No. 19-6442

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In The

Supreme Court of the United States

WILLIAM YEAGER

Petitioner

v.

NATIONAL PUBLIC RADIO, ANDREW FLANAGAN, JACOB GANZ, ASHLEY MESSENGER

Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For the Tenth Circuit

SUPPLEMENTAL BRIEF

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This supplemental brief is being filed to call attention to 2 recent orders in the lower courts that provide evidence of major discrepancies between the lower courts in Kansas and the lower courts in California and Texas in regards to what should be considered to establish if a plaintiff is a 'limited-purpose public figure' in a defamation case.

Case of Evidence # 1: an order (filed in District Court Central District of California on Nov 18th, 2019) written by District Judge Stephen V. Wilson in *Vernon Unsworth v. Elon Musk.*

Case of Evidence # 2: an order (filed in District Court of Texas on August 7th 2019) written by District Judge Amos Mazzant in *Ed Butowsky v. NPR.*

Supplemental brief:

Case of Evidence # 1:

In *Vernon Unsworth v. Elon Musk,* the plaintiff Vernon Unsworth was categorized by the defendant Elon Musk, as a 'limited-purpose public figure,' just as the petitioner William Yeager was categorized by the respondent NPR in *William Yeager v. NPR.*

However, differently to *William Yeager v. NPR,* this well known case being fought by Lin L. Wood is now moving forward to a JURY TRIAL, which is what should have also been given to myself, more so when considering the ***"constitutional question"*** as stated by Judge Stephen V. Wilson who wrote in his order (filed on Nov 18th, 2019): "Moreover, the limited public figure analysis is not a matter of state substantive law, but rather a pure constitutional question."

More excerpts from Judge Stephen V. Wilson's order on Nov 18, 2019, in *Vernon Unsworth v. Elon Musk*:

There is no dispute that Plaintiff "is not an all-purpose public figure," but this Court must "examine the nature and extent of [Plaintiff's] 'participation in the particular controversy giving rise to the defamation' to determine whether [Plaintiff] is a public figure for the limited purposes of a defamation claim . . . ." *Makaeff v. Trump Univ., LLC,* 715 F.3d 254, 266 (9th Cir. 2013) ("Makaeff") (citing *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 352 (1974)). "Moreover, the limited public figure analysis is not a matter of state substantive law, but rather a pure constitutional question." *Id.* at 270. As the moving party, Defendant bears the burden of showing Plaintiff is a limited-purpose public figure. *D.A.R.E Am. v. Rolling Stone Magazine,* 101 F. Supp. 2d 1270, 1276 (C.D. Cal. 2000) ("the burden is on the moving party to demonstrate that it is entitled to summary judgment").

To determine if Plaintiff is a limited-purpose public figure, "we consider whether (i) a public controversy existed when the statements were made, (ii) whether the alleged defamation is related to the plaintiff's participation in the controversy, and (iii) whether the plaintiff voluntarily injected itself into the controversy for the purpose of influencing the controversy's ultimate resolution."

Based on this record, it is clear that a public controversy did exist, both at the time of the Tweets and the Email, but that controversy is limited to the subject of the Rescue and the viability of the Subs. Having identified two public controversies, for Plaintiff to be a limited-purpose public

figure, the Plaintiff must have voluntarily injected himself into those public discussions.

For Defendant's comments to relate to Plaintiff's participation in the public controversies, there must be some relationship between pedophilia and the Recue or the Subs—there is simply no credible connection here. The limited-purpose public figure doctrine exists because "[t]hose who attempt to affect the result of a particular controversy have assumed the risk that the press, in covering the controversy, will examine the major participants with a critical eye." *Waldbaum,* 627 F.2d at 1298. But this eye only reaches "the issues at hand." *Id.* To allow criticism into every aspect of a plaintiff's life simply because he chose to get involved in a limited issue would render him an all-purpose public figure—effectively merging the limited-purpose public figure doctrine.

There is no relationship between the established public controversies, Plaintiff's role in the controversies, and Defendant's allegedly defamatory statements. Because Defendant's comments were not germane to Plaintiff's role in the public controversy, Plaintiff fails the second prong of the limited- purpose public figure test established in *Makaeff.*

Plaintiff is consequently a private person and may prove his defamation claims by the negligence standard established by California law. *Brown v. Kelly Broad. Co.,* 48 Cal. 3d 711, 747 (Cal. 1989) ("[a] private-figure plaintiff must prove at least negligence to recover any damages"); *see also Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 353–54 (Blackmun, J.,

Petitioner: The opinion by Judge Wilson reaffirms what is stated in the petitioner's writ of certiorari (Question number 1), especially considering that, even if the Supreme Court was to consider that the main issue at hand (cancellation of a the sale of a record album recorded by the petitioner over 29 years ago) in *William Yeager v. NPR* was a public controversy, there was no role of the petitioner in the controversy; and also that "the issue at hand" does not reach, does not allow criticism into every aspect of a plaintiff's life.

More excerpts from Judge Stephen V. Wilson's order on Nov 18, 2019, in *Vernon Unsworth v. Elon Musk*:

i. Public Controversy

In the Ninth Circuit, "a public controversy 'must be a real dispute, the outcome of which affects the general public or some segment of it.'" *Makaeff,* 715 F.3d at 270 (citing *Waldbaum v. Fairchild Publications, Inc.,* 627 F.2d 1287, 1296 (D.C. Cir. 1980)). Although it is not for this Court to "question the legitimacy of the public controversy," *Waldbaum v. Fairchild Publications, Inc.,* 627 F.2d 1287, 1297 (D.C. Cir. 1980)) ("Waldbaum"), not every subject that might draw public attention will have an impact on the public. *See Time, Inc. v. Firestone,* 424 U.S. 448, 454 (1976) ("[d]issolution of a marriage through judicial proceedings is not the sort of 'public controversy' referred to in *Gertz,* even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public"); *see also Partington v. Bugliosi,* 56 F.3d 1147, 1159–60 (9th Cir. 1995) ("while the divorce of a socialite does not in itself constitute[] a matter of public controversy . . . controversial trials that raise questions concerning the fairness of the justice system clearly do.") (internal citation omitted). There was

indisputably a public controversy over the Rescue—**it received wall-to-wall media attention throughout 2018 (even after the rescue was completed)** and involved the entire **Thai government** and **aid from several other nations including the United States**. Dkt. 58 at 12–13. **This is precisely the sort of public controversy anticipated by the limited-purpose public figure doctrine**—where "the press was covering the debate, reporting what people were saying and uncovering facts and theories to help the public formulate some judgment." *Walbaum,* 627 F. 2d at 1297.

Petitioner: This opinion supports question number 2 in the petitioner's writ.

ii. Plaintiff Injected Himself into the Controversy

When "an individual voluntarily injects himself or is drawn into a particular public controversy," he "thereby becomes a public figure for a limited range of issues." *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 351 (1974). "Under *Gertz,* [Plaintiff] must have 'thrust [itself] to the forefront' of this particular controversy 'in order to influence the resolution of the issues involved.'" *Makaeff,* 715 F.3d at 267. Plaintiff easily satisfies the third prong of the limited-public figure test regarding the public controversies of the Rescue and the Subs. After rising to international prominence through numerous new reports, **Plaintiff voluntarily appeared before millions of viewers in the CNN Interview and directly criticized the Subs.** Dkt. 1 ¶ 70.

There is no question that Plaintiff **did more than simply "respond[] to press inquiries or attempt[] to reply to comments on oneself through the media . . . ."** *Waldbaum,* 627 F.2d at 1298 n.31.

Petitioner: This opinion supports question number 1 and 2 in petitioner's petitioner writ of certiorari; the petitioner didn't "appeared," "respond to press inquiries"; not only did he not appear or respond, but he was never offered the opportunity to appear or respond by neither the respondents nor by any other media outlet.

Evidence number 2:

These are direct quotes from the case file 4:18-cv-00442-ALM-CMC

Defendants next argue the R&R incorrectly finds Plaintiff was not a limited-purpose public figure.13 Dkt. #63 at 21-22. According to Defendants, the R&R recognizes Plaintiff was an "internationally recognized expert in the investment wealth management industry" and "has made hundreds of appearances on national and radio shows."14 Id. at 21. Additionally, Defendants urge this Court that the issue of determining whether Plaintiff is a public figure is appropriately decided in a motion to dismiss as opposed to the R&R's opinion that the issue is more appropriately decided at the summary judgment stage of the proceedings.

Initially, the Court notes Defendants do not argue the R&R used the incorrect law on limited-purpose public figures, only that the law was wrongly applied to the facts at hand. As correctly stated in the R&R, a limited-purpose public figure is a public figure only "for a limited range of

issues surrounding a particular public controversy." Rodriguez v. Gonzales, 566 S.W.3d 844, 850 (Tex. App. – Houston [14th Dist.] 2018, pet. denied).

Texas courts utilize a three-part test in analyzing whether an individual is a limited-purpose public figure: (1) the controversy at issue must be public both in the sense that people are discussing it and people other than the immediate participants in the controversy are likely to feel the impact of its resolution; (2) the plaintiff must have more than a trivial or tangential role in the controversy; and (3) the alleged defamation must be germane to the plaintiff's participation in the controversy. Id. at 850. In other words, limited- purpose public figures "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. . . ." Klentzman I, 312 S.W.3d at 904. **An individual is not a limited-purpose public figure when a media defendant discusses the individual repeatedly or where the individual's actions become a matter of controversy as a result of the media defendant's actions.** Id. at 905 (citation omitted). A defamation defendant must show the plaintiff "relinquished. . . his interest in the protection of his own name" by "engag[ing] the attention of the public in an attempt to influence the resolution" of "an issue of public concern." Id.

Accepting the factual allegations in the complaint as true and viewing them in the light most favorable to Plaintiff, this Court finds Plaintiff's actions did not rise to the level of qualifying him as a limited-purpose public figure. As noted by the R&R, Plaintiff's involvement in the Seth Rich investigation and Plaintiff's communications with Wheeler were both limited. **Plaintiff's past appearances on national media outlets is inapposite to the limited-purpose public figure analysis.** Overall, at this stage of the proceedings, the facts do not show Plaintiff had anything more than a tangential role in the controversy surrounding the Seth Rich investigation. The Court overrules Defendants' fifth main objection. END

Petitioner: This order supports questions number 1 and 2 in the petitioner's writ.

While Ed Butowsky is an "internationally recognized expert in the investment wealth management industry" and "has made hundreds of appearances on national and radio shows," NPR stated the petitioner William Yeager was a "complete unknown" and that "no one has ever heard of him."

The district court in Texas is stating that the plaintiff had "anything more than a tangential role in the controversy surrounding the Seth Rich investigation" and therefor allowing the case to move forward.

In the case of the petitioner, the fact that the petitioner recorded a record album over 29 years ago was not even a "tangential role"; considering there was no role, no media appearance, how could the district court of Kansas categorize the petitioner as a limited-purpose public figure?

Respectfully submitted

S/ William Yeager