Unlike public officials, private individuals have not voluntarily thrust themselves into the public arena and do not enjoy ready access to channels of communication through which they can rebut false statements. Thus, private individuals have a "more compelling call on the courts for redress of injury inflicted by defamatory falsehood."¹⁹ This change in the relative importance of the state interest necessarily produced a different balance.

The Court held that actual malice was not an absolute requirement when defamed plaintiffs are private individuals. Instead, "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."²⁰ However, a lower standard is permissible only when a private plaintiff seeks compensation for actual injury. To obtain presumed or punitive damages, the plaintiff still must prove that the defendant acted with actual malice.²¹

III. THE *Dun & Bradstreet* CASE

The Court returned to the issue of punitive damages in *Dun & Bradstreet*. *Dun & Bradstreet* had distributed an erroneous credit report on Greenmoss Builders to five subscribers. The report mischaracterized Greenmoss's financial condition and stated that Greenmoss had filed for bankruptcy. Greenmoss

18. 418 U.S. at 341.

19. *Id.* at 344-46.

20. *Id.* at 347.

21. *Id.* at 349.

learned of the false publication while discussing future financing with one of the report's recipients. Greenmoss notified Dun & Bradstreet of the problem and requested names of subscribers in order to assure them of the company's solvency. Upon investigation, Dun & Bradstreet determined that its report was in error but refused to divulge the subscribers' names. Instead, it issued a correction to the five recipients, which explained the error and said that Greenmoss "continued in business as usual."²² Dissatisfied with this action, Greenmoss again requested the subscribers' names. When Dun & Bradstreet again refused to comply with the request, Greenmoss brought a defamation action in Vermont state court.

The jury found for Greenmoss and awarded \$50,000 in compensatory or presumed damages and \$300,000 in punitive damages. Arguing that *Gertz* required a showing of actual malice before presumed and punitive damages could be assessed, Dun & Bradstreet moved for, and was granted, a new trial. The Vermont Supreme Court reversed, concluding that Dun & Bradstreet was a "nonmedia" defendant and thus not entitled to the "media protections outlined in *Gertz*."²³ It found that Greenmoss, as a private individual, could obtain presumed and punitive damages without proving actual malice.²⁴

The United States Supreme Court in a plurality decision affirmed the Vermont Supreme Court. The Court, however, found *Gertz* inapplicable not because Dun & Bradstreet was a nonmedia defendant, but because the defamatory statements did not involve issues of public concern.²⁵ Prior cases setting limits on state defamation laws had involved statements on matters clearly of public concern. The Court found the credit report issued by Dun & Bradstreet to be a private matter and therefore of "less First Amendment concern."²⁶ In balancing the state interest in providing for compensation and the defendant's free speech rights, the Court found the state interest "identical to the one weighed in *Gertz*" but found the defendant's first amendment interest "less important than the one weighed in

22. *Dun & Bradstreet*, 105 S. Ct. at 2941-42.

23. *Greenmoss Builders, Inc. v. Dun & Bradstreet, Inc.*, 143 Vt. 66, 75, 461 A.2d 414, 418 (1983), *aff'd*, 105 S. Ct. 2939 (1985). The case was heard by the Vermont Supreme Court on an interlocutory appeal.

24. *Id.* at 76-77, 461 A.2d at 419.

25. 105 S. Ct. at 2942, 2948.

26. *Id.* at 2946-47.

Gertz.²⁷ The Court concluded: "In light of the reduced constitutional value of speech involving no matters of public concern, we hold that the state interest adequately supports awards of presumed and punitive damages—even absent a showing of 'actual malice.'"²⁸

IV. ANALYSIS

Continuing an analysis first begun in *New York Times*, the Court in *Dun & Bradstreet* balanced state interests against first amendment protection. Unlike prior decisions, however, *Dun & Bradstreet* involved a defamatory falsehood of strictly private concern. The Court held that this distinction rendered *Gertz* inapplicable and thus Greenmoss did not have to prove actual malice to obtain punitive damages.

The Court's private concern distinction does not warrant lowering the punitive damages standard below actual malice.²⁹ The Court acknowledged that private speech is entitled to significant first amendment protection. Yet the Court's standard substantially chills this speech without furthering any state interest. Under the Court's balancing test, this burden on protected speech, without a sufficient countervailing benefit to state interests, makes the less-than-actual malice standard improper.

A. *Private Speech Is Constitutionally Protected*

The Court's basic premise for adopting its lower standard was that speech on matters of private concern is not "at the heart of the First Amendment's protection."³⁰ However, as the Court correctly acknowledged, private speech "is not totally unprotected."³¹ The Court has consistently recognized "that the First Amendment requires significant protection from defamation law's chill for a range of expression far broader than simply

27. *Id.* at 2945.

28. *Id.* at 2946 (footnote omitted).

29. Whether it was proper to apply the actual malice standard under the facts in *Gertz* is, itself, not a question free from controversy. See, e.g., Note, *Punitive Damages and Libel Law*, 98 HARV. L. REV. 847, 848 & n.8 (1985) (arguing that the actual malice test "is too lenient"). On the other hand, Justice White continues to assert that "*Gertz* was erroneously decided" and that "common law remedies should be retained for private plaintiffs." *Dun & Bradstreet*, 105 S. Ct. at 2950 (White, J., concurring).

30. *Dun & Bradstreet*, 105 S. Ct. at 2945.

31. *Id.* at 2946.

speech about pure political issues."³² All speech, whether categorized as private, political, or commercial, is entitled to some first amendment protection.³³ As the Court stated in *Thornhill v. Alabama*: "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."³⁴

In light of today's complex commercial markets, Dun & Bradstreet's credit reports are unquestionably "needed and appropriate." Without credit reports, the current market system could not function effectively. Thus, even conceding the Court's point that private speech is of less constitutional concern, the first amendment protection for such speech is great enough that its *unnecessary* infringement is prohibited. For a lower standard for allowing punitive damages to be proper under the Court's balancing test, any burden on even this less-protected private speech must be justified by a sufficient benefit to state interests.

B. State Interests

The state interest identified by the Court in *Dun & Bradstreet* is in "compensating private individuals for injury to their

32. *Id.* at 2955 (Brennan, J., dissenting); see also *id.* at 2963 ("The language of the First Amendment does not except speech directed at private economic decisionmaking. Certainly such speech could not be regarded as less important than political expression. When immersed in a free flow of commercial information, private sector decisionmaking is at least as effective an institution as are our various governments in furthering the social interest in obtaining the best general allocation of resources.") (quoting *Dun & Bradstreet, Inc. v. Grove*, 404 U.S. 898, 905-06 (1971) (Douglas, J., dissenting from denial of certiorari)); *Time, Inc. v. Hill*, 385 U.S. 374, 388 (1967) ("The guarantees for speech and press are not the preserve of political expression or comment upon public affairs, essential as those are to healthy government.")

33. See, e.g., *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 766 (1976) ("[T]he free flow of commercial information is indispensable . . . to the formation of intelligent opinions," and therefore receives first amendment protection.); Barnes, *Commercial Speech Concerning Unlawful Conduct: A Clear and Present Danger*, 1984 B.Y.U. L. REV. 457, 507 (concluding that the distinction between commercial and noncommercial speech is unnecessary); Kushner, *Freedom to Hear: The First Amendment, Commercial Speech and Access to Information*, 28 WAYNE L. REV. 137, 176 (1981) ("[P]olitical activity and commercial activity are inextricably intertwined Notions that there exists a dichotomy between commerce and politics are simplistic at best."); Neuborne, *A Rationale for Protecting and Regulating Commercial Speech*, 46 BROOKLYN L. REV. 437, 437 n.2 (1980); Redish, *The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression*, 39 GEO. WASH. L. REV. 429 (1971).

34. 310 U.S. 88, 102 (1940), cited with approval in *Time, Inc. v. Hill*, 385 U.S. 374, 388 (1967).

reputation."³⁵ However, this compensation interest is satisfied by *Gertz's* provision for compensatory damages on a showing of less than actual malice. Compensatory damages, by definition, adequately compensate defamation victims.

Although not explicitly mentioned by the Court, some other state interests might exist that a lower standard for punitive damages would further. For example, some commentators have suggested that punitive damages are necessary to "compensat[e] victims for otherwise uncompensable losses."³⁶ However, most courts have rejected the notion that punitive damages should be awarded to prevent undercompensation, finding instead that punishment and deterrence are the only valid purposes for awarding punitive damages.³⁷ Punitive damages are "damages, *other than compensatory or nominal damages*, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future."³⁸ Punitive damages go beyond compensation; they are awarded against the wrongdoer and have little relation to the plaintiff's injury.³⁹

35. 105 S. Ct. at 2944-45.

36. Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. CAL. L. REV. 1, 3 (1982).

37. See *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266-67 (1981); see also *Poolaw v. City of Anadarko*, 738 F.2d 364, 367 (10th Cir. 1984) ("[P]unitive damages are intended to punish wrongdoers rather than compensate victims."); *Ratner v. Sioux Natural Gas Corp.*, 719 F.2d 801, 804 (5th Cir. 1983) ("[P]unitive damages [are] unconcerned with compensation; [they are] intended to punish the wrongdoer and to deter the commission of similar offenses in the future.").

38. RESTATEMENT (SECOND) OF TORTS § 908(1) (1977) (emphasis added).

39. R. PHELPS & E. HAMILTON, LIBEL 254 (1978); *Gertz*, 418 U.S. at 350 ("[Punitive damages] are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.").

Although this analysis rejects punitive damages as a vehicle for preventing undercompensation, the Court may well have been correct that the state interest in compensating victims is furthered by a lower standard for allowing presumed damages. Indeed, the Court's assertion that its standard furthers state interests relates solely to the issue of presumed damages:

The rationale of the common law rules has been the experience and judgment of history that 'proof of actual damage will be impossible in a great many cases where, from the character of the defamatory words and the circumstances of publication, it is all but certain that serious harm has resulted in fact.' As a result, courts for centuries have allowed juries to presume that some damage occurred from many defamatory utterances and publications. This rule furthers the state interest in providing remedies for defamation by ensuring that those remedies are effective.

Dun & Bradstreet, 105 S. Ct. at 2946 (citations omitted); see also *Gertz*, 418 U.S. at 350 (noting that punitive damages, *unlike presumed damages*, are wholly irrelevant to the

Nor are punitive damages necessary to serve the state interest in protecting private reputations by preventing defamation in the first instance. Although a lower standard for punitive damages obviously facilitates deterrence and punishment, in most cases compensatory damages alone sufficiently deter defamatory statements.⁴⁰ Deterrence is an economic concept that depends primarily on the standard of care governing potential defendants' conduct. For example, a defendant will be found negligent in a defamation action only when, in economic terms, the cost of preventing the defamatory statement is less than the cost of plaintiff's injury, multiplied by the probability of the defamation occurring.⁴¹ Under this standard, the economic threat of paying compensatory damages will deter defamatory conduct when the cost of conforming to the standard of care is less than the cost of paying compensatory damages.

These same principles apply to fault standards other than negligence. *Gertz* allows states to "define for themselves the appropriate standard" for awarding compensatory damages, "so long as they do not impose liability without fault."⁴² Most states impose liability for defamation upon a showing of common law malice, which is more than mere negligence but less than actual malice.⁴³ As with negligent defamation, the cost of conforming one's conduct to the standard of care, if less than the cost of compensating potential plaintiffs, will deter defamatory statements.

Punitive damages are needed only when the wrongdoer has extracted a benefit not reflected in the harm sustained by the plaintiff and consequently not reflected in the compensatory damages the wrongdoer must pay. To prevent this excess benefit

state interest in compensating defamation victims).

40. R. POSNER, *ECONOMIC ANALYSIS OF LAW* 143 (2d ed. 1977); Cooter, *Economic Analysis of Punitive Damages*, 56 S. CAL. L. REV. 79, 79 (1982).

41. R. POSNER, *supra* note 40, at 122. This view of negligence is commonly known as the Hand Formula. For Judge Hand's own explanation, see *United States v. Carroll Towing Co.*, 159 F.2d 169, 173-74 (2d Cir. 1947).

42. *Gertz*, 418 U.S. at 347.

43. For example, common law malice in Alabama is defined as "ill will, hostility, threats, former libels, etc." *Mead Corp. v. Hicks*, 448 So. 2d 308, 313 (Ala. 1983). The definition of common law malice in Vermont, the jurisdiction in which *Dun & Bradstreet* arose, is a reckless disregard of the possible consequences or even conduct manifesting ill will. *Greenmoss Builders, Inc. v. Dun & Bradstreet, Inc.*, 143 Vt. 66, 77, 461 A.2d 414, 419 (1983), *aff'd*, 105 S. Ct. 2939 (1985).

If states are truly interested in ensuring compensation for plaintiffs, they are free under *Gertz* to award compensatory damages on a showing of mere negligence.

from providing an incentive to enter into or continue wrongful conduct, the benefit must be eliminated by awarding punitive damages. As Professor Cooter has explained, excess benefit will only be realized when defamation is intentional:

If fault is unintentional, then imposing punitive damages in addition to compensatory damages is both unnecessary for deterrence and undeserved as punishment. However, there may be a small group of unusual persons who derive illicit pleasure from noncompliance or incur exceptional costs from compliance. Such people may cross the threshold of fault intentionally⁴⁴

As Professor Cooter's statement suggests, punitive damages can only be justified in cases involving wrongdoing that is malicious, outrageous, or intentional—the type of conduct that traditionally triggers punitive damages and closely parallels the actual malice requirement.

Thus the Court's lower standard for allowing punitive damages serves no state interest not already served by the existing actual malice standard. The state compensation interest is adequately served by allowing compensatory damages on a showing of less than actual malice. As to the state deterrence interest, in most cases, defendants can avoid liability for less than it costs to compensate plaintiffs and "the right amount of deterrence is produced by compelling . . . injurers to make good the victim's losses."⁴⁵ In those cases in which the defendant acts intentionally and derives a benefit not accounted for by compensatory damages, the existing actual malice standard permits an award of punitive damages to deter the defendant from further defamation.

C. *First Amendment Interests*

In contrast to its failure to significantly further state interests, the lower standard for punitive damages substantially burdens first amendment interests. Punitive damages create a chilling effect on nondefamatory constitutionally protected speech; indeed, given the compensating and deterring effects of compensatory damages discussed in the preceding section, the only additional result achieved by awarding punitive damages in these

44. Cooter, *supra* note 40, at 79.

45. R. POSNER, *supra* note 40, at 142-43.

cases is to chill speech. The Court apparently recognized the potential chilling effect, but dismissed it by stating that the speech involved in *Dun & Bradstreet*, "like advertising, is hardy and unlikely to be deterred by incidental state regulation."⁴⁶

The Court's assertion, however, is logically incorrect. First, saying *Dun & Bradstreet*'s type of speech will not be deterred is contrary to one of the purposes of awarding punitive damages.⁴⁷ Second, while credit reporting will certainly continue to exist, awarding punitive damages in the absence of actual malice will inevitably decrease the aggregate amount of credit reporting that is performed. An increased risk that a large, possibly extravagant,⁴⁸ punitive damages award will be assessed against the reporting agency will be reflected in the agency's cost of doing business, making its services more expensive. This increased cost will ultimately lead to a reduction in the number of credit reports demanded.⁴⁹

The potential for chill under a standard lower than actual malice is enhanced by the unpredictable nature of punitive damage awards. Compensatory damage awards in the American legal system are generally governed by the rule of certainty.⁵⁰ In contrast, punitive damages are limited only by the soft requirement that they "not be excessive."⁵¹ Recent trends demonstrate that this sort of freedom results in extravagant and unpredictable awards,⁵² thereby magnifying the potential chilling effect of a

46. *Dun & Bradstreet*, 105 S. Ct. at 2947.

47. See *supra* notes 37-39 and accompanying text.

48. See *infra* note 52 and accompanying text.

49. See Ellis, *supra* note 36, at 49 ("Prices will be higher, consumers will be limited . . . and capital will be diverted to other activities").

50. RESTATEMENT (SECOND) OF TORTS § 912 (1977); see also M. MINZER, J. NATES, C. KIMBALL, D. AXELROD & R. GOLDSTEIN, DAMAGES IN TORT ACTIONS § 3.23 (1985), and sources cited therein.

51. See *Gertz*, 418 U.S. at 350 ("In most jurisdictions jury discretion over the amounts awarded is limited only by the gentle rule that they not be excessive. Consequently, juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused.").

52. See PRACTISING LAW INSTITUTE, MEDIA INSURANCE: PROTECTING AGAINST HIGH JUDGMENTS, PUNITIVE DAMAGES, AND DEFENSE COSTS 27 (1983) (reporting that the initial punitive damage awards in *Green v. Alton Tel.*, 8 Media L. Rep. (BNA) 1345 (Ill. App. Ct. 1982), and *Pring v. Penthouse Int'l, Ltd.*, 7 Media L. Rep. (BNA) 1101 (D. Wyo. 1981), *rev'd*, 695 F.2d 438 (10th Cir. 1982), were \$2,500,000 and \$25,000,000, respectively).

Comparing statistics from various time periods demonstrates the extent of the trend to award larger verdicts. The percentage of media libel cases resulting in awards in excess of one million dollars went from 4% in cases decided between 1976 and 1980, to 15% in cases between 1980 and 1982, and to 19% in cases in 1982 and 1983. PRACTISING

standard lower than actual malice under which more punitive damage awards will be permitted.

A final factor demonstrating the burden the Court's new standard places on protected speech is the uncertainty inherent in the standard. No clear line separates speech that is a matter of private concern from speech of a public nature. The problem is well illustrated by the Court's attempt at classifying the speech involved in *Dun & Bradstreet*.⁵³ As Justice Brennan noted: "Without explaining what is a 'matter of public concern,' the plurality opinion proceeds to serve up a smorgasbord of reasons why the speech at issue here is not [of public concern]"⁵⁴ The most concrete test the Court provides is to look to the expression's "'content, form, and context . . . as revealed by the whole record.'"⁵⁵

The uncertainty under such a test is substantial. For example, is it a matter of public concern to know which companies are to be trusted with the community's investments and business? Would *Dun & Bradstreet's* credit report have been a matter of public concern—and therefore entitled to the protections outlined in *Gertz*—if all local businesses had subscribed to the report? What if the plaintiff had been a company owned by a politician or controversial public figure?

This definitional uncertainty has a significant chilling effect, on public speech as well as nondefamatory private speech. Doubt as to whether a statement is a matter of private or public concern may cause publishers to avoid speaking on matters within the gray area altogether, thereby causing self-censorship even in areas of public concern. This result is inconsistent with the Court's mandate that speech on matters of public concern be afforded significant "breathing space."⁵⁶

V. CONCLUSION

Dun & Bradstreet's standard for awarding punitive damages extends further than is necessary to protect legitimate state

LAW INSTITUTE, *supra*, at 15-19.

53. 105 S. Ct. at 2947.

54. *Id.* at 2959 (Brennan, J., dissenting) (emphasis in original).

55. *Id.* at 2947 (quoting *Connick v. Myers*, 461 U.S. 138, 147-48 (1983)).

56. *Gertz*, 418 U.S. at 342 ("In our continuing effort to define the proper accommodation between these competing concerns, we have been especially anxious to assure to the freedoms of speech and press that 'breathing space' essential to their fruitful exercise.") (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

interests. Because of the chilling effect accompanying a lower standard, punitive damages for defamation should never be awarded without proof of actual malice, regardless of whether the speech involves a matter of public or private concern. The actual malice standard not only prevents the unnecessary chilling effect on first amendment freedoms, but also protects state interests in compensating defamed plaintiffs and in deterring and punishing defamatory wrongdoers.

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