Benchmark

Friday, 15 November 2024

Weekly International Law Review

Editor: Dr Harry Melkonian, Adjunct Fellow, Macquarie Law School

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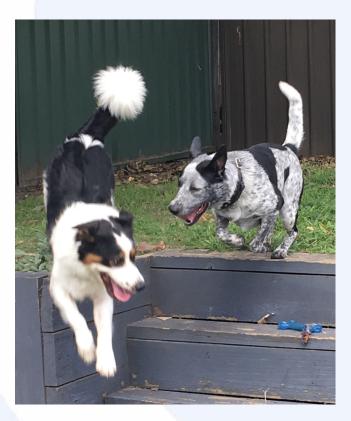## Executive Summary (One Minute Read)

Robert F Kennedy, Jr v Joseph R Biden, Jr (USCA5CT) - In an action for equitable relief, plaintiffs' claims failed as a result of lack of standing to sue because it was speculative that the wrong complained of was ongoing and therefore redressable

Associated Newspapers Ltd v The United Kingdom (EUHR4S) - The European Court found that, while cost assessments based on Conditional Fee Agreements were in violation of Article 10 of the *European Convention of Human Rights*, After the Event insurance premiums were recoverable cost items

AR Conolly & Company Lawyers
Level 17 Chifley Tower, 2 Chifley Square, Sydney NSW 2000
Phone: 02 9159 0777 Fax: 02 9159 0778
ww.arconolly.com.au

Page 1

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Level 17 Chifley Tower, 2 Chifley Square, Sydney NSW 2000
Phone: 02 9159 0777 Fax: 02 9159 0778
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Page 2

Robert F Kennedy, Jr v Joseph R Biden, Jr, No 24-30252
United States Court of Appeals
Higginbotham, Stewart, & Haynes JJ
Robert F Kennedy Jr and others complained that, due to unlawful pressure exercised by federal officials, Meta and YouTube censored or de-platformed Kennedy regarding COVID-related content in 2021. The plaintiffs sought and were granted a preliminary injunction by the District Court. The government appealed. In an earlier decision, *Murthy v Missouri* 144 S Ct 1972 (2024), the Supreme Court held that, to establish standing to sue, plaintiffs must demonstrate a substantial risk that they will suffer injury that is (1) traceable to a government defendant, and (2) redressable by an injunction. The Court of Appeals found that, while Kennedy had evidence that the initial censorship was traceable to government officials, he was unable to show that that the continued censorship could be attributed to government actions. The Court found that there was not any evidence that could attribute continued suppression to government activity as opposed to internal platform moderation procedures. Consequently, standing failed on the redressability issue; namely, that Kennedy was unable to show that an injunction directed against the government would, in fact, redress the injury of which he complained. In accordance with the recent Supreme Court precedent, standing to sue was not established and the orders of the District Court granting a preliminary injunction were reversed.
[Robert F Kennedy, Jr](#)
[From Benchmark Friday, 15 November 2024]

Associated Newspapers Ltd v The United Kingdom, No 37398/21
European Court of Human Rights
Kucsko-Stadlmayer P, Eicke, Vehabovic, Harutyunyan, Seibert-Fohr, Guerra Martins, & Raduletu JJ
An unsuccessful media defendant was assessed with costs that included attorneys' fees based on a Conditional Fee Agreement and premiums for After the Event insurance that the plaintiff had purchased. The defendant sought review in the European Court alleging the costs awards had violated Article 10 of the *European Convention on Human Rights*, guaranteeing freedom of expression. The Court found that ultimately the issue was that of proportionality. In its 2022 decision, *MGN Limited v the United Kingdom*, No. 72497/17, §§ 21-31, the Court found that the success fees were disproportionate and therefore in violation of Article 10. In the present case, the Court did not find any reason to depart from its prior ruling and found that a costs award that included the terms of a Conditional Fee Agreement were unlawful. However, the Court also held that After the Event insurance premiums paid by the plaintiff, and awarded as costs against the unsuccessful defendant, did not violate Article 10. The Court stated that the insurance was for the benefit of the defendant as well as the plaintiff. The Court concluded by stating that proportionality of costs awards must be considered on a case-by-case basis.
[Associated Newspapers Ltd](#)
[From Benchmark Friday, 15 November 2024]

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Level 17 Chifley Tower, 2 Chifley Square, Sydney NSW 2000
Phone: 02 9159 0777 Fax: 02 9159 0778
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Page 3

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Page 4

Poem for Friday

How Do I Love Thee? (Sonnet 43, from Sonnets from the Portuguese)

By Elizabeth Barrett Browning (1806-1861)

How do I love thee? Let me count the ways.
I love thee to the depth and breadth and height
My soul can reach, when feeling out of sight
For the ends of being and ideal grace.
I love thee to the level of every day's
Most quiet need, by sun and candle-light.
I love thee freely, as men strive for right.
I love thee purely, as they turn from praise.
I love thee with the passion put to use
In my old griefs, and with my childhood's faith.
I love thee with a love I seemed to lose
With my lost saints. I love thee with the breath,
Smiles, tears, of all my life; and, if God choose,
I shall but love thee better after death.

Elizabeth Barrett Browning, English poet was born on 6 March 1806, in County Durham, the eldest of 12 children, 11 of whom survived into adulthood. She was ill from her mid teens. She was influential in campaigning for the abolition of slavery and the introduction of child labour protection legislation. Her grandfather had been a slave owner in sugar plantations in Jamaica. She was a contemporary of, and met Coleridge, Tennyson, Carlyle, Wordsworth and Mitford. She met Robert Browning in 1845, and after a secret marriage, they moved to Italy in 1846. Whiting, describes her as "the most philosophical poet" living a life as "a Gospel of applied Christianity". Barrett Browning died on 29 June 1861 at the age of 55, in Florence Italy.

How Do I Love Thee? sung by Femmes de Chanson, (2012)
[How Do I Love Thee? (Nathan Christensen) - Femmes de Chanson - 2012 (youtube.com)](youtube.com)

How Do I Love Thee read by Dame Judi Dench
[How Do I Love Thee? (Sonnet 43) by Elizabeth Barrett Browning (read by Dame Judi Dench) (youtube.com)](youtube.com)

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading

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Page 5

theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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Page 6