No. 23-1303

IN THE

Supreme Court of the United States

CRAIG MALIN,

Petitioner,

v.

LEE ENTERPRISES, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE IOWA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ABBEY C. FURLONG
Counsel of Record
IAN J. RUSSELL
JENNY L. JUEHRING
LANE & WATERMAN LLP
220 North Main Street, Suite 600
Davenport, IA 52801
(563) 324-3246
afurlong@l-wlaw.com

Counsel for Respondents

130145

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Respondents disagree with Petitioner's questions presented, neither of which he properly raised to the district court. It is axiomatic that an argument cannot be considered on appeal that was not first raised and ruled upon in the courts below. The accurate questions presented, then, are: did Petitioner properly preserve error on his argument that the decisions of the lower courts conflict with *Anderson v. Liberty Lobby*? And: did Petitioner properly preserve error on his argument that a publisher's refusal to retract constitutes actual malice? The answers to both of these questions are "no," and the Petition for Writ of Certiorari should be denied on that basis alone.

If Petitioner preserved error on those questions, Petitioner's first question misstates *Anderson's* holding. The proper first question is: Whether, in granting and upholding Respondents' motion for summary judgment, the state district court's and state appellate court's decisions directly conflict with this Court's decision in *Anderson*? The answer is "no." The second question conflates Petitioner's first lawsuit (which ended in a jury verdict in favor of all defendants) with his instant lawsuit which centers on a 2019 editorial discussing the chilling effects of the first lawsuit. The proper second question is: did the lower courts correctly conclude that Petitioner failed to prove the requisite malice element of his defamation claim by clear and convincing evidence when the challenged publication is an editorial containing protected opinion speech and some factual statements about prior reporting that had been vindicated in a prior lawsuit? The answer is "yes."

RULE 29.6 STATEMENT

Respondent Lee Enterprises, Incorporated does not have a parent company and the only publicly held corporation that owns 10% or more of its stock is Quint Digital, Ltd., an Indian publicly traded company. Respondent Lee Publications, Inc. d/b/a Waterloo Cedar Falls Courier has a parent company, Lee Enterprises, Incorporated, and no publicly held corporation owns 10% or more of its stock. Respondent St. Louis Post-Dispatch, LLC d//b/a St. Louis Post Dispatch has a parent company, Pulitzer Inc., and no publicly held corporation owns 10% or more of its stock.

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STATEMENT

Petitioner asks this Court to grant his Petition for Writ of Certiorari based on two questions presented—neither of which were properly posed to the lower courts in this matter. As a result, Petitioner failed to preserve error on these issues and the writ should be denied for that reason alone. In his first question presented, Petitioner asserts that the district court's grant of summary judgment in favor of Respondents violated some sort of absolute right to a jury trial in defamation cases. Petitioner raised this argument for the first time in his brief to the Iowa Court of Appeals *after* the district court denied his motion for partial summary judgment and instead granted Respondents' motion for summary judgment. The Iowa Court of Appeals addressed Petitioner's new argument in a footnote in its opinion, noting "Malin also raises a constitutional claim on appeal. However, that claim is not preserved for our review because Malin never developed the argument below." App. 8. Petitioner now asks this Court to review an issue for which he failed to preserve error in the lower appellate court. This is impermissible and fatal to Petitioner's claims related to his first question presented.

Furthermore, even if Petitioner has preserved error on this issue—which Respondents do not concede—his reliance on *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) for the proposition that a public figure plaintiff in a defamation action has some sort of absolute right to a jury trial is misplaced. *Anderson* stands for no such thing. Instead, *Anderson* merely sets forth the now longstanding summary judgment standards applicable to claims of defamation which implicate First Amendment rights by

incorporating *Sullivan's* clear and convincing evidentiary standard in determining whether a genuine issue of actual malice exists. *Anderson* does not dictate that all defamation actions must be tried to a jury or otherwise imply that there is any sort of absolute right to a jury trial that would prevent the grant of summary judgment in favor of defendants to the action. In fact, *Anderson* explicitly states: "where the factual dispute concerns actual malice . . . *the appropriate summary judgment question* will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." *Id*. at 256 (emphasis added). What Petitioner fails to grasp is that he is only entitled to have "legitimate" and "justifiable" inferences drawn in his favor. The district court appropriately applied this standard in this matter in correctly ruling in Respondents' favor and the writ as to first question should be denied.

Petitioner next invites this Court to "update" *Sullivan* by addressing the question it purportedly left "open" by determining that a publisher's refusal to issue a retraction can constitute evidence of actual malice. Petitioner again, however, failed to properly raise this issue with the district court. Nowhere in Petitioner's briefing to the district court does he suggest that *Sullivan* is in need of updating or anything other than controlling Supreme Court precedent. It is not until his motion to amend and enlarge the district court's ruling in favor of Respondents and granting their motion for summary judgment that Petitioner suggests for the first time not that *Sullivan* needs updating, but that *Sullivan* is distinguishable from the facts of his case and should not apply. Resp. App. 12a–16a. Petitioner's belated effort to raise brand new arguments *after* the

district court had already issued its ruling is insufficient to preserve error on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). It is also worth noting that Petitioner's impermissible new argument in his motion to enlarge is not even the same argument he now asks this Court to address, further demonstrating his failure to preserve error.

Moreover, in his Memorandum of Law in support of his motion for partial summary judgment, Petitioner merely references his requests for retraction in passing in background sections of his brief but focuses his argument section on Respondents' alleged "purposeful avoidance" of the truth. Resp. App. 5a–7a. Not once did Petitioner ask the district court to expand on *Sullivan's* purported "open question." It was not until he filed his appeal with the Iowa Supreme Court that Petitioner—for the first time—addressed *Sullivan* head on, but even then asking the appellate court to set it aside in order to find that Petitioner met his burden by alleging Respondents' failure to retract constituted evidence of actual malice. Once again, Petitioner's belated attempt to have this Court expand on longstanding precedent without having ever raised the question in the proceedings below warrants outright denial of the writ as to Petitioner's second question presented.

To the extent Petitioner is found to have preserved error on his second question—which Respondents contest—his argument misses the mark for two reasons. First, Malin continually conflates the various iterations of his grievances against Respondent Lee Enterprises. In requesting that this Court "update" *Sullivan* and find that "years-spanning refusal to retract" can constitute

evidence of actual malice, Petitioner cites primarily to retraction requests he made with respect to publications which are *not at issue in the instant lawsuit*. Despite his repeated references to articles, editorials, and opinion pieces published by the Quad-City Times in 2015, none of those publications are germane to the instant action. Petitioner presented his complaints about the 2015 publications to a jury in his first lawsuit over the course of a 10-day trial, after which the jury exonerated the defendants and their reporting. Accordingly, the only publication at issue in Petitioner's current lawsuit is the 2019 *editorial* referencing the trial over the 2015 publications for the purpose of expressing the opinions of the Editorial Board, which are absolutely protected by the First Amendment.

Second, Petitioner attempts to cloak his second question presented as one of national importance when in reality, he is simply asking the this Court to second guess the factual determinations of the lower courts and replace their analysis with its own. *Sullivan* does not dictate that a failure to retract can *never* form the basis for a defamation plaintiff to establish actual malice. As such, the lower courts were never constrained from taking into account Petitioner's purported argument in that regard—they simply (correctly) rejected it. Moreover, even if this Court were to accept Petitioner's invitation to "update" *Sullivan*, it would not be dispositive of the matter but would have to be remanded back to the district court for factual findings that have already been made meaning the most likely outcome is the same result. For these reasons, the writ should be denied as to the second question.

1. Petitioner, Craig Malin, was employed as the City Administrator by the City of Davenport, Iowa from August 2001 through June 2015. App 18. On June 15, 2017, Petitioner filed his first lawsuit against Lee Enterprises, Incorporated ("Lee Enterprises"), the Quad-City Times (a newspaper owned by Lee Enterprises), and two Quad-City Times reporters alleging defamation and intentional interference with his employment contract related to publications in the Quad-City Times newspaper and website in June 2015. App. 4, 18. Those publications generally concerned Petitioner's involvement, as Davenport City Administrator, in negotiations between the City of Davenport and the developer of a planned local casino project. App. 18–19, 58. The publications reported that the City of Davenport—specifically its "taxpayers"—would be paying for the groundwork at the casino construction site. App. 18–19, 58.

The defendants in that case sought summary judgment. App. 19. The district court found the Quad-City Times publications that the City of Davenport ended up paying the groundwork costs of the casino were "largely true." App. 19. The district court ultimately granted the defendants summary judgment on Petitioner's defamation claim because the Petitioner had not presented evidence of actual reputational harm, which is required under Iowa law. App. 19–20.

At trial on Petitioner's remaining claim of intentional interference with a contract, the jury returned a unanimous general verdict in favor of the defendants. App. 20. Petitioner appealed, challenging two jury instructions concerning the First Amendment. App. 30. The Iowa Court of Appeals affirmed. App. 30. In its decision, the

Iowa Court of Appeals found "the jury either found that Malin failed to prove the falsity of the defendants' statements . . . or found the defendants were entitled to First Amendment protections . . ." and that "[b]oth findings were supported by the evidence." App. 20–21.

In 2019, less than a week before the jury trial was set to begin in Petitioner's first case against Lee Enterprises, another Lee Enterprises-owned newspaper, the St. Louis Post-Dispatch, published an editorial authored by its Editorial Board entitled "Editorial: Lawsuit threatens to put a chill on aggressive reporting that exposes wrongdoing." App. 57–59. The same editorial was published in another Lee-Enterprises-owned newspaper, the Waterloo-Cedar Falls Courier, titled as: "Truth on trial: Lawsuit could put a chill on aggressive journalism that exposes wrongdoing." App. 57–59. App. 21. The point of the editorial was "to highlight the importance of journalism to the public and stress it should not be suppressed through litigation efforts." App. 14.

While Petitioner attempts to distort the language and meaning of the 2019 editorial by presenting twisted pieces of it accompanied by his personal—and unreasonable—interpretation, and at other times seemingly forgets that this lawsuit is about the 2019 editorial and not about the vindicated 2015 Quad-City Times publications, Respondents ask the Court to review the entirety of the short 2019 editorial for itself, as the Iowa courts aptly did:

> Libel allegations always send a shudder through new organizations, but thanks to First Amendment protections affirmed by the U.S. Supreme Court, judges rarely agree to hear

libel cases against reporters and even more rarely do courts side with plaintiffs. The bar is set extraordinarily high for good reasons. Otherwise, corrupt officials like former St. Louis County Executive Steve Stenger could use frivolous lawsuits to bankrupt local organizations whose aggressive reporting exposes wrongdoing.

In Davenport, Iowa, a former city administrator is trying a chilling tactic to punish the local newspaper for reporting that exposed backroom wheeling and dealing and cost him his job. The accuracy of reporting by Davenport's Quad-City Times newspaper might not be adequate to fend off the "tortious interference" case brought by former city administrator Craig Malin.

The Quad-City Times, which along with this newspaper is owned by Lee Enterprises, published a series of damning reports in 2015 exposing involvement by Malin and Davenport's former city attorney in the advancement of taxpayer-funded groundwork for a future casino project. The city council and mayor had given them no authorization to do so. The newspaper's reporting led to Malin's negotiated departure from office.

Recall the backroom wheeling and dealing by Stenger, who likely would have escaped public accountability if not for the Post-Dispatch's aggressive reporting. Stenger and

his cronies tried all kinds of maneuvers to silence this newspaper's reporting but failed.

Malin tried a libel lawsuit in 2017 but also failed. Malin is instead suing the Quad-City Times for tortious interference, arguing that the newspaper's reporting interfered with his employment contract. In June 2015, the city council overwhelmingly approved a severance agreement that Malin signed. He's now city manager in the northern California town of Seaside.

But his resort to a tortious interference complaint gives him the ability to sidestep the Supreme Court's normal libel standard of proof for plaintiffs in news media cases—that reporters displayed a "reckless disregard" for the truth, and were malicious and premeditated in trying to damage the plaintiff. That's why this case is so troubling. Adherence to professional reporting standards might not provide protection—as suggested by Judge Nancy Tabor's decision to let the case proceed.

Attorney Sarah Matthews, with the Reporters Committee for Freedom of the Press, warns the case "could have a significant chilling effect" on news coverage.

The mere threat of a tortious interference lawsuit caused CBS News to back down from an investigative report on "60 Minutes" in 1995 exposing that a chief executive of a major

> tobacco company lied about his knowledge of nicotine's addictiveness. Rather than face potential bankruptcy from such a lawsuit, CBS pulled back—even though the truthfulness of its report was not challenged.
>
> The trial starts Monday in Iowa. The only acceptable ruling would be one that upholds press freedoms and rejects frivolous efforts to stifle aggressive reporting.

App. 57–59.

In response to the 2019 editorial raising concern about public officials, like Petitioner, using creative litigation tactics to attack aggressive media reporting and stifle First Amendment freedoms, Petitioner opted to reinforce the very point of the 2019 editorial. He filed the present lawsuit attacking the 2019 editorial and asserting a defamation claim (and other claims rooted in defamation) based largely on his continued—and wholly unfounded—claim that the Quad-City Times 2015 reporting was "objectively" false. App. 7–8, 21–22.

2. The district court considered cross summary judgment motions filed by Petitioner and Respondents. App. 22. The district court granted Respondents summary judgment. App. 56. In its decision, the district court cited to and applied Iowa's summary judgment standard, which mirrors the summary judgment standard found in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986). App. 23–24. The district court found Petitioner is a public official for purposes of this lawsuit, which Petitioner has never challenged in this, or prior, litigation. App. 37. As a

result, the district court found Petitioner's claims required him to establish by clear and convincing evidence that the statements in the 2019 editorial were false and made with actual malice. App. 36 (citing *Bertrand v. Mullin* 846 N.W.2d 884, 892–93 (Iowa 2014) (citing *New York Times v. Sullivan*, 376 U.S. 254, 279–80 (1964))). The district court found Petitioner failed to prove malice as a matter of law. App. 45–51. The district court found the ruling on Petitioner's defamation claim in his first lawsuit "vindicated" the 2015 Quad-City Times publications which were relied upon in the 2019 editorial at issue in this case. Therefore, since Petitioner failed to offer any basis for the district court to determine a genuine issue of fact as to malice—other than an anonymous online post that was hearsay—the district court concluded that "[e]ven considering all the bases alleged by [Petitioner] collectively in the light most favorable to him, a reasonable jury could not conclude that [Petitioner] has shown malice by clear and convincing evidence." App. 51.

3. The Iowa Court of Appeals affirmed the district court's summary judgment ruling. App. 4–14. The Court of Appeals declined to consider Petitioner's constitutional argument on appeal, finding "that claim is not preserved for our review because [Petitioner] never developed the argument below." App. 8. The Court of Appeals found that the 2019 editorial contained some protected opinion speech and some factual statements that were "factually correct statements" or "the gist" of the statements were true. App. 13. The Court of Appeals cited to Iowa law holding that a court should not "indulge far-fetched interpretations of the challenged publication." App. 10–11 (quoting *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 772 (Iowa 2006)). The Court of Appeals ultimately found that Petitioner's

interpretation of the 2019 editorial imputing defamatory meaning was unreasonable. App. 14. The Court of Appeals also rejected Petitioner's repeated argument that the 2015 Quad-City Times publications falsely reported that the groundwork for the casino project was "taxpayer funded." The Court of Appeals stated: "We consider the gist of the publications' statement to be true because the casino development was to be funded by bonds that would be repaid by tax revenue." App. 13.

The Iowa Supreme Court denied Petitioner's Application for Further Review. App. 1–2.

REASONS FOR DENYING CERTIORARI

This Court should deny certiorari. Petitioner attempts to have the Court address questions that were never properly raised in the lower courts below. For that reason alone, the writ should be denied. Even if Petitioner can somehow overcome this fatal procedural defect, his blatant misrepresentation of what *Anderson v. Liberty Lobby* stands for also requires denial of certiorari as to Petitioner's unsupported argument that the lower court rulings conflict with this Court's precedent because a defamation plaintiff has an absolute right to a jury trial. Petitioner's suggestion that a defamation action can never be disposed of on dispositive summary judgment motion is rooted in a fundamental misreading of *Anderson*.

Moreover, Petitioner's invitation for this Court to "update" *Sullivan* is nothing more than his latest effort to overturn the adverse jury verdict following trial on Petitioner's first lawsuit against Lee Enterprises. Petitioner overtly attempts to bootstrap his prior

claims—all of which were resolved against him—into his grievance against the 2019 editorial which contains opinions protected by the First Amendment and factual statements deemed to be substantially true.

Further, this case is a poor vehicle for resolving the question presented as to *Sullivan*. Even if this Court agreed to revisit *Sullivan*, material facts and legal issues remain in dispute such that any decision by this Court would not be dispositive here. Finally, the decisions of the district court and Iowa Court of Appeals are correct.

I. Petitioner failed to preserve error as to either of his questions presented (that the lower court rulings conflict with *Anderson v. Liberty Lobby* and that this Court should "update" *New York Times v. Sullivan*).

Petitioner's first question presented suggests that the lower court rulings are in conflict with this Court's precedent set forth in *Anderson v. Liberty Lobby* because there exists an absolute right to a jury trial and his second question presented invites the Court to "update" *New York Times v. Sullivan* in order to answer "an open question" as to whether a publisher's refusal to issue a retraction constitutes evidence of actual malice. Both of Petitioner's questions presented suffer the same fatal flaw: neither were properly raised in the underlying proceedings such that he failed to preserve error on these issues rendering this Court unable to address them.

With respect to any reference to an absolute right to a jury trial, Petitioner cannot point to a single reference to *Anderson v. Liberty Lobby* in the underlying summary

judgment briefing before the district court where he argues that he, as a public figure, has an absolute constitutional right to a jury trial in a defamation case. Petitioner raised this issue for the first time in his appeal to the Iowa Supreme Court but does not connect his argument to any precedent set forth in *Anderson*. Citing to the Iowa Constitution, Petitioner instead argues that Iowa law, specifically, "has historically guaranteed trial by jury in libel cases." Resp. App. 18a. This again demonstrates that Petitioner is asking this Court to address a question raised for the very first time in the procedural history of this case in his Petition for Writ of Certiorari.

With respect to Petitioner's *Sullivan* related question presented, he similarly falls short of having preserved error on this issue. In his summary judgment briefing in support of his own partial motion for summary judgment on his defamation claim, Petitioner devotes a section to the requisite element of demonstrating that Respondents acted with actual malice. Resp. App. 2a–7a. Here, Petitioner cites to *Sullivan* only for the purpose of conceding that, as a public official, he was subject to the burden of proving the complained of "statement must be false and it must be made with actual malice." *Id.* (original emphasis); *see also* Resp. App. 10a (citing to *Sullivan* and conceding "[t]he law requires '*convincing clarity*' of actual malice.") (original emphasis).

Nowhere in his summary judgment briefing does Petitioner suggest to the district court that *Sullivan* was in need of updating or that it did not apply to the facts of his case. Nowhere in Petitioner's summary judgment briefing does he suggest that the district court needed to consider *Sullivan's* "open question" as to whether

a publisher's failure to issue a retraction constituted evidence of actual malice. Petitioner does, however, cite Respondents' refusal to issue any retractions in response to his repeated requests in an effort to establish actual malice. For example, in his Reply to Respondents' Combined Brief in support of their Motion for Summary Judgment and Resistance to Petitioner's Motion for Partial Summary Judgment, Petitioner states in his characteristic conclusory fashion: "Lee Enterprises' refusal to publish retractions of the *opposite* of the truth statements that the casino was "taxpayer-funded" or that Plaintiff was akin to a felon, while suppressing facts they possess (and their admission) contrary to their false statements, could not be any more convincing nor clear." Resp. App. 11a (original emphasis). Accordingly, while Petitioner did not raise to the district court the question he presents for the first time here, he *did* set forth the very arguments that he apparently wants this Court to establish as law of the land (that a publisher's failure to retract can satisfy the requisite element of actual malice in a public figure defamation case).[1] It was not until Petitioner submitted his appeal to the Iowa Supreme Court that he raises *Sullivan* in the context of the question it "left open" as to refusal to retract constituting evidence of malice while simultaneously arguing that *Sullivan* should not apply at all to his case.

Notably absent from the Iowa Court of Appeals' ultimate decision is any discussion concerning *Sullivan*. This is because the appellate court itself specifically

1. Which calls into serious question what relief, exactly, Petitioner hopes to achieve in now inviting this Court to "update" *Sullivan*.

noted that Petitioner never properly raised any challenge to *Sullivan* below. The Iowa Court of Appeals rejected Petitioner's attempt to raise Sullivan for the first time on appeal because he did not develop the argument before the district court. App. 8 (citing *Taft v. Iowa Dist. Ct.*, 828 N.W.2d 309, 322–23 (Iowa 2013) ("A party cannot preserve error for appeal by making only general reference to a constitutional provision in the district court and then seeking to develop the argument on appeal.")).

Likewise, this Court should not hear Petitioner's arguments concerning *Anderson* or *Sullivan* now because those arguments were "not raised or litigated in the lower courts." *City of Springfield, Mass. v. Kibbe*, 480 U.S. 257, 259 (1987). Petitioner's procedural misstep and failure to preserve error on these arguments means the writ must be denied.

II. There is no absolute right to a jury trial for a public figure defamation plaintiff.

Assuming *arguendo* that Petitioner preserved error on his argument that the district court's grant of summary judgment in Respondents' favor violated his right to a jury trial, Petitioner's argument fails for the simple reason that there is no such absolute right to a jury trial in defamation cases. As such, the lower court rulings are not in direct conflict with *Anderson's* precedent. Despite Petitioner's effort to frame *Anderson* as a case conferring a near inalienable right to a jury trial upon public figure plaintiffs in defamation actions, *Anderson's* true effect is to *increase the burden* on such plaintiffs. *Anderson* stands for the proposition that in defamation cases which implicate the First Amendment, *Sullivan's* more exacting clear and

convincing evidentiary standard applies to the actual malice element of the claim. *Anderson*, 477 U.S. at 254. Contrary to Petitioner's assertions, *Anderson* specifically contemplates a public figure defamation plaintiff failing to satisfy his burden of establishing actual malice by clear and convincing evidence, warranting a grant of summary judgment against him:

> Thus, in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden. This conclusion is mandated by the nature of this determination. The question here is whether a jury could reasonably find *either* that the plaintiff proved his case by the quality and quantity of evidence required by the governing law *or* that he did not.

Id. Should a plaintiff fail to carry his increased burden of establishing actual malice, summary judgment is indicated which is precisely what occurred in the procedural history of this case.

Having established that *Anderson* does not provide an absolute right to a jury trial, what Petitioner is really requesting in his first question presented comes into focus. Petitioner is asking that this Court revisit the Iowa district court's specific factual findings and conclusions of law in this particular case in the hopes that it will reach a different result. This is hardly the issue of national importance that Petitioner claims it to be. Petitioner's true motives are apparent by the fact that he dwells on the evidence he submitted and self-servingly declares that it "entirely favor[ed] Petitioner." Petition for Writ of

Certiorari, p. 24. Petitioner's incredulity at the outcome falls well short of the standard for granting his writ.

It is further telling that the entirety of Petitioner's "evidence" he references concerns the 2015 publications not directly at issue in this matter. The 2015 publications were exonerated by a jury of Petitioner's peers and the Iowa Court of Appeals found the gist of the 2019 editorial's brief summary of those 2015 publications to be true. App. 12–14. The 2015 publications were not the focal point of the 2019 editorial which was intended "to highlight the importance of journalism to the public and stress it should not be suppressed through litigation efforts." App. 14. Petitioner nevertheless insists he was wrongfully deprived of his "right" to a jury trial, but cites to only two sentences of *Anderson* in support of his position:

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.

Anderson, 477 U.S. at 255. In doing so, however, Petitioner ignores the operative language of the above passage in that only *legitimate* and *justifiable* inferences are to be drawn in his favor.

In his effort to obfuscate the issues, Petitioner's Petition is replete with alleged facts that were not in the record before the district court when it considered

the motions for summary judgment or are blatant misstatements of fact that are not reasonable or legitimate even when considering them in a light most favorable to Petitioner. For example, Petitioner repeatedly claims that the Quad-City Times "falsified" and "concealed" information in its 2015 Quad-City Times publications. App. 7, 8, 13, 23. These claims are not discussed in the district court's or Iowa Court of Appeals' rulings because they were never properly raised before those courts. Petitioner cannot make these claims now for the first time to this Court. Further, Petitioner repeatedly falsely claims that Respondents knew the 2015 Quad-City Times publications were false, without support in the record, and ignoring that the 2015 Quad-City Times publications have been "vindicated." App. 51. Petitioner's evidence fell well short of the clear and convincing standard and the district court correctly granted Respondents' motion for summary judgment.

III. This case is not a proper vehicle to revisit *Sullivan* as Petitioner merely uses guise of an issue of "national importance" to improperly attempt to appeal a 2017 jury verdict via a subsequent 2019 lawsuit.

It is entirely unclear what Petitioner asks the Court to do, exactly, with *New York Times v. Sullivan*. At times he suggests the Court should overrule *Sullivan* because it preceded the internet App. 25–26, 29–30, or the Court should not apply *Sulivan's* malice requirement to his case because of factual distinctions App. 27–28, or the Court should decide that the failure of Lee Enterprises to retract the vindicated 2015 Quad-City Times publications is evidence of actual malice App. 31–32, 34–35, or the Court

should "update" *Sullivan* to address the question it "left open" as to whether a publisher's failure to retract could ever constitute evidence of actual malice App. 36. This disconnect reveals Petitioner's second question presented for what it is: a sleight of hand. To distract from the fact that Petitioner's aim is to have the this Court substitute its own factual findings and conclusions of law for that of the Iowa courts below, Petitioner attempts to cloak his second question presented as one of "national importance," suggesting an urgency in "updating" *Sullivan*. This argument is disingenuous at best.

As an initial matter, *Sullivan* left no "open question" that this Court should address. *Sullivan* intentionally held open the possibility that a failure to retract *may* rise to the level of evidence of actual malice under different circumstances than the ones present in *Sullivan*. *Sullivan*, 376 U.S. at 286 (stating: "Whether or not a failure to retract may ever constitute such evidence, there are two reasons why it does not here…."). *Sullivan* did not hold that a failure to retract could *never* satisfy the actual malice requirement such that no lower courts are bound by any precedent that would prevent them from making such a finding. Petitioner, in fact, raised this very argument with the lower courts. In doing so, however, Petitioner continually conflates the various iterations of his grievances against Respondent Lee Enterprises—all of which are focused on the same underlying issue: the 2015 Quad-City Times publications. The substance of the Petition for Writ of Certiorari makes it clear that it is nothing more than yet another of Petitioner's attempts to challenge the adverse jury verdict in his prior lawsuit against Lee Enterprises which vindicated those very publications. Petitioner has long since exhausted the

appeal process following the defendants trial victory. Unsatisfied with the outcome of the earlier litigation, Petitioner filed the instant lawsuit to continue making the same arguments that were rejected by the district court (as to his defamation claims), a jury, the Iowa Court of Appeals, and the Iowa Supreme Court. This is evidenced by the fact that the Petition spends far more time attacking the 2015 Quad-City Times publications than the 2019 editorial that purportedly forms the basis for this litigation.

The retraction requests Petitioner cites to are almost exclusively related to the 2015 Quad-City Times publications which are only tangentially at issue in the instant lawsuit as the allegedly defamatory 2019 editorial only briefly summarized the 2015 publications. The Iowa courts below correctly rejected Petitioner's sleight of hand by focusing on the language of the 2019 editorial itself and the evidence in the record before it (namely that the 2019 editorial was an opinion piece protected by the First Amendment which merely summarized reporting that had already been vindicated) and determining that no reasonable jury could find that Petitioner could prove actual malice by clear and convincing evidence.

Importantly, the lower courts never suggested they would not entertain Petitioner's actual malice argument in reliance on *Sullivan*. Instead, the district court granted summary judgment in favor of Respondents despite Petitioner's position that failure to retract constituted actual malice. Accordingly, Petitioner has no evidence that the district court did not already consider—and simply reject—his argument. If this Court were to accept Petitioner's invitation to "update" *Sullivan*, then, it would

not affect the ultimate outcome in any way. At most, Petitioner requests that this Court expand *Sullivan* to explicitly hold that failure to retract may be sufficient to establish actual malice. At that point, the matter would necessarily be remanded to Iowa State court for further fact finding to determine if the failure to retract in this case rises to the level of actual malice. But the lower courts have already considered Petitioner's arguments in this regard and granted Respondents' motion for summary judgment regardless. There is no credible evidence to suggest that any other result would follow. Given the fact that providing Petitioner the relief he requests would not dispose of this matter but would instead require the district court to duplicate its efforts, this case is not a proper vehicle for revisiting *Sullivan* and the writ should be denied.

IV. The Iowa state courts below followed the appropriate Iowa state law summary judgment standards and reached the right result.

All of Petitioner's arguments and questions presented are predicated on the lower courts having improperly granted summary judgment to Respondents and/or affirmed the grant of summary judgment. In this case, however, the district court and Court of Appeals reached the correct conclusion. Iowa's summary judgment standard mirrors the federal summary judgment standard. *See Anderson*, 477 U.S. at 247 ("summary judgment 'shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" (quoting Fed. R. Civ.

P. 56(c))); *Hedlund v. State*, 930 N.W.2d 707, 715 (Iowa 2019) ("Summary judgment is appropriate only when the record shows no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." (citing Iowa R. Civ. P. 1.981(3)). That is the standard applied by the district court and Iowa Court of Appeals. App. 9, 23–24.

Furthermore, and as noted above, *Anderson* holds "where the factual dispute concerns actual malice, clearly a material issue in a *New York Times* case, the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." *Anderson*, 477 U.S. at 255–56. This is the precise holding that the district court applied in its decision below. App. 51 ("Even considering all the bases alleged by [Petitioner] collectively in the light most favorable to him, a reasonable jury could not conclude that [Petitioner] has shown malice by clear and convincing evidence.").

Petitioner's true issue with the decisions below is that the district court and Iowa Court of Appeals did not accept his repeated (and unsupported) claim that the 2015 Quad-City Times publications are false nor did they accept his unreasonable interpretation of the 2019 editorial. Iowa courts, in considering a summary judgment motion, are only required to draw "legitimate interferences," from the record. *Banwart v. 50th Street Sports, L.L.C.*, 910 N.W.2d 540, 545 (Iowa 2018). A legitimate inference is one that is "rational" and "reasonable." *Id.* (quoting *McIlravy v. N. River Ins.*, 653 N.W.2d 323, 328 (Iowa 2002)). The Iowa courts did not indulge Petitioner's far-fetched

and unreasonable interpretation of the 2019 editorial. Instead, they applied appropriate summary judgment and defamation standards and determined the 2019 editorial contains protected opinion speech, its factual statements are substantially true, and Malin's interpretation of it imputing defamatory meaning is unreasonable. App. 12–14.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

Abbey C. Furlong
Counsel of Record
Ian J. Russell
Jenny L. Juehring
Lane & Waterman LLP
220 North Main Street, Suite 600
Davenport, IA 52801
(563) 324-3246
afurlong@l-wlaw.com

Counsel for Respondents

APPENDIX

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APPENDIX A — EXCERPTS FROM PLAINTIFF'S MEMORANDUM OF LAW IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY, FILED MARCH 3, 2022

No. LACE132888

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

CRAIG MALIN,

Plaintiff,

vs.

LEE ENTERPRISES, INCORPORATED, LEE PUBLICATIONS, INC. D/B/A WATERLOO CEDAR FALLS COURIER, ST. LOUIS POST DISPATCH, LLC D/B/A ST. LOUIS POST DISPATCH, ROY BIONDI, RAY FARRIS, TOD ROBBERSON AND KEVIN MOWBRAY,

Defendants.

Defendants.

COMES NOW Plaintiff Craig Malin, by and through his undersigned counsel pursuant to Iowa R. Civ. P. 1.981(8) and submits the following memorandum of legal authorities in support of his motion for partial summary judgment:

Appendix A

TABLE OF CONTENTS INTENTIONALLY OMITTED

* * * *

Injury typically involves "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Id.* (quoting *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350 (1974)).

Certain statements spoken or published can be defamatory *per se.* Such statements have "a natural tendency to provoke the plaintiff to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence or social intercourse." *Bierman v. Weier,* 826 N.W.2d 436, 444 (Iowa 2013)."

C. Public officials and the requirement of "actual malice.

However, defamation *per se* is not available when the plaintiff is a public official and the allegedly defamatory statements concern his or her official conduct. *New York Times v. Sullivan,* 376 U.S. 254, 279-80 (1964).

> Nonetheless, since the United States Supreme Court constitutionalized the law of defamation, our court has consistently viewed media defendant status as significant. When the defendant is a media defendant, we have said that presumptions of fault, falsity, and damages are not permissible, and thus the common law doctrine of libel per se cannot apply.

Appendix A

Bierman at N.W.2d 444 (Iowa 2013)

The First Amendment imposes two additional elements when the plaintiff is a public official: "the statement must be *false* and it must be made with *actual malice*." *Bertrand,* 846 N.W.2d at 892 (citing *New York Times v. Sullivan,* 376 U.S. 254, 279-80 (1964)) (emphasis added);

> "[T]o establish a prima facie defamation action against a media defendant, a private figure plaintiff must prove (1) publication (2) of a defamatory statement (3) concerning the plaintiff (4) in a negligent breach of the professional standard of care (5) that resulted in demonstrable injury."

Bierman at N.W.2d 447. See also Stevens, 728 N.W.2d at 830; *Anderson v. Low Rent Housing Comm'n of Muscatine,* 304 N.W.2d 239, 248 (Iowa 1981).

The Supreme Court has defined "actual malice" as "knowledge that [the allegedly defamatory falsehood] was false or with reckless disregard of whether it was false or not." *N.Y. Times,* 376 U.S. at 279-80; *accord Carr v. Bankers Trust Co.,* 546 N.W.2d 901, 904 (Iowa 1996). A defendant communicates with "reckless disregard" as to truth or falsity where the statements are made with a "high degree of awareness of their probable falsity." *Garrison v. State of Louisiana,* 379 U.S. 64, 75 (1964); *accord Bertrand,* 846 N.W2d at 894; *Stevens,* 728 N.W.2d at 830. *Harte-Hanks Commc'ns,* 491 U.S. 657,688 (1989).

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant *in fact entertained serious doubts as to the truth of his publication.* ***Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.*** *(emphasis added).*

St. Amant v. Thompson, 390 U.S. 727, 731 (1968).

The actual malice standard to prove defamation of a public official is not the same as common law malice—"[U]nlike the common law definition of actual malice, *New York Times* actual malice focuses upon the attitudes of defendants vis-à-vis the truth of their statements, as opposed to their attitudes towards plaintiffs." *Barreca,* 683 N.W.2d at 120. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Stevens,* 782 N.W.2d at 830 (quoting *Harte-Hanks* Commc'ns, 491 U.S. at 688). Thus, "ill-will" or *even* an "intent to inflict harm" is insufficient to meet the "actual malice" standard for a reckless disregard for the truth. *Bertrand,* 846 N.W.2d at 899; *but cf. Harte-Hanks, 491* U.S. at 668 (noting that "it cannot be said that evidence concerning motive or care never bears any relation to the actual malice inquiry" and opining that evidence of motive may be *circumstantially probative* of the defendant's attitude towards the truth of the statement at issue).

Appendix A

The Iowa Supreme Court has characterized this burden of proving actual malice in a defamation case - demonstrating a reckless disregard for the truth - as "substantial." *Bertrand,* 846 N.W.2d at 892; *Stevens,* 782 N.W.2d at 830; *see also Harte-Hanks Commc'ns,* 491 U.S. at 688 (applying a "high degree of awareness" standard).

Plaintiff is not limited to proving Defendants harbored a high degree of belief in the falsity of their publication. "'Reckless disregard,' it is true, cannot be fully encompassed in one infallible definition." *St. Amant v. Thompson,* 390 U.S. 727, 730, 88 S.Ct. 1323 1325, 20 L.Ed.2d 262, 267 (1968). On facts eerily similar to those at bar the Supreme Court found *a purposeful avoidance of* the truth is a reckless disregard for the truth or falsity of a statement.

> It is also undisputed that Connaughton made the tapes of the Stephens interview available to the Journal News and that no one at the newspaper took the time to listen to them. Similarly, there is no question that the Journal News was aware that Patsy Stephens was a key witness and that they failed to make any effort to interview her. Accepting the jury's determination that petitioner's explanations for these omissions were not credible, it is likely that the newspaper's inaction was a product of a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity of Thompson's charges. Although failure to investigate will not alone support a finding of

> actual malice... the purposeful avoidance of the truth is in a different category.

Communications, Inc v. Connaughton, 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989).

The Supreme Court recognizes that a purposeful avoidance of the truth is sufficient proof of a reckless disregard of the truth.

Iowa law recognizes the Constitutional standard is met where the facts could demonstrate an *intentional avoidance of the truth.* The Iowa appellate courts have twice published opinions adopting purposeful avoidance of the truth as sufficient to prove a reckless disregard for the truth of falsity.

> "'Reckless disregard,' it is true, cannot be fully encompassed in one infallible definition." St. Amant v. Thompson, 390 U.S. 727, 730, 88 S.Ct.13231325, 20 L.Ed.2d 262, 267 (1968). Yet, in the half century the New York Times rule has preserved the First Amendment's guarantee of uninhibited commentary regarding public officials and figures, the Supreme Court has crafted some useful guideposts. Most prominently, an early case nearly contemporaneous with *New York Times* opined that statements made with a "high degree of awareness of their probable falsity" may subject the speaker to civil damages. *Garrison,* 379 U.S. at 74, 85 S.Ct. at 216, 13 L.Ed.2d at 133. The negative implication, of

> course, is that a court may not award damages against one who negligently communicates a falsehood about a public official.

Bertrand v. Mullin, 846 N.W.2d 884, 894 (Iowa 2014). The Iowa Court of Appeals expressly recognized purposeful avoidance of the truth is a reckless disregard for the truth of falsity.

> The article stated that Stevens rarely attended events about which he wrote, without revealing to the reader what defendant Harman knew — that personal attendance was not required by professional standards. As the Supreme Court said in *Harte-Hanks,* "[a]lthough failure to investigate will not alone support a finding of actual malice, the purposeful avoidance of the truth is in a different category." 491 U.S. at 692, 109 S.Ct. at 2698, 105 L.Ed.2d at 591 (citation omitted). When the evidence in the summary judgment record is viewed in the light most favorable to the resisting party, we conclude that a reasonable jury could find by clear and convincing evidence that this statement was false in its implication and was made with reckless disregard for the truth under the New York Times standard. We therefore affirm the court of appeals and reverse the district court on this issue.

Stevens at N.W.2d 8831 (Iowa 2007).

* * * *

APPENDIX B — EXCERPTS FROM PLAINTIFF'S REPLY TO DEFENDANT'S COMBINED BRIEF IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY, DATED APRIL 8, 2022

IN THE IOWA DISTRICT COURT
FOR SCOTT COUNTY

No. LACE132888

CRAIG MALIN,

Plaintiff,

vs.

LEE ENTERPRISES, INCORPORATED, LEE PUBLICATIONS, INC. D/B/A WATERLOO CEDAR FALLS COURIER, ST. LOUIS POST-DISPATCH, LLC D/B/A ST. LOUIS POST DISPATCH, ROY BIONDI, RAY FARRIS, TOD ROBBERSON AND KEVIN MOWBRAY,

Defendants.

Dated April 8, 2022

PLAINTIFF'S REPLY TO DEFENDANT'S COMBINED BRIEF

COMES NOW Plaintiff Craig Malin, by and through his undersigned counsel pursuant to Iowa R. Civ. P. 1.431(5) and submits the following reply and resistance to

Appendix B

Defendant's April 8, 2022 Combined Brief in Support of their Motion for Summary Judgement and in Resistance to Plaintiffs Motion for Partial Summary Judgment:

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Regarding proof of reckless or knowing disregard for the truth, no reasonable trier of fact could conclude the statement in the 2019 publications, " . . . *the accuracy of reporting by Davenport's Quad City Times newspaper might not be adequate* . . . " is anything other than reckless disregard for the truth, expressed with astounding clarity. In consideration of whether the clearly expressed disregard for the truth in the 2019 publications establishes a pattern of Lee Enterprises' disregard of prior warnings of false publications concerning Plaintiff, no reasonable trier of fact could ignore the Waterloo Courier posted a comment in 2015 that their reporting was "far from accurate" or that Lee Enterprises was placed on notice in 2018 that stating "public money" was used on the casino without further explanation was evidence of actual malice.

Notably, the 2019 publications include direct reference to Judge Tabor's 2018 ruling which included notice that stating public money was used on the casino project without further explanation was evidence of actual malice. If the standard for proving reckless disregard for the truth is not a plain written admission that " . . . *the accuracy of reporting might not be adequate* . . . " in a

publication *referencing* the very ruling which warned Lee Enterprises that stating public money funded the casino without further explanation was evidence of actual malice, but instead must be some cinematic, Jack Nicholson outburst of culpability on the witness stand, that is an impossible standard, and it is not the law.

The law requires *"convincing clarity"* of actual malice, *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-86 (1964).

"In sum, a court ruling on a motion for summary judgment must be guided by the New York Times "clear and convincing" evidentiary standard in determining whether a genuine issue of actual malice exists . . . " Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). *For evidence to be "clear and convincing," it is merely necessary that there be no serious or substantial doubt about the correctness of the conclusion drawn from it. See Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983) and *Words and Phrases, Permanent Edition*, Vol. 7, at 523-24"

There is no more convincing or clear evidence than written fact in original documents and the objective, written fact is the 2019 publications plainly state their disregard for the truth in their expression of doubt regarding the accuracy of the Quad City Times' publications. There can be no *"serious or substantial doubt"* that the 2019 publications expressed doubt, because the doubt is plainly stated.

Appendix B

Regardless of Defendants' 2019 trial victory on different issues and claims, with the extraordinary amount of evidence Lee Enterprises possesses regarding the fact that no part of the Elmore Avenue casino was taxpayer-funded, and with their forced admission of that fact, and with the casino producing more than $100 million in taxpayer benefit, no reasonable trier of fact could conclude Lee Enterprises was not and is not aware that stating the casino was taxpayer-funded is provably false. Lee Enterprises' refusal to publish retractions of the *opposite* of the truth statements that the casino was "taxpayer-funded" or that Plaintiff was akin to a felon, while suppressing facts they possess and their admission) contrary to their false statements, could not be any more convincing nor clear. Lee Enterprises was warned, in no uncertain terms by the Court, that stating public money funded the casino without further explanation was evidence of actual malice (App 30, 31). In their largest circulation newspaper (App 2), published by a Lee Vice President (App 5), they not only ignored that warning, they effectively repeated what they were warned not to do in order to amplify their attack on Plaintiff, then living and working two

* * * *

APPENDIX C — EXCERPTS FROM PLAINTIFF'S RULE 1.904(2) MOTION IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY, FILED SEPTEMBER 25, 2022

IN THE IOWA DISTRICT COURT
FOR SCOTT COUNTY

No. LACE132888

PLAINTIFF'S RULE 1.904(2) MOTION

CRAIG MALIN,

Plaintiff,

vs.

LEE ENTERPRISES, INCORPORATED, LEE PUBLICATIONS, INC. D/B/A WATERLOO CEDAR FALLS COURIER, ST. LOUIS POST-DISPATCH, LLC D/B/A ST. LOUIS POST DISPATCH, ROY BIONDI, RAY FARRIS, TOD ROBBERSON AND KEVIN MOWBRAY,

Defendants.

COMES NOW, Plaintiff by and through his undersigned counsel, and pursuant to Iowa R. Civ. P. 1.904(2) moves the amend and enlarge its summary judgment ruling of September 11, herein, and support thereof states:

INTRODUCTION

Plaintiff respectfully moves the Court under Iowa Rule of Civil Procedure 1.904(2) to reconsider, enlarge

and amend its Ruling on Cross Motions for Summary Judgment entered on September 11, 2022. Plaintiff principally requests the Court reconsider and amend its defamation ruling in favor of Defendant Lee Enterprises specifically, as Plaintiff has detailed a prima facie claim for malice, with all inferences in his favor as non-moving party, through clear and convincing documentary evidence, by application of law and addressing questions of fact asserted in the record by Plaintiff but unaddressed in the September 11, 2022 Ruling.

LEGAL STANDARDS

* * *

81 Respectfully, though unaddressed in the September 11, 2022 ruling, the factual record in full in the case at bar includes extensive documentation by Plaintiff, including the City reports and exhibits referenced in paragraph 47, which clearly and convincingly exist as documentary evidence that Lee Enterprises, through Wellner and / or their attorneys, knew what they published in 2019 about taxpayer funding of the casino relocation project was false.

82 *Separate and distinct* from Plaintiff's primary argument that the extensive documentation he provided is clear and convincing *objective* evidence that *exceeds* the *Sullivan* standard of knowing falsity on the part of Lee Enterprises, Plaintiff argues the facts and context in *Sullivan*

and the facts and context of the case at bar are materially different. Justice Gorsuch would seemingly agree,

> "Again, it's unclear how well these modern developments serve Sullivan's original purposes. Not only has the doctrine evolved into a subsidy for published falsehoods on a scale no one could have foreseen, it has come to leave far more people without redress than anyone could have predicted. And the very categories and tests this Court invented and instructed lower courts to use in this area-"pervasively famous," "limited purpose public figure"-seem increasingly malleable and even archaic when almost anyone can attract some degree of public notoriety in some media segment. Rules intended to ensure a robust debate over actions taken by high public officials carrying out the public's business increasingly seem to leave even ordinary Americans without recourse for grievous defamation. At least as they are applied today, it's far from obvious whether Sullivan 's rules do more to encourage people of goodwill to engage in democratic self-governance or discourage them from risking even the slightest step toward public life."

Berisha v. Lawson, 141 S.Ct. 2424, 2429 (2021)

83 The information technology landscape in 1964 was fundamentally different than today. In the

pre-internet age, if somebody wanted to know what the New York Times published on some random day about some unnamed person in Alabama, that inquisitive person would have to find a newspaper that had escaped the garbage canon that random day, or a library that had microfilm records of the New York Times, find the publication at issue, and *then* start attempting to figure out who was responsible for police activities in Montgomery, Alabama. The 2019 publications, and the information technology landscape in 2019, are entirely different. Lee Enterprises' 2019 publications, naming Plaintiff and falsely proclaiming his "wrongdoing" premised upon an unauthorized "taxpayer-funded" casino while associating him with a felon, reside on keyword searchable electronic archives, instantly accessible world-wide on personal electronic devices people carry in their pockets or purses; all scarcely imaginable even decades past 1964.

84 The fundamental differences between the case at bar and the facts of *Sullivan,* with trivial errors in *Sullivan* against an unnamed individual, with no prior litigation on the topic, with no prior possession and concealment of contrary facts, with no proffered and refused $200,000 to bury the truth, with no three years of breathing space to check facts, and with no digitally pervasive and inescapable world-wide information technology landscape on which the false statements reside and propagate in perpetuity, all underscore

that it is not the "breathing space" or "buffer zone" or "robust debate" in *Sullivan* that is at issue; it is Iowa's law setting forth damages for Lee Enterprises' *corporate refusal* to publish corrections and *both* Iowa's Bill of Rights establishing *responsibility* for defamatory speech and the constitutional line drawn by *Sullivan,* for *knowingly* false statements, that is the issue. It is the commonly decent imperative for honesty that is the issue, and the peril for democracy which false corporate journalism for immense profit engenders, which is of gravest concern.

85 This is the rarest of public figure defamation cases; one with the precision of a court record timeline and admitted documentary proof of knowing falsity.

86 Respectfully, application of law turns on facts, and the uncontroverted fact is Lee Enterprises possessed substantial documentation, including multiple documentary City of Davenport reports

* * * *

APPENDIX D — EXCERPTS FROM PLAINTIFF-APPELLANT'S FINAL BRIEF IN THE SUPREME COURT OF IOWA, FILED MAY 17, 2023

IN THE SUPREME COURT OF IOWA

Supreme Court No. 22-1940

Scott County No. LACE132888

PLAINTIFF-APPELLANT'S FINAL BRIEF

CRAIG MALIN,

Plaintiff-Appellant,

v.

LEEENTERPRISES, INCORPORATED, LEE PUBLICATIONS, INC. D/B/A WATERLOO CEDAR FALLS COURIER, ST. LOUIS POST DISPATCH, LLC D/B/A ST.LOUIS POST DISPATCH, ROY BIONDI, RAY FARRIS, TOD ROBBERSON AND KEVIN MOWBRAY,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE STUART P. WERLING, JUDGE
SEVENTH JUDICIAL DISTRICT

Appendix D

Theodore Sporer, AT0007453
108 Third Street, Suite 302
DesMoines, Iowa 50309-4758
(515) 989-6080
(515) 414-767 - fax
teddy@sporerlaw.com

ATTORNEY FOR APPELLANT

The First Amendment to the United States Constitution, combined with *Sullivan,* grants significant freedom to the press. But that freedom is not absolute. In Gertz, the United States Supreme Court found, "*there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless* error *materially advances society's interest in "uninhibited, robust, and wide-open" debate on public issues.*" Gertz at U.S. 340. After *Gertz,* the Supreme Court was "*not persuaded ... an additional separate constitutional privilege for "opinion" is required to ensure the freedom of expression guaranteed by the First Amendment.* " *Milkovich* at U.S. 21.

A defamatory and knowingly or recklessly false statement represented as fact in an editorial has no First Amendment protection. Iowa law has historically guaranteed trial by jury in libel cases.

> *"Liberty of speech and press: Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain*

or *abridge the liberty of speech,* or *of the press. In all prosecutions* or *indictments for libel, the*

* * * *