No. ___-_____

In the Supreme Court of the United States

ALEX E. JONES; INFOWARS, LLC; FREE SPEECH SYSTEMS, LLC; KIT DANIELS; OWEN SHROYER,

Petitioners,

v.

MARCEL FONTAINE; SCARLETT LEWIS; LEONARD POZNER; VERONIQUE DE LA ROSA; NEIL HESLIN,

Respondents.

On Petition For Writs of Certiorari to the Texas Supreme Court

PETITION FOR WRITS OF CERTIORARI

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August 31, 2021

QUESTIONS PRESENTED

New York Times v. Sullivan, 376 U.S. 254 (1964) establishes that speech must be "of and concerning" a specific individual for that individual to state a state tort claim for that speech. The Court further explained in *Rosenblatt v. Baer*, 383 U.S. 75 (1966) that "of and concerning" test requires specific identifying references to the person claiming tortious conduct. *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6 (1970) also establishes that journalists who accurately report others' factual statements may comment, opine, and theorize on those statements with full confidence in the First Amendment's protections.

The Texas Court of Appeals held that the *Sullivan/Rosenblatt* test could be satisfied based on specific references to a limited class of individuals. It also held that journalists' video replay of shooting victims' comments and their subsequent questioning of the victims' stories as being connected to a possible staged tragedy by state and federal governments contained sufficiently interspersed facts and opinion to place them on the wrong side of the First Amendment.

The questions presented are:

1. Whether the First Amendment bars tort actions seeking damages for speech on matters of public concern directed at a loosely associated, large class of people rather than at specific individuals?
2. Whether the First Amendment bars tort actions seeking damages for a media organization's accurate replay of factual statements and a commentator's opinion on those facts as accurately replayed?

PARTIES TO THE PROCEEDING

The Petitioners are Alex E. Jones; Infowars, LLC; Free Speech Systems, LLC; Kit Daniels; and Owen Shroyer. They were the defendants in the Travis County District Court and the appellants before the Texas Court of Appeals, Third District, and the Texas Supreme Court.

The Respondents are Marcel Fontaine; Scarlett Lewis; Leonard Pozner; Veronique De La Rosa; and Neil Heslin. They were the plaintiffs in the Travis County District Court and the appellees before the Texas Court of Appeals, Third District, and the Texas Supreme Court.

RULE 29.6 CORPORATE DISCLOSURES

Infowars, LLC and Free Speech Systems, LLC are not owned by any parent or publicly held company. No parent or publicly held company owns 10% or more of their stock.

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PETITION FOR A WRIT OF CERTIORARI

Assaults on free speech do not merely come at the hands of governments. Society increasingly wages war against unpopular commentators in a phenomenon that has been colloquially called the cancel culture. It exerts immense social pressure to ban commentators from popular social media platforms and other mediums through which they might share their views with a vast audience. Now, for the first time, cancel culture has attempted to invoke the courts to systematically silence journalists and political commentators who have drawn society's ire for asking rational, but unpopular questions and expressing views that have offended the tender-minded.

The Petitioners – Alex Jones, Owen Shroyer, Kit Daniels, Infowars, LLC, and Free Speech Systems – have advocated for an intense distrust of governments and major media outlets. They have further questioned the validity of major tragedies throughout the world ranging from the 2003 invasion of Iraq to major school shootings in the United States. After seeking and reviewing evidence available to them in the public record, they have questioned whether governments and other powerful interests have staged some major school shootings to advance a radical agenda of gun regulation, which they believe is at odds with the Second Amendment.

These views have drawn both society's wrath and the wrath of those who have lost loved ones in the tragedies that the Petitioners have questioned. Grieving loved ones have savagely attacked the Petitioners on national television for questioning the tragedies that cost them their loved ones. When the Petitioners would not cave to

society's temper tantrum and shut up, the grieving loved ones mounted a different campaign to silence them: a crusade of lawsuits designed to impose such massive liability on them that they would be forced to declare bankruptcy.

The Court's precedents, however, guarantee the Petitioners a right to fair comment under the First Amendment. The rationale for this protection is simple. Journalists and commentators such as the Petitioners serve a vital role in sustaining the American way of life. Their questions and their opinions inform the public debate and safeguard the liberties guaranteed to every American by keeping an ever-vigilant eye on government. Thus, the Court has created an objective First Amendment jurisprudence that does not consider the content or offensiveness of a message, but rather whether it falls into the realm of public debate and fair commentary.

The Respondents have advocated for a very different First Amendment – one predicated on hurt feelings. The Texas Court of Appeals accepted their arguments and has practically barred the First Amendment from influencing the five underlying cases that are now the subject of this petition. In doing so, the Texas Court of Appeals contorted the Petitioners' speech to carry implications that it could not possibly convey and to target specific individuals even when it spoke at high levels of generality.

The First Amendment does not permit hurt feelings and offensiveness to act as a barometer for when it applies. The Texas Court of Appeals committed constitutional error of the gravest proportions when it declined to apply the standards that this Court has clearly established requiring speech to be directed at a person

specifically to be actionable in state tort claims and protecting journalists who comment on factual statements made by others that they accurately report.

Thus, the Petitioners respectfully ask the Court to grant their petition for writs of certiorari in five underlying cases.

OPINIONS BELOW

There are five underlying cases. The Petitioners identify the opinions below by their names for clarity's sake.

Infowars, LLC, et al. v. Fontaine : The Texas Supreme Court's order denying review is unreported and is reprinted at App.1-8. Its order denying rehearing is unreported and is reprinted at App.9-16. The Texas Court of Appeals, Third Circuit, opinion is reported at 2019 WL 5444400 and reprinted at App.17-33. The Travis County District Court's order is reprinted at App.34-52.

Jones, et al. v. Lewis : The Texas Supreme Court's order denying review is unreported and is reprinted at App.79-87. Its order denying rehearing is unreported and is reprinted at App.88-98. The Texas Court of Appeals, Third Circuit, opinion is reported at 2019 WL 5090500 and is reprinted at App.99-108. The Travis County District Court's order is reprinted at App.109-110.

Jones, et al. v. Pozner, et al. : The Texas Supreme Court's order denying review is unreported and is reprinted at App.117-124. Its order denying rehearing is unreported and is reprinted at App.125-134. The Texas Court of Appeals, Third Circuit, opinion is reported at 2019 WL 5700903 and is reprinted at App.135-155. The Travis County District Court's order is reprinted at App.156-157.

Jones, et al. v. Heslin, TX S.Ct. No. 20-0347 : The Texas Supreme Court's order denying review is unreported and is reprinted at App.189-195. Its order denying rehearing is unreported and is reprinted at App.196-204. The Texas Court of Appeals, Third Circuit, opinion is reported at 2020 WL 1452025 and is reprinted at App.205-220. The Travis County District Court's order is reprinted at App.221-223.

Jones, et al. v. Heslin, TX S.Ct. No. 20-0835 : The Texas Supreme Court's order denying review is unreported and is reprinted at App.254-262. Its order denying rehearing is unreported and is reprinted at App.263-269. The Texas Court of Appeals, Third Circuit, opinion is reported at 2020 WL 4742834 and is reprinted at App.270-285. The Travis County District Court's order is reprinted at App.286-289.

JURISDICTION

The Texas Supreme Court denied review in the five underlying cases on January 22, 2021. The Petitioners timely moved for reconsideration in each case, which the Texas Supreme Court denied on April 16, 2021. The Petitioners seek review of the five underlying cases in a single petition under Supreme Court Rule 12.4.

On March 19, 2020, the Court issued a general order extending the time for filing any petitions for a writ of certiorari due on or after March 19, 2020 to one hundred and fifty (150) days. The Court issued another general order on July 19, 2021 returning the due date for all petitions from judgments or petitions for rehearing issued on or after July 19, 2021 to ninety (90) days. The Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I states as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The Petitioners are alternative media organizations (Infowars, LLC and Free Speech Systems, LLC) and commentators (Alex Jones, Owen Shroyer, and Kit Daniels) that have become nationally renowned as alternative news sources. Led by the extraordinary efforts of Alex Jones, they have attracted monthly audiences that rival and exceed major television channels and traditional news outlets. The secret to the Petitioners' popularity is hardly a secret. Jones, his organizations, and his fellow commentators have embraced the most fundamental principle underlying a free society by asking the questions that other media organizations and commentators will not ask for fear of offending society's sensibilities. Jones' and his compatriots' willingness to engage in these intellectual inquiries, however, has drawn countless attempts to silence them, including the five lawsuits now discussed below.

I. *Infowars, LLC, et al. v. Fontaine*:

On February 14, 2018, Nikolas Cruz shot and killed seventeen people and injured seventeen others at a high school in Parkland, Florida. App.19. As information rapidly circulated in the aftermath of Cruz's shots, Kit Daniels – a reporter for Free Speech Systems, LLC – published what he referred to as "alleged

photos" of the suspected shooter on the Infowars website ("Infowars") owned and operated by Free Speech Systems, LLC. App.54-56. As more information emerged in the aftermath of the shooting, Daniels quickly realized that the photo depicted someone else other than Cruz and quickly arranged for it to be removed from Infowars – thirteen hours after it had been published. App.56. Free Speech Systems, LLC then published a complete retraction and correction:

> ***Retraction, clarification, and correction***: On this webpage on February 14, 2018, we showed a photography of a young man that we had received and stated incorrectly that it was an alleged photo of the suspected shooter at Douglas High School in Parkland, Florida. Infowars promptly removed the contents of this webpage within a hours after posting on February 14, 2018. The young man whose picture was shown later contacted us and asked that we take the photo down, but we had already done so several days before. We regret this error occurred.

App.73.

The misidentified man, Marcel Fontaine, then sued Alex Jones, Free Speech Systems, LLC, Infowars, LLC, and Kit Daniels for defamation, intentional infliction of emotional distress, conspiracy, and respondeat superior. Jones and the other defendants moved to dismiss under Texas's anti-SLAPP statute – the Texas Citizens' Participation Act (TCPA) – which afforded them special procedural protections. The Travis County District Court dismissed Fontaine's claims against Alex Jones as well as his claim for intentional infliction of emotional distress against the other defendants. It denied the defendants' motion to dismiss the other counts.

The Texas Court of Appeals, Third Circuit, affirmed this decision, holding that the remaining defendants - Free Speech Systems, LLC, Infowars, LLC, and Kit Daniels – had conspired to defame Fontaine. App.19-20. In doing so, the Court of

Appeals rejected their argument that they had only accurately reported a rumor circulating on social media and mitigated by reporting the photos as "alleged photos" of the suspect. The Texas Supreme Court then twice declined to review the Court of Appeals' decision.

II. Jones, et al. v. Lewis:

On December 14, 2012, Adam Lanza shot and killed 26 people, including 20 first-grade children, at the Sandy Hook Elementary School in Newtown, Connecticut. App.101. Tragically, Scarlett Lewis's son perished during the shooting. App.101.

In the immediate aftermath of the shooting, the Petitioners - Alex Jones, Infowars, and Free Speech Systems, LLC – publicly explored various theories that the shooting had been staged by the federal or state governments and discussed those theories on radio, television, and online media platforms that they owned. App.106-107. They hosted guests – notably Wolfgang Halbig – who stated their opinion that the shooting had been staged or otherwise faked. In line with his exploration of these theories, Jones also questioned whether news organizations were using "blue" or "green" screens in their broadcast coverage of the incident and accused the news organizations of faking interviews concerning the shooting.

From 2012 to 2018, the Petitioners, from time to time, explored the theories that the shooting was staged and, in 2019, Scarlett Lewis sued them for intentionally inflicting emotional distress on her. App.101. The Petitioners moved to dismiss her claim under the TCPA on the grounds that they never directed their speech at her specifically and had engaged in criticism of the traditional news media and

governments. The Travis County District Court denied the TCPA motion to dismiss, and the Texas Court of Appeals affirmed the decision on the grounds that the class of potential plaintiffs was limited and readily identifiable, thus creating a specific directing on the part of the Petitioners. The Texas Supreme Court then twice declined to review the Court of Appeals' decision.

III. ***Jones, et al. v. Pozner, et al.*** **:**

Like the preceding case, this case arises from the Petitioners' - Alex Jones, Infowars, and Free Speech Systems, LLC – exploration of theories that various aspects of the Sandy Hook school shooting were staged. App.137. The Respondents – Leonard Pozner and Veronique De La Rosa – lost their child during the Sandy Hook school shooting. App.137. In the aftermath, De La Rosa entered the national public debate over gun control policy and gave an interview to CNN's Anderson Cooper during which the Petitioners perceived a video anomaly that they, based on their own experience in television production, chalked up to the use of a "green" screen, which enables a video to be portrayed as being filmed at a certain location while not actually being filmed there. App.145-46.

Jones repeatedly questioned whether CNN had used a "green" screen during the interview and, in three 2017 television broadcasts, Jones claimed that CNN had faked the interview, labelled it and other media outlets "Sandy Hook Vampires," and attempted to analyze the footage on his television show. App.145-47. In his analysis of the footage of the CNN interview with De La Rosa, Jones never mentioned her or

Pozner even though her image appeared on screen. Instead, he focused entirely on why Anderson Cooper's nose disappeared during the broadcast.

Nonetheless, De La Rosa and Pozner sued the Petitioners for defamation based on Jones' repeated speculation and inquiries into whether aspects of the Sandy Hook shooting were staged. App.137. The Petitioners moved to dismiss their claim under the TCPA on the grounds that they never directed their speech at De La Rosa or Pozner specifically and had engaged in criticism of the traditional news media and governments. Alternatively, they argued that De La Rosa and Pozner had become limited purpose public figures by the nature of their advocacy for gun control. The Travis County District Court denied the TCPA motion to dismiss, and the Texas Court of Appeals affirmed the decision on the grounds that Jones implied that all of the Sandy Hook parents were lying about their children dying in the school shooting and that neither De La Rosa or Pozner were limited purpose public figures. The Texas Supreme Court then twice declined to review the Court of Appeals' decision.

IV. *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0347 :

This case also arises from the Sandy Hook school shooting. The Respondent, Neil Heslin, lost his son in the shooting, and he has devoted his life to advocating for gun control, participating in legislative hearings, giving media interviews, and speaking at political rallies. In 2017, Heslin gave an interview to NBC's Megyn Kelly where he directly and harshly criticized Alex Jones for questioning the Sandy Hook shooting and recounted holding his son's body after the shooting. App.206-07.

Jones' fellow commentator, Owen Shroyer, responded with a four-minute segment on his Infowars' television show discussing another news site's fact check of Heslin's interview, which claimed that he could not have possibly held his dead son based on what Connecticut's chief medical examiner told the public about how victims' bodies were handled in the aftermath. App.232-33. Shroyer then compared another victim's parent's statement to Heslin's and questioned the inconsistencies between them. App.232-33

Approximately a month later, Alex Jones revisited the subject on his Infowars' television show as he was complaining about YouTube censoring Shroyer's prior commentary. App.213. Jones replayed Shroyer's comments for his viewers and then attacked the news media for failing to exercise due diligence and challenge factual inconsistencies. App.213-14

Heslin responded by suing Jones, Shroyer, Infowars, LLC, and Free Speech Systems, LLC for defamation. App.207. The Petitioners moved to dismiss his claim under the TCPA on the grounds that their statements were protected opinions, accurate reporting of allegations made by a third party, and constituted fair comment. The Travis County District Court denied the TCPA motion to dismiss, and the Texas Court of Appeals affirmed the decision on the grounds that the Petitioners had stipulated to the truth of the factual allegations of Heslin's complaint for purposes of the motion and that the Petitioners had repeatedly made verifiable statements of fact instead of opinion. The Texas Supreme Court then twice declined to review the Court of Appeals' decision.

V. *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835 :

This case is very similar to the *Lewis* case discussed above. In the immediate aftermath of the Sandy Hook shooting, the Petitioners - Alex Jones, Infowars, and Free Speech Systems, LLC – publicly explored various theories that the shooting had been staged by the federal or state governments and discussed those theories on radio, television, and online media platforms that they owned. App.271-72. They hosted guests who stated their opinions that the shooting had been staged or otherwise faked. In line with his exploration of these theories, Jones also questioned whether news organizations were using "blue" or "green" screens in their broadcast coverage of the incident and accused the news organizations of faking interviews concerning the shooting. App.271-72.

From 2012 to 2018, the Petitioners occasionally explored the theories that the shooting was staged and, in 2019, Neil Heslin sued them for intentionally inflicting emotional distress on him. App.272. The Petitioners moved to dismiss his claim under the TCPA on the grounds that they never directed their speech at him specifically and had engaged in criticism of the traditional news media and governments. The Travis County District Court denied the TCPA motion to dismiss, and the Texas Court of Appeals affirmed the decision on the grounds that the class of potential plaintiffs was limited and readily identifiable, thus creating a specific directing on the part of the Petitioners. The Texas Supreme Court then twice declined to review the Court of Appeals' decision.

REASONS FOR GRANTING THE PETITION

The First Amendment protects the freedom of the press to inquire into sensitive matters, and its protections do not ebb and flow at the whim of human emotions. In other words, the First Amendment protects the press's right to play devil's advocate and explore the socially unconscionable. The Respondents have sought to subjugate this indispensable First Amendment freedom to their status as victims of school shootings by weaponizing Texas' state tort system to silence the Petitioners – Alex Jones, Owen Shroyer, Kit Daniels, Infowars, LLC, and Free Speech Systems, LLC.

Even more telling is the Respondents' status as political advocates for policy positions that the Petitioners oppose and advocate against. Instead of countering what they have perceived as misinformed opinions, the Respondents have turned to the courts to do the dirty work of closing the Petitioners' mouths and running them out of business. To date, they have succeeded, and this Court's intervention is absolutely necessary to preserve the Petitioners' right to voice their opinions publicly.

I. The First Amendment bars tort actions seeking damages for speech on matters of public concern directed at a loosely associated, large class of people rather than at specific individuals.

The Court's precedents completely foreclose any possibility that the First Amendment permits civil liability for speech because it is merely "outrageous." *Snyder v. Phelps*, 562 U.S. 443, 458 (2011). Speech on matters of public concern falls at the heart of the First Amendment's protection for free speech no matter how

outrageous it is. *Id.* at 451-52. Thus, it is entitled to special protection under the First Amendment. *Connick v. Myers*, 461 U.S. 138, 145 (1983).

Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Id.* at 146. Speech may also deal with matters of public concern when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *City of San Diego, California v. Roe*, 543 U.S. 77, 83-84 (2004). Constitutionally mandated in this inquiry is the rule that the "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." *Rankin v. McPherson*, 483 U.S. 378, 387 (1987).

When speech is on a matter of public concern, plaintiffs who seek to impose civil liability on it must establish that some exception to general First Amendment principles applies. *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988). While defamation is a First Amendment exception that the Court has recognized, outrageousness has never been one. *Rankin*, 483 U.S. at 387.

There is no question that the Petitioners' speech in the four Sandy Hook cases[1] before the Court was on matters of public concern. [2] Just as people did in the aftermath of the September 11 terrorist attacks, the Petitioners conducted a searching inquiry into whether state and federal governments that they deeply

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[1] *Jones, et al. v. Lewis* ; *Jones, et al. v. Pozner, et al.* ; *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0347; *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835.

[2] The Petitioners do not petition for a writ of certiorari in the *Infowars, LLC, et al. v. Fontaine* case on this issue, but there is no question that the Parkland shooter's identity, picture, and background was of intense, legitimate news interest.

distrust had staged the Sandy Hook massacre to justify a sinister attack on Second Amendment freedoms. They focused on inconsistencies in the information that emerged in the chaotic aftermath of the massacre and the statements made by the parents of victims and various government officials. They also drew attention to anomalies in traditional media's coverage of the events, including technical anomalies in how this tragedy was presented on the nation's television screens. As a gun control policy debate began at the behest of politicians before the blood had even dried at Sandy Hook and the dead were laid to rest with dignity, the Petitioners questioned the rush to blame guns instead of an evil monster as being too smoothly executed as to be an organic reaction. In other words, the Petitioners have always pointed a finger of suspicion at the United States government and the state of Connecticut.

These questions are at the heart of the First Amendment's protection. They addressed political questions and engaged with a public policy debate that the Respondents quickly participated in during the immediate aftermath of the Sandy Hook tragedy and actually used to attack the Petitioners. Impartial analysis quickly reveals that the Petitioners' repeated comments questioning whether Sandy Hook had been staged are speech on matters of public concern entitled to special consideration under the First Amendment.

The four Sandy Hook cases all purport to sound in the First Amendment's defamation exception to challenge this speech. Only two of the cases[3] actually state

[3] *Jones, et al. v. Pozner*, *et al.* ; *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0347.

claims for defamation. Three of the cases[4] state claims for the intentional infliction of emotional distress where the dispositive issue will be the outrageousness of the Petitioners' remarks. The Texas Court of Appeals' decision to allow the defamation claims and the intentional infliction of emotional distress claims to proceed in these cases shreds clearly established First Amendment law and reshapes it into an "outrageousness" standard where controversial speech will fall as a casualty to an outraged judge's or jury's sensibilities and plaintiffs' hurt feelings.

A. A defamation claim must show that the speech at issue was directed at the plaintiff to survive First Amendment scrutiny.

In *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Court devoted substantial time to discussing why the First Amendment barred liability against a public official because the statements at issue "could not reasonably be read as accusing [him] of personal involvement in the acts in question." The Court made very clear that this inquiry is of constitutional proportions, not an element of state tort law: "We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury's finding that the allegedly libelous statements were made 'of and concerning' respondent." *Id.* at 288.

The Court's application of the "of and concerning" test in *Sullivan* is particularly instructive as to what it means. The plaintiff, Sullivan, was a city commissioner in Montgomery, Alabama, and his duties included supervising the town's police department. *Id.* at 256. He sued the New York Times and four African-

[4] *Jones, et al. v. Lewis* ; *Jones, et al. v. Pozner*, *et al.* ; *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835.

American clergymen who were coordinating a legal defense and publicity for Martin Luther King, Jr. for libel after they published a sensationalized advertisement regarding conflicts between law enforcement and civil rights protestors in Montgomery. *Id.* at 256-59. Despite the inaccurate facts contained in the advertisement, the Court found two critical facts. First, the advertisement made "no reference to [Sullivan]… either by name or official position." *Id.* at 288. Second, even though the advertisement could be construed to refer to the police, it did not make "even an oblique reference to [Sullivan] as an individual." *Id.* at 289. Thus, the Court emphatically rejected Sullivan's effort to transmute "criticism of the government, however impersonal it may seem on its face, into personal criticism, and hence potential libel…." *Id.* at 292.

The Court then expanded on this principle in *Rosenblatt v. Baer*, 383 U.S. 75 (1966). In *Rosenblatt*, a county recreational area supervisor sued a New Hampshire newspaper contributor for defamation after he questioned what happened to the money that the county had set aside for the recreational area the year before. *Id.* at 77-79. After a jury awarded damages, the Court reversed on the grounds that it was constitutionally improper for the jury "to award damages upon a finding merely that respondent was one of a small group acting for an organ of government, only some of whom were implicated, but all of whom were tinged with suspicion." *Id.* at 82. In doing so, the Court made unmistakably clear that a specific reference is required to attach liability to speech on a matter of public concern. *Id.* at 82-83.

One of the defamation claims that the Petitioners ask the Court to review do not meet this standard. None of the Respondents in that matter alleges that the Petitioners specifically targeted them.

In *Jones, et al. v. Pozner*, *et al.*, the Respondents, Leonard Pozner and Veronique De La Rosa, and the Texas Court of Appeals focused on a single April 17, 2017 television broadcast where Petitioner Alex Jones began by describing the government's and the media's willingness and efforts to deceive the American people.[5] App.143-47. After citing many examples that included WikiLeaks and the Iraq war and weapons of mass destruction, Jones turned his attention to the traditional news media's portrayal of him, including distorting past comments out of their context to fan flames of resentment toward him. App.143-44. He then addressed the Sandy Hook massacre:

> Most fake mass shootings, they have shooters and then killer patsy. We know that's happened before. They've been caught before. False flag's a household name.
>
> I tend to believe that's what happened. But real mass shootings happen. I'm not saying real kids didn't die. We've entertained the idea, because the majority of people online don't believe the official story, because they've been lied to so much and seen our government launch wars that killed millions on lies, so they killed 20-something kids?
>
> But you watch the blue screens, and you watch the fake stuff. . . .
>
> The point is, is that everybody knows they lied about WMDs, everybody knows that, that stuff went on, everybody, [it's] in our normal reel about Sandy Hook being fake. You, you know [why] people question it, okay?

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[5] The Respondents complained of three broadcasts, but they and the Texas Circuit Court of Appeals ultimately focused only on the April 22, 2017 broadcast.

App.144.

Jones turned back to the media and discussed a CNN interview of Respondent Veronique De La Rosa:

> So here are these holier than thou people, when we question CNN, who, supposedly, is at the site of Sandy Hook, and they've got, in one shot, leaves blowing and flowers that are out, and you see the leaves blowing, and they go- they glitch. They're recycling a, a green screen behind them.
>
> Uh, you've got, who's the female lawyer used to be on CNN? Uh, [fake] southern accent or whatever? She's on there with cars driving in a cul-de-sac in circles and you see, it's the same cars going in circles.
>
> And then we've got Anderson Cooper famously, not just with the flowers blowing in the fake, but when he turns, his nose disappears repeatedly, because the green screen isn't set right. And they don't like to do live feeds because somebody might run up.
>
> CNN did that in the Gulf War and admitted it. They just got caught two weeks ago doing it in, supposedly, Syria, and then the green screen cuts out and they got, you know, phones ringing. And all we're saying is, if these are known liars that lied about WMDS and lied to get us into all of these wars and backed the Arab Spring, and Libya, and Syria, and Egypt, everywhere else to overthrow governments and put in radical Islamicists, if they do that and have blood on their hands, and lied about the Iraq war, and for the sanctions that killed a half million kids, and let the Islamicists attack Serbia, and lied about Serbia launching the attack, when it all came out later that Serbia didn't do it, how could you believe any of it if you have a memory and you're not Dory from Finding Dory, you know, the Disney movie?

App.145-46.

After further commentary on the general propensity of the traditional news media to participate in "false flag" hoaxes, Jones then mentioned past stories that his organizations had done on the Sandy Hook massacre and questioned why police officers were smiling and eating lunch at a crime scene with more than 20 gruesomely murdered children. App.146-47. He and a guest also questioned why the school had

been closed early in the year and why there were no blurred photos of dead bodies, which occasionally appear in news coverage of other tragedies. App.146-47.

While Jones and his guest did question whether CNN had faked aspects of its interview with De La Rosa, they never questioned what she said during that interview. They also never mentioned her or Respondent Leonard Pozner by name in their broadcast. Their criticisms and questioning of what happened at Sandy Hook could not even fairly be said to deny that it actually happened. Instead, they repeatedly questioned whether it had been staged by the government for sinister policy reasons.

The Texas Court of Appeals, however, made a jump that neither law nor logic can support. It accused Jones of leaving the impression that "Pozner and De La Rosa were not truthful in stating that their children were killed, or that if they were, then they were, then the children may have been killed as part of what Jones calls a hoax or a 'false flag.'" App.146. The Court of Appeals did not stop there:

> By asserting, as a matter of fact, that De La Rosa's interview was staged on a green screen and that the school had in fact been closed for years leading up to the shooting, Jones necessarily implies that the parents were untruthful in representing that De La Rosa spoke to Anderson Cooper at the site of her son's death and in representing that they were parents of children who attended Sandy Hook Elementary before and during the shooting. Overall, the gist of the broadcast is that the shooting at Sandy Hook was staged and, by implication, that the parents were complicit.

App.147.

Jones regularly expects this type of distortion of his words from the public and the traditional news media who have their political agendas to advance. Coming from

a court, it only supports his theories that there is a concerted effort to silence him because of what he says. This Court should require more of Texas's courts.

Jones never questioned Pozner and De La Rosa's sincerity or truthfulness in the broadcast that they hung their entire case. In fact, just as in *Sullivan* and *Rosenblatt*, he never mentioned their names or discussed them or any Sandy Hook parent at all. Instead, he relentlessly focused on the unreliability of the traditional news media and government – something that the First Amendment gives him every right to do.

Shockingly, the Court of Appeals did not address either *Sullivan* or *Rosenblatt* in its decision. If it had, it could not have reached the conclusion that it did because there is no way that Jones specifically referenced Pozner or De La Rosa in his remarks, let alone in a defamatory way. The Court of Appeals had to stretch for inferences that cannot be located within the bounds of reason. In doing so, the Court of Appeals replaced this Court's broad First Amendment standards with a "offensiveness" and "outrageousness" standard.

The Court has repeatedly rejected such standards, and it should grant review in this case because lower courts have not accepted its message. *See Matal v. Tam*, 137 S.Ct. 1744, 1764 (2017) ("the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate"). In this case, the price that the courts and the Respondents will seek to exact will be tens of millions of dollars. For free speech to endure, this Court should be quick to check lower courts when they overstep as the Court of Appeals did here.

B. Speech-based intentional infliction of distress claims must also show the speech at issue was directed at the plaintiffs to survive First Amendment scrutiny.

In *Snyder v. Phelps*, 562 U.S. 443 (2011), the Court rejected the proposition that the tort of intentional infliction of emotional distress could circumvent the First Amendment's protections for free speech: "The Free Speech Clause of the First Amendment… can serve as a defense in state tort suits, including suits for intentional infliction of emotional distress." *Id.* at 451. Thus, like defamation, intentional infliction of emotional distress must survive a First Amendment analysis.

That analysis starts with whether the person claiming distress is a public figure who is "intimately involved in the resolution of important public questions or, by reasons of their fame, shape events in areas of concern to society at large." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 51 (1988). Additionally, the Court made clear that *New York Times*'s standard applied in its entirety, including its "of and concerning" principle. *Id.* at 52.

The second aspect of the test is that public figures "may not recover for the tort of intentional infliction of emotional distress by reason of publications such as the one here at issue without showing in addition that the publication contains a false statement of fact which was made with 'actual malice…." *Id.* at 56. The Court explained that this was not a blind application of the *New York Times* standard either. Instead, plaintiffs are required to show that speakers spoke "with knowledge that the statement was false or with reckless disregard as to whether or not it was true." *Id.* at 56.

Falwell's facts are particular instructive. Hustler Magazine published a parody of a liquor advertisement that targeted a nationally known minister, Jerry Falwell, who had actively commentated on politics and public affairs. *Id.* at 48-49. The parody included a picture of Jerry Falwell and was entitled "Jerry Falwell talks about his first time." *Id.* at 48-49. Unlike the liquor advertisements though, Hustler's editors drafted an alleged "interview" with him during which he confessed the first time that he had sex was "during a drunken incestuous rendezvous with his mother in an outhouse." *Id.* at 48. The advertisement contained a small note that it was a parody "not to be taken seriously." *Id.* at 48.

The Court held that Falwell was a public figure and that the parody was not reasonably believable. *Id.* at 57. Thus, it denied him recovery on his claim for intentional infliction of emotional distress. *Id.* at 57. Central to the Court's holding was that public figures are often subjected to, and expected to endure, "vehement, caustic, and sometimes unpleasantly sharp attacks." *Id.* at 51 (internal quotation marks and citation omitted). In particular, the Court held that opponents and reporters have significant leeway under the First Amendment to demonstrate that the public figure at issue is not as spotless or trustworthy as he claims to be. *Id.* at 51-52.

The three cases that claim that the Petitioners intentionally inflicted emotionally distress fail on the "of and concerning." The Petitioners address each in turn.

The Petitioners have already discussed the facts of *Jones, et al. v. Pozner*, *et al.* and how the broadcast complained of does not mention either of the two Respondents. The same discussion is dispositive of the case's intentional infliction of emotional distress claim. One additional point bears mention though. Even if the Petitioners did direct their comments toward the two Respondents, they did not make their comments with reckless disregard or knowledge of falsity. They questioned the story behind the interview as being told by CNN and Anderson Cooper. In particular, they questioned whether CNN used a green screen to stage a live interview – a legitimate question to them as they had experience with green screens causing the video anomaly that appeared in Respondent De La Rosa's interview with Anderson Cooper. Thus, liability does not lie with them, and the Texas Court of Appeals made a gross constitutional error in concluding that it did based on its distaste for their speech.

Jones, et al. v. Lewis presents a similar lack of evidence. The Respondent, Scarlett Lewis, lost her son in the Sandy Hook massacre. She sued the Petitioners – Jones, Infowars, LLC, and Free Speech Systems, LLC – for intentional infliction of emotional distress. The Texas Court of Appeals could not point to a single statement where Jones and his organizations directed comments at her specifically. Instead, it pointed to statements where Jones called the Sandy Hook shooting "as phony as a three-dollar bill." App.106. It also pointed to Jones' comments on Respondent De La Rosa's CNN interview and various other parent interviews. App.106-07. Lewis,

however, did not do any interviews. To accuse Jones of targeting Lewis, the Court of Appeals used the following statement that Jones made:

> So, if children were lost at Sandy Hook, my heart goes out to each and every one of those parents. And the people who say they're parents that I see on the news. The only problem is, I've watched a lot of soap operas. And I've seen actors before. And I know when I'm watching a movie and when I'm watching something real.

App.107.

It gave the following interpretation of the statement: "This statement, and some of the broadcasts as a whole, could be understood to accuse parents of Sandy Hook victims of either being untruthful about the manner in which their children were killed or being untruthful about whether their children were killed at all." App.107. It then held that, because the number of possible parents was limited and readily identifiable, Lewis could proceed on her claim even though Jones had named her or specifically referred to her. App.107.

The Texas Court of Appeals' decision breaks so far from the Court's "of and concerning" precedents that it is unrecognizable. In particular, the decision violates the Court's decision in *Rosenblatt*, which dealt with an even smaller class of very readily identifiable potential plaintiffs. The *Rosenblatt* Court made it clear that specific references are required when a speaker comments on a matter of public concern and people who have become public figures.

There is no question that Jones never specifically referenced Lewis or talked about her at all. In fact, the comments that the Texas Court of Appeals relied on only referred to people who had appeared on the news. Lewis made no alleges that she

ever appeared on the news despite her status as the parent of a Sandy Hook victim. Thus, Jones could not have possibly specifically referenced her, which is constitutionally required for her claims to proceed.

Likewise, in *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835, Respondent Neil Heslin, who lost his son during the Sandy Hook massacre, claimed that Jones and his organizations intentionally inflicted emotional distress on him due to their remarks on Sandy Hook at least nine times. Heslin, however, did not identify how Jones attacked him specifically on these nine occasions. Instead, he relied entirely on his theory that Jones had targeted all of the Sandy Hook families. App.284. The Texas Court of Appeals concluded that such a general targeting was sufficient to survive First Amendment scrutiny in direct contradiction to the Court's *Sullivan* and *Rosenblatt* precedents. App.284.

The First Amendment's protections do not ebb and flow on an "offensiveness" standard. The Texas Court of Appeals, however, created one to attach liability to the Petitioners. This Court's precedents have clearly established that, when speech concerns public figures or matters of public concern, it must specifically reference a person to serve as the basis for state tort liability. Texas's courts have abandoned the Court's precedents in favor of an "outrageousness" standard because the Petitioners' speech strikes them as unconscionable in a civilized society. Such an approach is anathema to the First Amendment, and it requires this Court's intervention to ensure that the First Amendment applies neutrally and fairly to protect robust debate on the most important issues that society confronts.

Thus, the Petitioners ask the Court to grant writs of certiorari in the cases of *Jones, et al. v. Lewis*, *Jones, et al. v. Pozner, et al.*, and *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835.

II. The First Amendment bars tort actions seeking damages for a media organization's accurate replay of factual statements and a commentator's opinion on those facts as accurately replayed.

The Court has held that "a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection" under the First Amendment. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). It has also held that statements that cannot "reasonably [be] interpreted as stating actual facts" about an individual are protected by the First Amendment, thus assuring that public debate has the full benefit of "imaginative expression or the rhetorical hyperbole which traditionally added much to the discourse of our Nation." *Id.* at 20 (internal quotations and citations omitted).

In *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6 (1970), a local newspaper published articles describing a real estate developer's negotiating position with a local city council as blackmail. *Id.* at 13. This Court held that the newspaper's account of the negotiations was an accurate account and that its use of the term "blackmail" constituted mere rhetorical hyperbole protected by the First Amendment. *Id.* at 13-14. Thus, the First Amendment protects scathing critiques of those who enter public debate.

As the Seventh Circuit has indicated, these cases stand for the proposition that

> "[a] statement of fact is not shielded from an action for defamation by being prefaced with the words "in my opinion," but if it is plain that the

> speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is actionable."

Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1227 (7th Cir. 1993) (citing *Milkovich*, 497 U.S. at 17-21).

These principles take on more importance when a journalist accurately and neutrally reports information provided by an external source and then offers a subjective opinion on the information. In *Edwards v. National Audubon Soc., Inc.*, 556 F.2d 113 (2d Cir. 1977), the Second Circuit rebuffed a defamation suit against the New York Times where it reported false allegations made by the National Audubon Society. It relied on the Court's decision in *Time, Inc. v. Pape*, 401 U.S. 279 (1971) to hold that the press is not required "to suppress newsworthy statements merely because it has serious doubts regarding their truth." *Id.* at 120. The Second Circuit qualified its ruling though, stating that reporters who deliberately distort statements factually to launch personal attacks are not protected by the First Amendment. *Id.* at 120.

The Texas Court of Appeals ignored these fundamental principles in each case now before the Court, and it replaced them with a knee-jerk "offensiveness" standard that discards objective analysis for hurt feelings.

In *Infowars, LLC, et al. v. Fontaine*, the Petitioners – Infowars, LLC, Free Speech Systems, LLC, and Kit Daniels – reported on the Parkland school shooting. In the chaotic hours that followed the first shots, Daniels noticed a photo of Marcel Fontaine was becoming popular on social media and that he was being identified as

the Parkland shooter. App.55. Daniels' culling of social media yielded various photos of Fontaine wearing shirts featuring images of several famous communist leaders. App.55-56. Daniels then wrote a story for Infowars entitled "MSM already covering it up"[6] and included the photos that he had found of Fontaine using the captions "another alleged photo of the suspect shows communist garbs" and "Shooter is a commie." App.61-71. Hours later, Daniels realized that Fontaine was not the Parkland shooting suspect, and he quickly arranged for his original story to be taken down. App.56. The Petitioners then published a full retraction. App.73.

Instead of assessing the Petitioners' conduct under the well-established, objective, First Amendment principles for reporting facts stated by others, the Texas Court of Appeals imposed a due diligence standard on the Petitioners under the auspices that they omitted material facts to create the impression that Fontaine was the shooter. App.45-47. Not only could the Texas Court of Appeals point to no set of facts that could support its conclusion, but it also uses its distorted interpretation of the law to require the Petitioners to conduct extensive due diligence any time that they wish to accurately report factual statements made by others that offend an established political narrative.

The First Amendment does not permit such a tortured conclusion. There is no dispute that Daniels published the images exactly as he found them on social media, which is all that the First Amendment required. They were clearly newsworthy as the Parkland's shooting's aftermath had already turned into the latest political

[6] "MSM" refers to mainstream media.

battleground over whether far right extremism or far left extremism was responsible. By captioning the photos that he had published as "alleged photos," Daniel accurately reported the factual statements that had been made by others and, in the use of the caption, actually went a step further than the First Amendment requires by expressing his own doubts as to their veracity. The rest of Daniels' article then reiterated the common themes of Infowars and Free Speech Systems' media coverage – an intense distrust of governments and suspicion that they regularly conceal the truth from the public at large.

Thus, Daniels' reporting falls squarely within *Milkovich*, *Bresler*, and *Pape*. Daniels accurately reported the factual statements made by others and offered subjective commentary on them. The Texas Court of Appeals committed gross error in manipulating its way to a due diligence requirement that has no basis in the First Amendment simply because Daniels obtained the statements from social media, which the court viewed as being inherently unreliable.

The Texas Court of Appeals' disregard for this principle continued against Alex Jones, Infowars, LLC, and Free Speech Systems, LLC in *Jones, et al., v. Lewis*. In Jones' commentary on media interviews of parents who lost children in the Sandy Hook massacre, he repeatedly questioned whether the stories being told by the media were accurate, and he even questioned whether Sandy Hook had been a staged event by federal and state governments. App.106-07. The Texas Court of Appeals construed Jones' comments on these media interviews as being statements of fact without conducting any analysis of whether Jones had been relaying actual statements of fact

or commentating on the media interviews that he showed. App.107. As it did in the *Fontaine* case, the Court of Appeals did not, and could not, imply that Jones or his organizations had inaccurately replayed the media interviews of the parents that he was commentating on.

This Court's precedents do not permit such an ad-hoc and sloppy approach to cases where the First Amendment is at issue over speech on matters of public concern. They require an objective inquiry that systematically explores every First Amendment defense that the Petitioners raise. Blinded by its outrage at Jones' comments, the Texas Court of Appeals forsook its objectivity and omitted crucial portions of the First Amendment analysis, leaving the Petitioners to face lawsuits designed to chill their speech and ultimately silence them. Jones did nothing more than speculate and theorize while commentating on the interviews that he accurately replayed for his audience. He and fellow journalists attempted to analyze inconsistencies and ask questions within the realm of rationality despite the Court of Appeals' aspersions to the contrary. He then offered his theories based on his intense distrust of the government. The First Amendment and this Court's precedents indisputably protect his right to do so, and the Texas Court of Appeals' decision grossly departs from what the law is.

Jones, et al. v. Pozner, et al. presents an even more unconstitutional decision from the Texas Court of Appeals. As part of his commentary and regular monologues on how untrustworthy government and major media outlets are, Jones replayed a CNN interview with Respondent Veronique De La Rosa that CNN claimed took place

from the site of De La Rosa's son's death. App.146. During the interview, CNN anchor, Anderson Cooper, turned slightly, and his nose disappeared from the screen. App.145-46. Jones played the video of this happening for his viewers and then proceeded to commentate.

Having had experience with green screens in his own television productions and understanding how they can be used to portray a location many miles away, Jones questioned whether CNN had lied about the interview taking place live where it said that it did. App.____. He then returned to his theme about how governments and the media constantly lie and speculated that they might have lied about what actually happened at Sandy Hook.

The Texas Court of Appeals transformed Jones' comments into an accusation that parents such as De la Rosa were being untruthful as to the events surrounding Sandy Hook and the CNN interview. App.145-46. It did not dispute, however, that Jones had accurately replayed the CNN clip for his viewers. In an objective First Amendment analysis, this undisputed fact would have ended the inquiry as everything that followed thereafter from Jones was plainly commentary about the government and CNN. The Texas Court of Appeals, however, extended the analysis to read as many sinister implications into Jones' comments as it could, acting a third litigant rather than an impartial tribunal.

The First Amendment requires a content-neutral scrutiny of whether speech constitutes fair commentary and opinion on matters accurately reported. Such an analysis, objectively rendered in this case, clearly demonstrates that Jones accurately

reported the factual information by showing the actual video clip and then proceeded to theorize about it – conduct indisputably protected by the First Amendment.

Finally, the Texas Court of Appeals continued its vendetta against Jones and his organizations in *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0347 and *Jones, et al. v. Heslin*, TX S.Ct. No. 20-0835 – the facts of which are identical. Respondent, Neil Heslin, has made it his life's mission to attack anyone who questions whether the Sandy Hook massacre occurred the way that it has been portrayed in traditional media and government reports and who opposes his efforts to advocate for strict gun control. In a nationally televised interview with NBC's Megan Kelly, he attacked Jones and his organizations for questioning how the Sandy Hook massacre occurred. Owen Shroyer, a commentator with Infowars, addressed Heslin's attack on Jones and his organizations by commentating on a fact checking story from a popular news website, Zero Hedge:

> So folks now, here's another story. I don't even know if Alex knows about this to be honest with you. Alex, if you're listening and you want to… or if you just want to know what's going on, Zero hedge has just published a story: "Megyn Kelly fails to fact check Sandy Hook father's contradictory claim in Alex Jones' hit piece." Now again, this broke… I think it broke today. Neil Heslin, a father of one of the victims during the interview described what happened the day of the shooting. Basically what he said, the statement he made, fact checkers on this have said cannot be accurate.
>
> He's claiming that he held his son and saw the bullet hole in his head. That is his claim. Now, according to a timeline of events and a coroner's testimony, that is not possible. One must look at Megyn Kelly and say, "Megyn, I think it's time for you to explain this contradiction in the narrative because this is only going to fuel the conspiracy theory that you're trying to put out, in fact." Here's the thing too, you would remember… Let me see how long these clips are. You would remember if you held your dead in your hands with a bullet hole. That's not

> something that you would just misspeak on. Let's roll the clip first. Neil Heslin telling Megyn Kelly of his experience with his kid.

App.231-233.

After showing a clip of Heslin telling Megyn Kelly that he held his murdered son "with a bullet hole through his head," Shroyer reacted: "Okay, so making a pretty extreme claim that would be a very thing vivid in in your memory, holding his dead child. Now here is an account from the coroner that does not cooperate with that narrative." App.233. Shroyer then played the following clip from Dr. Wayne Carver – Connecticut's chief medical examiner at the time whose offices handled the bodies from the Sandy Hook massacre:

> We did not bring the bodies and the families into contact. We took pictures of them, of their facial features. It's easier on the families when you do that. There is a time and a place for up close and personal in the grieving process, but to accomplish this, we felt it would be best to do it this way. You can control the situation depending on your photographer, and I have very good photographers.

App.233.

Shroyer concluded his discussion with the following:

> Okay, so just another question that people are now going to be asking about Sandy Hook, they conspiracy theorist out there that have a lot of questions that are yet to get answered. I mean, you can say whatever you want about the event. That's just a fact. So there's another one. Will there be a clarification from Heslin or Megyn Kelly? I wouldn't hold your breath. Now they're fueling the conspiracy theory claims. Unbelievable. We'll be right back with more.

App.233.

About a month later, Alex Jones replayed Shroyer's discussion on his television show and added the following commentary:

> you've got CNN and MSNBC both with different groups of parents and the coroner saying we weren't allowed to see our kids basically ever, what they sound like they're saying, but we see a father, a grieving father saying that he dropped him off with a book bag, got him back in a body bag. . . . we need to get clarification on what went on, and I couldn't ever find out. The stuff I found was they never let them see their bodies.

App.214.

The Texas Court of Appeals did not dispute in either case that Shroyer accurately replayed the videos of Heslin's interview and Dr. Carver's interview. It also did not dispute that Jones had accurately replayed Shroyer's segment on his own show. Instead, it concluded that their commentary doubting the possibility that Heslin held his dead son's body constituted verifiable statements of fact.

That conclusion could not be more at odds with the First Amendment, which only required Jones and Shroyer to accurately report Heslin's and Carver's statements. They did accurately report those statements and proceeded to ask questions and offer opinions – something that the First Amendment unquestionably protects. The fact that Jones and Shroyer made the Court of Appeals and Heslin uncomfortable with their commentary has no bearing on the objective analysis of whether they offered subjective commentary and opinions protected by the First Amendment.

To speculate, theorize, and opine remains at the heart of the freedoms protected by the First Amendment, and those freedoms protect even the most unpopular and offensive opinions. As journalists and regular commentators on matters of public, the Petitioners depend on it every day to fulfill their vital role in

our society. The Texas Court of Appeals, however, has stripped them of its protection and their ability to offer their opinions on stories that they report simply because the overwhelming majority of society has concluded that they are wrong and despicable for the opinions that they offer.

If left to stand, the Texas Court of Appeals' decisions will chill the Petitioners' speech immeasurably because they will not be able to speculate and opine on any piece of conventional wisdom or story told by the regular news media without fear of bankrupting financial liability. This is precisely the evil that the First Amendment prohibits, and the Texas Supreme Court's unwillingness to put a halt to it requires this Court's intervention.

Thus, the Petitioners respectfully ask the Court to grant writs of certiorari in all of the underlying cases.

CONCLUSION

Texas's court should not be permitted to secede from the union when it comes to the First Amendment's protection of unpopular reasons. For all these reasons, this Court should grant the petition for certiorari.

Respectfully submitted

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August 31, 2021

APPENDIX