PRIOR RESTRAINTS AND THE EUROPEAN COURT

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I INTRODUCTION

Courts have traditionally been suspicious of any restrictions on free expression. The right to free expression has been considered to lie at the foundations of a free and democratic society [1] At the same time courts have stated that the right to free expression is not an absolute right and have been willing to uphold restrictions on this right in a range of well defined and narrow circumstances. In a narrower category of cases, the courts have upheld preventive or prior restrictions on the publication of speech.

This paper will examine how the European Court of Human Rights has approached prior restrictions on free speech. The focus here will be on prior restraints of the press. though other related cases will also be analyzed. The paper will also briefly compare the European case law with the jurisprudence of the United States.

This paper takes the position that prior restraints should not be permitted under any circumstances. They tend to be speculative and the court can never

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1 Abrams v United States, 40 Sup. Ct. 17 (1919); Whitney v People of State of California 47 Sup. Ct. 641 (1926)

2 Whitney at 647

3 Jeffrey Smith. *Prior Restraint, Original Intentions and Modern Interpretations*, 28 WM & Mary L. Res 430, 446 (1987) (arguing that the US Supreme Court has usually limited the government's role to subsequent punishment for unlawful speech, stating that an aversion to prior restraint is deeply etched in the US law.