No. 19-6442

ORIGINAL

In The

Supreme Court of the United States

WILLIAM YEAGER - Petitioner

vs.

NATIONAL PUBLIC RADIO (NPR),
ANDREW FLANAGAN, JACOB GANZ, ASHLEY MESSENGER -
Respondents

On Petition for a Writ of Certiorari to

The United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

WILLIAM YEAGER

PO BOX 42, State St.

Cottonwood Falls, KS, 66845

Question # 1

In *Gertz v. Robert Welch, Inc* (1974), the U.S. Supreme Court determined that the plaintiff, a lawyer tangentially involved in the prosecution of a policeman, was not a *limited* purpose *public figure* in connection with the controversy surrounding the prosecution because he had not "*thrust* himself into the vortex of [a] *public* issue, nor *did* he engage the public's attention in an attempt to influence its outcome." 418 U.S. at 352, 94 S.Ct. 2997. The public figure status of a person in a libel case is to be determined by focusing on the "nature and extent of an individual's participation in the controversy giving rise to the [alleged] defamation." 443 U.S. at 167 (citing Gertz)."

As articulated by the Second Circuit, a *limited* purpose *public figure* is someone who has: (i) successfully invited *public* attention to his views in an effort to influence others prior to the incident that is the subject of the litigation (ii) voluntarily injected himself into a *public* controversy related to the subject of the litigation; (iii) assumed a position of prominence in the *public* controversy; and (iv) maintained regular and continuing access to the media. *Contemporary Mission, Inc. v. New York Times Co.*, 842 F.2d 612, 617 (2d Cir.1988), *citing Lerman v. Flynt Distrib. Co., Inc.*, 745 F.2d 123, 136–37 (2d Cir.1984).

Whether the petitioner, an unknown musician and independent filmmaker (NPR stated: *"Nobody's ever heard of this guy."*), who fails to meet the requirements for a *limited* purpose *public figure* under *Gertz* and the line of cases that consistently require "affirmative steps," "purposeful activity," "voluntary" injection, or "invit[ing] *public* attention" *See James*, 40 N.Y.2d at 423, 386 N.Y.S.2d 871, 353 N.E.2d 834; *Lerman*, 745 F.2d at 136–37; *Contemporary Mission*, 842 F.2d at 617; *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 588–89 (1st Cir.1980), who did not "*thrust* himself into the vortex of [a] *public* issue, nor *did* he engage the public's attention in an attempt to influence its outcome," nor did he *"voluntarily injected himself into a public controversy related to the subject of the litigation,"* nor did he *"maintained regular and continuing access to the media (1),"* **can be considered a *limited* purpose *public figure* in connection with a matter public concern, when he had no participation in the matter other than recording the album in 1989.**

Important information to consider: The Supreme Court still has to decide if they considered the cancellation of a record album on Discogs a matter of public concern.
(1) Neither National Public Radio contacted (prior to the news or after) the petitioner to give him the chance to reply and defend himself, nor did any other media outlet offer him a platform to counteract the allegations against him.

Question # 2

"In Time, Inc. v. Firestone, 424 U.S. 448, 458, 96 S.Ct. 958, 967, 47 L.Ed.2d 154 (1976), the Supreme Court rejected the equation of "public controversy" with all disputes of interest to the public. Mere newsworthiness, it stated, is not sufficient to create a public controversy. See Wolston v. Readers Digest, 443 U.S. at 167-68, 99 S.Ct. at 2707-08. In Avins v. White, 627 F.2d at 647, we cited with approval the District of Columbia Circuit's definition that a public controversy "must be a real dispute, the outcome of which affects the general public or some segment of it." Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287, 1296 (D.C.Cir.), cert. denied,449 U.S. 898, 101 S.Ct. 266, 66 L.Ed.2d 128 (1980). To be "public," the dispute must affect more than its immediate participants.

Public Interest: is a common concern among citizens in the management and affairs of local, state, and national government, affecting the rights, health, or finances of the public at large. It does not mean mere curiosity. Public Controversy: is a state of long term dispute or debate, generally about a topic that affects a large proportion of the public, that creates conflicting opinion.

Considering that NPR was the only major media outlet that covered this piece of news (the cancellation of the sale of a record album (that happened 3 months before) in Discogs), which proves that this was not even a case of newsworthiness; considering that there was no "real dispute" and no "debate," considering that it didn't affect the general public, and considering the test developed by Chief Justice John G. Roberts (3)

(3) Considered a landmark case, *Snyder v. Phelps*, 562 U.S. 443 (2011) "matters of public concern" were finally addressed by the Supreme Court voting an 8-1 ruling in favor of Phelps, several tests were framed by Chief Justice John G. Roberts that were major factors that helped the Justices make their decision regarding what should be considered "a matter of public concern." Chief Justice's three variables were required to consider (1) *content* of the speech; (2) *form* of the speech; and (3) *context* of the speech. The Court made it clear that consideration of these factors is mandatory, not simply suggested or recommended, also emphasizing that "[i]n considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including *what* was said, *where* it was said, and *how* it was said." Chief Justice Roberts's reasoning squares solidly with that of the Court's interpretation of a message's meaning in obscenity cases, under which "the First Amendment requires that redeeming value be judged by considering the *work as a whole.*" Ashcroft v. Free Speech Coal., 535 U.S. 234, 248 (2002) Chief Justice John G. Roberts also framed a disjunctive test to

determine whether a statement relates to a matter of public concern, stating that a statement related to a matter of public concern if:(1) the statement related *"to any matter of political, social, or other concern to the community,"* or (2) the statement related to *"a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public."* Finally to determine if the WBC's speech was about a matter of public or private concern, Chief Justice Roberts made it clear that the inquiry must be highly fact specific, taking into account *"all the circumstances of the case,"* with the lone exception of whether the speech is inappropriate or controversial in character.

Question A) Whether the news regarding the cancellation of a record album sale on the website Discogs can be considered a matter of public concern/public controversy.

In *Buller v. Pulitzer Publishing Co.*, a reporter sought the services of a professional psychic and then published an article portraying her as a fraud, or at least as a joke. The Missouri court of appeals considered that the woman's psychic abilities and the nature of her consultation with clients was a private matter; and the disclosure was offensive because she was depicted as doing her work in an unprofessional manner. But most importantly, the court found that her consultation with clients were not of legitimate public concern. Unless she was accused of a crime, or predicted world disaster, there was nothing newsworthy about her work.

The official statement in the press release that Discogs sent to NPR specifically reported that the sale of the *301 Jackson St.* record album had been cancelled. Discogs never accused Billy Yeager. Discogs stated that the seller and the buyer of the album were located in 2 different states and had different IP addresses.

Question B) Considering NPR's story was a news article (not an opinion column) written by a reporter (not an opinion columnist) specifically addressing a 'brief statement' sent to NPR by Discogs (the cancellation of the sale of the record album), in the case of a petitioner that is considered an involuntarily limited-purpose public figure (even if this 'brief statement' was considered a matter of public concern), **whether defamatory falsehoods referring to his life** (misrepresenting his career, his motivation and purpose in his life and in his work, his private thoughts and feelings), which the lower courts considered were statements of opinion, **be protected by the First Amendment**, when the petitioner was not a person of "public interest" (in NPR's own words "a complete unknown") and the statements of opinion were unnecessary to report the news (the cancellation of the sale of the record album) communicated by Discogs, and were of no legitimate public concern.

410 U.S. 113 (1973) The central court decision that created current abortion law in the U.S. is *Roe v. Wade*. The Ninth Amendment not only has been stretched to encompass privacy, liberty, and a woman's reproductive choices.

The Ninth Amendment states that the "enumeration of certain rights" in the Bill of Rights "shall not be construed to deny or disparage other rights retained by the people. The Supreme Court said in the 1977 case of Moore v. East Cleveland that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in the Nation's history and tradition."

The early years in the development of privacy rights began with English common law Those rights expanded to include a "recognition of man's spiritual nature, of his feelings and his intellect." The "natural rights" theory is based largely on the word "retained" in the Ninth Amendment.

Question C) Whether NPR's article was a complete violation of the Ninth Amendment and Tenth Amendments invading my rights to personal privacy when addressing my wife "Anais" in their article, and including personal information about how and why we were married, and my private thoughts ("motives" "motivation" "ambitions" "intent") in a story that was about the "sale of a record album"?

Question D) Whether the district court of Kansas err in holding that all the defamatory claims presented by the petitioner regarded a 'matter of public concern' and that the petitioner, an 'involuntarily limited-purpose public figure,' had to prove actual malice for all of the defamatory claims.

Question # 3

> Justice Stewart: While some risk of exposure "is a concomitant of life in a civilized community," Time, Inc. v. Hill, 385 U.S. 374 388 (1967), the private citizen does not bargain for defamatory falsehoods. Nor is society powerless to vindicate unfair injury to his reputation. It is a fallacy ... to assume that the First Amendment is the only guidepost in the area of state defamation laws. It is not ... The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being — a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system. Rosenblatt v. Baer, supra, at 92 (STEWART, J., concurring).
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> Justice White's comment to Justice Stewart's statement above: His remarks indicated his uneasiness with application of the New York Times standard to defamation of private persons: "That rule should not be applied except where a State's law of defamation has been unconstitutionally converted into a law of seditious libel. The First and Fourteenth Amendments have not stripped private citizens of all means of redress for injuries inflicted upon them by careless liars." 383 U.S. , at 93.

In agreement with Justice Stewart and Justice White, and quoting some of Justice White's opinions (for I cannot express this better than him), with gratitude for their contribution and their willingness to fight for the rights of the private individual that has been defamed, I respectfully ask this court:

Question A) Were there sufficient grounds for the Supreme Court (in *New York Times v. Sullivan* and its progeny, including *Gertz v. Welch*) to, contrary to history and precedent, abolish/retool the common law of libel, jettison the settled law of the States, consequently depriving the States of the opportunity to experiment with different methods for guarding against abuses, and depriving the private citizen of his 'historic recourse' to redress published falsehoods damaging to character and reputation; leaving ordinary citizens (such as the petitioner) with no chance to even have a trial or declaratory judgement to vindicate their reputation, regardless of whether they can or can't recover damages?

Question B) Whether the Court "*has gone too far*" in protecting the First Amendment rights of the media above the rights of the individual (whether characterized as a right

of privacy or the common law right not to be defamed / 9th amendment or 10th amendment) who may be permanently damaged or quite literally destroyed by the powerful news media.

Whether an 'involuntarily limited-purpose public figure,' who was falsely accused of perpetrating a dishonest act based on dishonest motives without proof; who had no chance to defend himself on any media platform; who proved negligence, actual malice, damage to reputation, work, and health; should be able to have a trial/declaratory judgement, regardless of whether he is or not able to recover monetary damages (not just to prove that the damaging publication was false and to redress his reputation, but to let the public know the truth about the petitioner and his wife's purpose and work).

Question # 4

From the founding of the Nation until 1964, the law of defamation was *"almost exclusively the business of state courts and legislatures."* Gertz, supra, at 369–370 (White, J., dissenting). But beginning with New York Times, the Court *"federalized major aspects of libel law by declaring unconstitutional in important respects the prevailing defamation law in all or most of the 50 States."* Gertz, supra, at 370. These decisions made little effort to ground their holdings in the original meaning of the Constitution. The Court took it upon itself *"to define the proper accommodation between"* two competing interests — *"the law of defamation and the freedoms of speech and press protected by the First Amendment."* Gertz, 418 U. S., at 325 (majority opinion).

Although the Court held that its newly minted actual-malice rule was *"required by the First and Fourteenth Amendments,"* id., at 283, it made no attempt to base that rule on the original under-standing of those provisions. New York Times was *"the first major step in what proved to be a seemingly irreversible process of constitutionalizing the entire law of libel and slander."* Dun & Bradstreet, 472 U. S., at 766 (White, J., concurring in judgment). The Court promptly expanded the actual-malice rule to all defamed "'public figures,'" Curtis Publishing Co. v. Butts, 388 U. S. 130, 134 (1967), which it defined to include private persons who *"thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved,"* Gertz, supra, at 345.

The Court also extended the actual-malice rule to criminal libel prosecutions, Garrison v. Louisiana, 379 U. S. 64 (1964), and even restricted the situations in which private figures could recover for defamation against media defendants, Gertz, supra, at 347, 349; Philadelphia Newspapers, Inc. v. Hepps, 475 U. S. 767 (1986).

None of these decisions made a sustained effort to ground their holdings in the Constitution's original mean-ing. As the Court itself acknowledged, *"the rule enunciated in the New York Times case"* is *"largely a judge-made rule of law,"* the *"content"* of which is *"given meaning through the evolutionary process of common-law adjudication."* Bose Corp. v. Consumers Union of United States, Inc., 466 U. S. 485, 501–502 (1984).

New York Times and the Court's decisions extending it were policy-driven decisions masquerading as constitutional law. Instead of simply applying the First Amendment as it was understood by the people who ratified it, the Court fashioned its own *"'federal rule[s]'"* by balancing the *"competing values at stake in defamation suits."* Gertz, supra, at 334, 348 (quoting New York Times,

supra, at 279).

We should not continue to reflexively apply this policy-driven approach to the Constitution. Instead, we should carefully examine the original meaning of the First and Fourteenth Amendments. If the Constitution does not require public figures to satisfy an actual-malice standard in state-law defamation suits, then neither should we. ***Justice Clarence Thomas February 19, 2019 McKee v. Cosby No. 17–1542***

> The Supremacy Clause says "[t]his Constitution" is the "supreme law of the land." The Constitution therefore is the fundamental law of the United States. Federal statutes are the law of the land only when they are "made in pursuance" of the Constitution. State constitutions and statutes are valid only if they are consistent with the Constitution. Any law contrary to the Constitution is void.
>
> The federal judicial power extends to all cases "arising under this Constitution." As part of their inherent duty to determine the law, the federal courts have the duty to interpret and apply the Constitution and to decide whether a federal or state statute conflicts with the Constitution.
>
> All judges are bound to follow the Constitution. If there is a conflict, the federal courts have a duty to follow the Constitution and to treat the conflicting statute as unenforceable. The Supreme Court has final appellate jurisdiction in all cases arising under the Constitution, so the Supreme Court has the ultimate authority to decide whether statutes are consistent with the Constitution.

In the words of Justice Clarence Thomas (Concurring opinion in *McKee v. Cosby*) the petitioner asks:

Question A) Whether either the First or Fourteenth Amendment, as originally understood, encompasses an actual-malice standard for public figures or otherwise displaces vast swaths of state defamation law; more so considering the respondent receives funds from the government.

"In controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable." George Mason

Question B) Does either the First or Fourteenth Amendment, as originally understood, encompass an actual malice standard for private individuals that were involuntarily thrust into a controversy but had no participation in it (involuntarily limited purpose public figures) or otherwise displaces vast swaths of state defamation law; and if the purpose of libel law is to provide an individual with a via to defend his reputation, character and rights, but instead the present laws have rendered it impossible for the petitioner to defend himself, not being even able to have the chance to have a judgement that allows the falsity of a statement be publicly known (whether he can or can't recover damages); isn't this wrong, unjust, cruel, an unconstitutional act, a violation of the constitutional rights of the petitioner (9th and 10th Amendments)?

Question C) Whether either the First or Fourteenth Amendment, as originally understood, encompass a negligence standard for private figures (involuntarily limited purpose public figures) to prevail in their defamation claim.

Question # 5

Excerpts from the Supreme Court of the state of Kansas decision in *Marshall Dominguez v. Paul Davidson*: One who gives to another publicity which places him or her before the public in a false light of a kind highly offensive to a reasonable person, is subject to liability to the other for invasion of his privacy. False light invasion of privacy is one of four types of invasion of privacy and the elements of the false light type are: (1) publication of some kind must be made to a third party; (2) the publication must falsely represent the person; and (3) that representation must be highly offensive to a reasonable person.

A false light privacy action differs from a defamation action in that the injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is damage to reputation. Truth and privilege are defenses available in both causes of action.

Whether a news article and broadcast, both containing numerous defamatory falsehoods and highly offensive falsehoods that damaged the reputation of the petitioner (an involuntarily limited-purpose figure) and his health, including great mental distress (factual evidence proves this), and as a whole, the article and the broadcast, on its face, indefeasibly represents an attack on the character and reputation of the petitioner and represent the petitioner in a false light that is highly offensive to a reasonable person (including misrepresentation of private matters such as his character, work and life), if factual evidence proves extreme negligence and actual malice, is it within the constitution for the court to dismiss the claim for defamation and false light and not present the question to the jury or even a trial court?

Question # 6

The first amendment protects individuals' free speech rights from *government* infringement. Although the first amendment's language refers only to Congress--"Congress shall make no law . . . abridging the freedom of speech, or of the press" the amendment has been interpreted to protect those rights from infringement by federal agencies, and state and municipal governments. Thus, in order to invoke the first amendment's protection, a plaintiff must first demonstrate sufficient federal, state, or municipal government involvement ("state action") in the infringing conduct. Courts must assess the sufficiency of government involvement by examining the facts and circumstances linking the government to an alleged First Amendment violation. *Id.* at 146 (White, J., concurring)

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), was a United States Supreme Court case that considered the application of the Equal Protection Clause on a private business that operates in close relationship to a government to the point that it becomes a "state actor." Archibald Cox proved to the Court that the fact that the business was a state lessee as well as franchisee, was located in a parking complex developed by the state to promote business, and that the complex flew a Delaware flag in front of the building, all rendered the state a "joint participant" with the restaurant, sufficient to invoke the Fourteenth Amendment. The Court agreed. The Burton case broadened the reach of the Equal Protection Clause to include not only direct government action, but also actions by private companies acting in close relationship to a government agency.

Question A) Whether there are sufficient facts to render the United States Government a joint participant with NPR, and to invoke the First and 14th amendments.

The petitioner's work, reputation, mission, future and health have been damaged because of the defamatory statements published and broadcasted by National Public Radio.

Pursuant to the due process clause in the Fifth and Fourteenth Amendment, government entities, including state and federal agencies, must follow certain procedures before taking action that affects an individual's life, liberty, or property. Those procedures allow an individual the opportunity to be heard and thereby influence the outcome of the government's action.

Question B) If the government is a joint participant with NPR, and the petitioner was stripped of what he had worked for (40 year career), and he was denied the chance to express himself freely and defend himself, wasn't his First and 14th (due process) Amendments violated, and must not the court protect his rights?

> In United States law, a state actor is a person who is acting on behalf of a governmental body, and is therefore subject to regulation under the United States Bill of Rights, including the First, Fifth and Fourteenth Amendments, which prohibit the federal and state governments from violating certain rights and freedoms. If the government merely enters into a contract with an individual or organization for the goods or services, the actions of the private party are not state action, but if the government and the private party enter into a "joint enterprise" or a "symbiotic relationship" with each other it is state action (*Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961.)

Question C) Whether NPR / a journalist working for NPR is considered to be acting on behalf of a governmental body (state actor), thereby making the United States Government a joint participant in a libel case when NPR libels/slanders a private citizen.

Question # 7

The Supreme Court in accommodating government regulation of broadcasters, emphasizes the right of viewers and listeners to receive ideas. In determining the contours of this right, the Supreme Court sometimes has restricted broadcasters 'traditional free press rights.' The Supreme Court has examined only a few FCC fairness doctrine rulings and, in all cases, has upheld them on constitutional grounds. *See, e.g., id.* at 375 (fairness doctrine requires free reply time for personal attacks and reasonable response time for political editorializing); *Columbia Broadcasting Syi,* 412 U.S. at 123 (upholding FCC determination that fairness doctrine does not require right of access for editorial advertisements).

[1]In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), the U.S. Supreme Court upheld (by a vote of 8-0) the constitutionality of the fairness doctrine in a case of an on-air personal attack, in response to challenges that the doctrine violated the First Amendment to the U.S. Constitution. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others.... In *Red Lion*, the Supreme Court stated that "*[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than countenance monopolization of that market, whether it is by the Government itself or a private licensee.*" The Court went on to say that it was consistent with this First Amendment purpose for the Commission "*to require a broadcaster to permit answers to personal attacks occurring in the course of discussing controversial issues.*"

Justice White concluded in *Red Lion Broadcasting v. FCC: "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.*"

The Supreme Court in *FCC v. League of Women Voters* identified this paramount right as "*the public's First Amendment interest in receiving a balanced presentation on diverse matters of public con-cern.*" By choosing this phrase, the Court captured the idea that the public's free speech interest in broadcasting is a collective right.

As the court had suggested previously in the *Red Lion* case: "*[T]he people as a whole retain their interest in free speech by radio [and television] and their collective right to have the medium function consistently with the ends and purposes of the First Amendment.*"

Thus, in the Supreme Court's attempts to sort out the various first amendment

> interests at stake-the broadcasters' and the public's interests-the Court has settled on protecting the public's interest primarily as a collective right of access to a variety of ideas, rather than a right of individual access or individual determination of program content.
>
> And limited as this collective right may be, the public continues to retain it even though individual free speech interests in broadcasting largely have been relinquished by legislative decision to a government-regulated industry.
>
> The Supreme Court, in the context of broadcast regulations, has pointed to this theory as a justification for FCC regulation protecting the public's collective right of access: [Because it] is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, ...the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences [through the medium of broadcasting] is crucial here [and it] may not constitutionally be abridged.

Question: Considering the Supreme Court reasons for their ruling in *Red Lion*, considering the reasons for which the 'Fairness doctrine' was required such as the *"discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage,"* considering the reasons why these rules were created by the FCC (including "equal time" rule and a "response to personal attack" rule) such as *"the broadcasting spectrum is limited and; there are only so many spaces available in any geographic area, thus anyone who is fortunate enough to obtain a license to use public airwaves must serve the public interests,"* considering that National Public Radio is partially governmentally funded, and considering the case of the petitioner, a private citizen who *"has no access to any other broadcasting or media platform to defend themselves from the attacks on their character and reputations"* (such as in this case), isn't it unconstitutional (and inconsistent with the public's right / the rights of the viewers and listeners) to not impose a fiduciary duty on the licensee to be required to contact the person that is being attacked not only to provide him with a chance to reply on the air and to the story (in accordance with his individual rights granted to him by the constitution and his natural rights given to every human being by our creator) to defend his reputation, but to present the public with all points of view?

In other words, whether the removal of the Fairness Doctrine/personal attack rule by an "administrative law" is unconstitutional (infringes upon the petitioner and the public's right to "freedom of speech") in the case of an attack on a private citizen on the air-waves on National Public Radio.

Question # 8

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.

Question A) Whether the Petitioner's First Amendment rights were violated by *"viewpoint discrimination"* when National Public Radio issued 'prior restraint/ censorship' on the petitioner when NPR's in-house general counsel stated that they would *"decline"* to publish the petitioner's reply/viewpoint if they considered that his reply/viewpoint *"might create liability" or "not serve their audience,"* which represents subjecting the petitioner under 'restrictions/conditions' that would abridge the petitioner's Freedom of Speech.

Question B) Whether the Constitution and Bill of Rights grant the First Amendment clause 'Freedom of Press' precedence over the First Amendment clause "Freedom of Speech" allowing the media the right to be able to issue prior restraint and censorship on the subjects of their reports and broadcasts?

Question # 9

This 2 part question addresses the alternative grounds for which the court of appeals for the 10th circuit stated the petitioner could not succeed on appeal.

Question A) In the case of a petitioner that is an involuntarily limited-purpose public figure, whether a defamatory statement of opinion in a news article is protected if it can be proven with factual evidence that this statement is false; that it was made with negligence and actual malice; and also that the facts on which the reporter is basing his opinion are false, defamatory, and were published/republished with actual malice/ negligence.

Question B) Whether the court of appeals committed an outlandish error dismissing the petitioner's case based on 'alternative grounds' considering that the court stated the petitioner *"may have preserved his argument as to whether Mr. Flanagan made the "purposeless obfuscation" statement with actual malice"* and that the 'disclosed facts' on which the defamatory claim stating that the petitioner's life is *"one of purposeless obfuscation"* are the same that the 'disclosed facts' on which the 'alternative grounds' are based, and all these 'disclosed facts' are false, defamatory and made with actual malice / negligence?

Question # 10:

This question also addresses the alternative grounds for which the court of appeals for the 10th circuit stated the petitioner could not succeed on appeal.

Question A) Whether (in a news article and broadcast) a 'statement of fact couched as an opinion' that asserts a matter of objective fact that can be proven true or false (that accuses the petitioner of perpetrating a dishonest action/activity), which can be proved with factual evidence and sworn witnesses to be false; to have been distributed all over the world; to have **injured the petitioner** (discredited him, destroyed his reputation as an honest person and a serious artist, misrepresented his work, his career, diminished the esteem and confidence in which he was held prior to the defamatory article and broadcast); to have been published and broadcast in violation of the code of rules, ethics and standards of NPR (and the American society of journalism); to have been **published and broadcast with actual malice** (knowledge of falsity or reckless disregard for the truth regarding defamatory information being published or broadcast); and for which **all the disclosed facts can be proven to be defamatory and made with negligence and actual malice**; can be considered non-defamatory.

Question B) Whether the district court err stating this 'statement of fact couched as an opinion' (accusing the petitioner of perpetrating a dishonest action/activity) was not defamatory even if it was false.

(Note 1: The 'statement of fact couched as an opinion' addressed in this question was not stated in any way that would mean the journalist didn't seriously mean it; the statement was made in an assertive manner and it was repeated several times in the article clearly accusing Billy Yeager of having acted with dishonesty.

(Considering also that according to Gertz the petitioner, as an involuntarily limited-purpose public figure, doesn't have to prove actual malice, the sentence before the last sentence in the question above (that can be proven with factual evidence to have been published and broadcast in violation of the code of rules, ethics and standards of NPR (and the American society of journalism)) becomes significantly important as 'proof of negligence,' which, according to the present libel law, would become the burden of proof (threshold for liability) that the petitioner would have to meet instead of the actual malice requirement.)

LIST OF PARTIES

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IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

PETITION FOR WRIT OF CERTIORARI

William Yeager respectfully requests that this Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

(Appellate Case: 18-3252 Document: 010110200926 Date Filed: 07/22/2019)

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

(Case 5:18-cv-04019-SAC-GEB Document 57 Filed 01/09/19)

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 22, 2019.

No petition for rehearing was filed in my case.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

TABLE OF AUTHORITIES CITED

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United States v. Paramount Pictures, Inc., 334 U.S. 131, 166 (1948) Page 33

Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287, 1296 (D.C.Cir.)

Wolston v. Readers Digest, 443 U.S. at 167-68, 99 S.Ct. at 2707-08

STATUTES AND RULES

Constitutional Laws 1ST, 9TH, 10TH 14TH, AMENDMENTS

First and Fourteenth Amendments," id., at 283

FCC Consider Newspaper Control of Local TV, 32 Cong. Q. 659-663 (1974).

The Communications Act of 1934 June 19, 1934 and codified as Chapter 5 of Title 47 of the United States Code, 47 U.S.C. 151 et seq.

FCC Federal Register

Fairness Doctrine and Personal Attack Rule

Columbia Broadcasting Syi, 412 U.S. at 123

Cooley, Constitutional Limitations 883 (8th ed. 1927).

10 B. Franklin, Writings 38 (Smyth ed. 1907).

F. Mott, Jefferson and the Press 14 (1943).

Attorney General, 205 U.S. 454, 462 (1907)

Article [X] (Amendment 10 - Reserved Powers states Marbury v. Madison, 5 U.S. 137 (1803) Page 5 U. S. 178, Page 5 U. S. 179

Charles de Secondat, Baron de Monttesquieo in The Spirit of the Laws

United States constitutional law Separation of Powers

CASE OVERVIEW

The media should be protected to print legitimate news, but they should also be responsible for publishing false information that damages an individual, like any other business. There is nothing in the Constitution or the Bill of Rights that concedes that the interests of the Press are more important than the interests of the individual; that the clause of Freedom of Press in the First Amendment overpowers the rights of reputation and privacy of the individual guaranteed to him by the 9th and 10th Amendments.

The opposite; the Constitution sought to fulfill the promises of the Declaration of Independence of 1776 that expressed people's yearning to be free to develop their God-given talents; the Bill of Rights was created to protect individual freedom.

All historical information only supports the idea that the Freedom of Speech (of every individual; written first than the second part "Freedom of Press") and Freedom of Press were created to avoid prior restraint, but that, as Thomas Jefferson stated, there were limitations on any right: *"Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others." --Thomas Jefferson to I. Tiffany, 1819. "All natural rights may be abridged or modified in their exercise by law."* --Thomas Jefferson: Official Opinion, 1790.

This case of libel law is respectfully asking for the reconsideration of this Court's previous decisions in Sullivan and its progeny, including Gertz.

Therefor this case raises the critical issue of whether there were sufficient grounds to establish the actual malice standard and negligence standard and to swath the well established state libel law that was applied until 1964.

These common-law protections for the "core private righ[t]" of a person's " 'uninterrupted enjoyment of . . . his reputation' " formed the backdrop against which the First and Fourteenth Amendments were ratified. Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 567 (2007) (quoting 1 Blackstone *129).

Before our decision in New York Times, we consistently recognized that the First Amendment did not displace the common law of libel. As Justice Story explained, "The liberty of speech, or of the press, has nothing to do with this subject. They are not endangered by the punishment of libellous publications. The liberty of speech and the liberty of the press do not authorize malicious and injurious defamation." Dexter v.

Spear , 7 F. Cas. 624 (No. 3,867) (CC RI 1825)

Also, this case calls upon the Court to revise the lower court's decision (regarding involuntarily limited-purpose public figure and matter of public concern) as it is conflict-ing directly with controlling Supreme Court precedents, and the court of appeal's decision which the petitioner considers a serious error; all the reasons are thoroughly addressed in this writ.

Also this case questions if there are sufficient facts that render the government a joint participant with NPR thereby invoking the petitioner's Fourteenth Amendment and procedural due process rights and his first amendment rights; also questioning if National Public Radio has the right to apply prior restraint/censorship on the speech of an ordinary American citizen, abridging his 'Freedom of Speech' and the public's interest in receiving all different viewpoints.

Also this case is questioning the constitutionality of an act of congress and the FCC's abandonment of the right to reply rule in the case of private or involuntarily limited-purpose public figure that is attacked on print and on the air waves.

STATEMENT OF THE CASE

The petitioner William "Billy" Yeager is a songwriter / musician, independent filmmaker, humanitarian and media activist. National Public Radio (NPR, stylized as npr) is an American privately and publicly funded non-profit membership media organization based in Washington, D.C. NPR differs from other non-profit membership media organizations, such as AP, in that it was established by an act of Congress [2] and most of its member stations are owned by government entities (often public universities). It serves as a national syndicator to a network of over 1,000 public radio stations in the United States.

NPR: *"Public service should be the goal of any journalist, but it has special meaning for us, because we call ourselves 'public media.' Listeners consider public radio an enriching and enlightening companion; they trust NPR as a daily source of unbiased independent news, and inspiring insights on life and the arts."*

In January 2017, a test pressing of a record album called *301 Jackson St.* (recorded by

Billy Yeager in 1989) was sold on Discogs (a website to buy and sell vinyl records) becoming the most expensive record sold on this website.

Over 2 months later, on March 22, 2017, Discogs sent a press release to NPR to share

the news about the sale of the album. The following day, on March 23, at 4 am in the morning, Discogs cancelled the transaction.

6 hours later (without making a single attempt to inform the petitioner about the breaking news they were getting ready to publish against him (which represents a violation of NPR's Codes of Rules, Standards and Ethics)), NPR broke the news; at 9:48 AM ET (on March 23) NPR published what was supposed to be a "music news article," not an opinion column.

In the publication of their "news article," NPR violated their standards (and the standards of the American Society of Professional Journalists) to an unfathomable high degree.

Some of the standards that were violated include:

> This excerpt from The Society of Professional Journalists, indicates some of the standards that must be followed when reporting the news:
>
> **Objectivity** in reporting the news… serves as the mark of an experienced professional. Sound practice makes **clear distinction** between **news reports** and **expressions of opinion**. **News reports** should be **free of opinion or bias and represent all sides of an issue.** Journalists at all times will show **respect for the dignity, privacy, rights, and well-being of people** encountered in the course of gathering and presenting the news. The news media **should not communicate unofficial charges affecting reputation or moral character without giving the accused a chance to reply.** The media should not pander to morbid curiosity about details of vice and crime. **It is the duty of news media to make prompt and complete correction of their errors.** Journalists should be **accountable to the public** for their reports and the public should be encouraged to voice its grievances against the media.

Important fact: No charge (neither unofficial nor official) was ever made against the petitioner; Discogs never accused the petitioner.

> National Public Radio's CODE: *"Accurate" means that each day we make **rigorous efforts** at all levels of the **news gathering and programming process** to ensure our facts are not only accurate but also presented in the correct context. We make **every possible effort** to ensure assertions of fact in **commentaries**, including facts implied as the basis for an opinion, are correct. We **attempt to verify** what our sources and the officials we interview tell us when the material involved is argumentative or open to different interpretations. We are skeptical of all facts gathered and report them **only** when we are reasonably satisfied of their accuracy. **We guard against errors of omission that cause a story to misinform our listeners by failing to be complete. We make sure that our language** accurately describes the facts and **does not imply a fact we have not confirmed,** and quotations are both accurate and placed properly in context. Take special care with news that might **cause grief or damage reputations.***

Important fact: Discogs stated there was a buyer and a seller in two different states and with two different IP addresses; this information was omitted (it was neither published nor broadcasted.)

The day following the publication of the news article, on March 24, NPR continued to spread the same defamatory accusations and malicious falsehoods on their radio show "All Things Considered," which is the flagship news program on the American network National Public Radio; again, the petitioner was not contacted and offered the opportunity to reply and defend himself against the attacks on his character and reputation; there was no *"effort"* or *"attempt"* to *"ensure"* or to *"verify"* made.

NPR's CODE: *We make every effort to gather responses from those who are the subjects of criticism, unfavorable allegations or other negative assertions in our stories. In all our stories, especially matters of controversy, we strive to consider the strongest arguments we can find on all sides. When a person or company has been charged with wrongdoing by official sources, we must carefully avoid presenting facts in a manner that presumes guilt.* (NPR's journalists *"must"* be careful even when a person has been officially charged; the petitioner had not even been accused.) *If the subject of the story*

doesn't know what you're going to report, how can we be fair to them? When news is breaking, make sure the people we're attempting to reach know about our deadlines — for the next newscast and the next program, for example. Look for proxies who may be able to defend their side.

NPR journalists with a role in reporting and producing the news do not deliver commentaries...do not opine on matters we cover in the news...the public deserves factual reporting...without our opinions influencing what they hear or see.

The petitioner proved to the court the lack of reasonable care and extreme degree of negligence exercised by NPR's journalists and their superiors.

Both the article and the radio broadcast were completely biased against the plaintiff and contained numerous defamatory false statements that were made with actual malice. All the disclosed facts to support what the court considered 'statements of opinion' were made with actual malice; the disclosed facts were misrepresented to the audience, taken out of context, information that was crucial for their understanding was omitted, and in consequence what the public received was a complete distortion of the truth.

Overall, both the article and the radio broadcast described the petitioner as a corrupt individual that had attempted to perpetrate a fraudulent sale because of his "hunger for fame, or infamy." The news article stated 3 times that the petitioner was motivated by "infamy." The radio broadcast, again, repeated that the petitioner was interested in "infamy." Definition of infamy: noun: **infamy**; plural noun: **infamies** an evil or wicked act. the state of being well known for some bad quality or deed.

100% of comments from NPR's readers and listeners were extremely offensive, insulting, contemptuous; the petitioner was even compared to Charles Manson.

NPR's CODE states: *Be judicious when passing along breaking news. When news is breaking, we may need to pass along information reported by others because the public should know about it immediately.* ***This is particularly true when safety is an issue*** *(**severe weather events** or other types of **emergencies**, for example).*

And again, if we have information that might cause significant grief or might potentially put someone in harm's way, we do not report it until it's been thoroughly verified and senior editors have given their approval. Few in our audience will know or care which

news organization was first to report a breaking news story. But if we get it wrong, we leave a lasting mark on our reputation.

Any falsehoods in our news reports can cause harm. But errors that may damage reputations or bring about grief are especially dangerous, and extra precautions should be taken to avoid them. *In those cases, err on the side of caution. Go* ***slowly,*** *and* ***above all, get clearance from a senior manager.***

The accusations National Public Radio published and broadcast against the petitioner were published in a matter of hours even though there wasn't even an unofficial charge, and there was no evidence to sustain the accusation — Discogs stated that the IP addresses of the seller and the buyer were different and the seller and the buyer were located in two different states; this information indicated the contrary to what NPR reported.

Again, NPR never attempted to give the petitioner the chance to reply and defend himself; the petitioner was never informed about the breaking news; never contacted after the publication of the news; never contacted to be invited to the broadcast; never contacted afterwards.

3 months later, the petitioner himself contacted NPR's in-house legal counsel Ashley Messenger to ask for the removal of NPR's article and broadcast, which not only accused the petitioner of committing a dishonest action, but defamed his character, his career, his work and went as far as declaring the petitioner's life as *"one of purposeless obfuscation"* and stating the petitioner was interested in *"infamy"* and *"the chase of pulling the wool over people's eyes"* and had *"repeatedly poured more of his creative energy into being a trickster-booster than he has as an artist."*

After careful examination of the article and broadcast and talking to the responsible parties, Ashley Messenger got back in contact with the petitioner. As an experienced media law attorney, if Messenger would have thought that NPR had done nothing that could cause liability she would have said so; that was not the case. Messenger began asking the petitioner if he could provide NPR with the names of the seller and the buyer, because NPR did not have this information, meaning that she admitted that NPR had published and broadcasted a defamatory accusation of fact without proof.

The petitioner replied, "weren't you supposed to know?"

Already under severe depression, NPR's attitude did not set well with the petitioner; there was no genuine emotion of concern for what NPR had unjustly and wrongly done to a human being.

The petitioner began to send Ashley Messenger the same information that was seen by NPR's journalists prior to the publication of the article and broadcast; NPR removed the article from NPR's website; the petitioner informed NPR that the removal of the article would not be enough to compensate for all the damage done; NPR put the article back on their website.

Messenger remained in communications with the petitioner and his wife for 3 weeks about the matter (until the petitioner decided to file his lawsuit); she stated in an e-mail *"we are taking this very seriously."* The petitioner refused to answer questions regarding issues that should have been investigated and asked prior to the story and broadcast that was shared all over the world to millions of people destroying the reputation and work of the petitioner.

After all the harm that had been done (not just to the petitioner, but his wife, and others), complete lack of due care and abandonment of their codes, the petitioner was not going to accept some corrections and a retraction of the article (what about the millions of people that heard the radio-broadcast?).

(The petitioner wanted the removal of the defamatory story and broadcast, a true apology, a public statement to the audience explaining what NPR had done wrong, a new article and broadcast telling the truth about his and his wife's work and mission and benefit concerts, and recompense for damages to his work and health. NPR never showed the least empathy or compassion; their behavior showed they were primarily concerned about protecting themselves, their reputation, and their money.)

The petitioner continued to send much more of the same facts that were ignored by those who were responsible for the article and the broadcast; including a video (over an hour in length) showing footage that revealed the truth of the petitioner and his wife's work and people giving testimony of what they had felt watching their films and videos; Messenger brought the members of the corporate team together to watch it.

During the year 2016, the petitioner and his wife, together with many others, had been preparing a series of benefit concerts (in an underground missile base in KS) to provide wheel chairs to landmine victims in third world countries where there are still many

people who can't afford a wheel chair. This information which was located in the petitioner and his wife's websites **was also sent to Messenger who shared it with the corporate team.** NPR was also informed that due to their article and broadcast the concerts had been destroyed.

The owner of the missile base heard NPR's broadcast and he stated to the petitioner that NPR was saying *"very bad things about you... That you were a huckster and a charlatan..."* Not only National Public Radio didn't inform the public about the benefit concerts, but due to NPR's accusations the owner of the missile base wanted to permanently cancel the concerts.

(NOTE: THIS IS AN EXAMPLE OF THE MANY LINKS PROVIDED IN Appellate Case: 18-3252 Document: 010110105133 Date Filed: 01/03/2019 Exhibit. Q http://exhibitscase.blogspot.com/2018/03/exhibit_37.html)

After reviewing all the evidence, Messenger wrote an e-mail to the petitioner stating: *"We misunderstood you."*

"*Misunderstood*" was not just an insult after all the damages; "*misunderstood*" was not simply a misnomer, but a soft persuasive manipulation of words that underneath imply a total admission of guilt; "mistakes" and "misunderstandings" in this case mean "false defamatory allegations," there is no middle ground, this is libel.

In the same e-mail NPR (instead of removing the article and the broadcast) offered the petitioner to "write my own story" (which represents a complete violation of their CODE of rules and ethics), on a "condition" however. Messenger wrote: "*We think our audience would be best served by having you say for yourself what your purpose has been.*

You may write up to 1500 words in a response that addresses what you would like the public to know about your career, your motives, your desire to change the world.

I hope you'll take us up on this offer to allow you to communicate your vision to our audience. If you like, I can arrange to have one of our top editors work with you on crafting a response that will cover what you want to say.

To be clear, NPR is not promising to publish it; ***we will decline*** *to do so* ***if*** *we believe it would not serve our audience or* ***might create liability.*** *Given our communications,*

however, I would expect that ***you can articulate your highest ideals and your artistic vision"***

After accusing the petitioner of being a fraud to millions of people; after painting the petitioner in a most negative "false light;" after summarizing his whole life as one of *"purposeless obfuscation,"* and stating he is motivated by *"fame and infamy,"* they ask him to talk about his career, his motives, his desire to change the world, when all this information was in the petitioner and his wife's websites; why is the petitioner being asked to do the job that NPR's professional journalists were supposed to do?

It is obvious why NPR offered the petitioner to write his own story (something never heard of, which is not in accordance with their rules); this would have protected themselves from any liability; if NPR had written a different story that contradicted their original story themselves, they would have had to admit fault to their audience and their Ombudsman for publishing and broadcasting false and defamatory information.

(NOTE: *This is another violation of their code of ethics. "In 2000, NPR became the first U.S. broadcast news organization to create an Ombudsman." "The Ombudsman's office serves primarily as a liaison between the newsroom and listeners." "We read over 100 of these emails per day." "Listeners raise ethical issues and question NPR's adherence to its journalistic standards." "We investigate listener concerns and issues of journalism ethics and occasionally suggest changes."*)

The court of appeals wrote: `He contacted attorney Messenger and requested that NPR remove the article and the interview from its website. She refused, but offered Mr. Yeager the opportunity to respond in an NPR forum. He declined.`

The court of appeals omitted crucial information; NPR never offered an opportunity to respond, but a "censored opportunity" (with prior restraint).

NPR: *To be clear, NPR is not promising to publish it;* ***we will decline*** *to do so* ***if*** *we believe it would not serve our audience or might create liability.*

(This issue of prior restraint, censorship, and point of view discrimination is being addressed in question # of this writ.)

With a great lack of knowledge in libel law, the petitioner filed his original complaint. The District Court in Kansas stated that the article and the broadcast involved a matter of public concern and that plaintiff's part in the story makes him in a limited-purpose public figure. (This decision is addressed in questions # 1 and # 2 of this writ.)

The petitioner argued he was a private figure and not a limited-purpose figure to the Court of Appeals for the 10th Circuit; the Court of Appeals stated: Although Mr. Yeager **may have preserved his argument as to whether he is a limited public figure** and whether Mr. Flanagan made the "purposeless obfuscation" statement with actual malice, he does not address the court's alternative grounds for dismissal of the defamation claims.

Regarding the court of appeal's reason for dismissal of the petitioner's case, the petitioner considers that this decision involves an outlandish error, for there are no alternative grounds to protect the specific defamation claim addressed in the brief to the Court of Appeals for the 10th Circuit (or other defamation claims addressed in the motion for reconsideration.)

Questions 9 & 10 of this writ address this error which contradicts the precedent established by the Supreme Court in Milkovich v. Lorain Journal. In *Milkovich v. Lorain Journal* the Supreme Court stated: If a speaker says, "In my opinion John Jones is a liar," he implies knowledge of facts which led to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact... can cause as much damage to reputation... As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.'"

Not only were the facts on which the respondent purported to base his 'statements of fact couched as an opinion' (which represents the *"alternative grounds"* the court is referring to) incorrect, or assessed erroneously, but they were purposely misrepresented, assessed erroneously and delivered in an incomplete manner omitting crucial information.

Also, the same argument used by the petitioner to prove actual malice in his brief to the court of appeals for the 10th Cir., which the court stated the petitioner may have preserved, applies to the *"alternative grounds."*

In *Harte Hanks v. Connaugthon*, the U.S. Supreme Court ruled that the purposeful failure to interview a person with an opposing viewpoint can be evidence of actual malice. If it appears that the reporter is trying to "build a case" and is intentionally avoiding any information that would be contrary to the point he is trying to make, such an approach may be view as evidence of actual malice.

REASONS FOR GRANTING THE PETITION

Respect for the reputation of persons forbids every attitude and word likely to cause unjust injury, including irony aimed at disparaging someone by maliciously caricaturing (mocking) his good efforts.

One is guilty of calumny who harms the reputation of others and gives occasion for false judgments concerning them by remarks contrary to the truth.

Misrepresentation to discredit someone is an offense against truth.

These sins violate both the commandment against false witness, as well as the command to love one's neighbor as oneself.

The Catholic Church teaches that "A lie consists in speaking a falsehood with the intention of deceiving." According to the Bible, the Lord denounces lying as the work of the devil: "You are of your father the devil, . . . there is no truth in him. When he lies, he speaks according to his own nature, for he is a liar and the father of lies." (John 8:44) Lying is the most direct offense against the truth. To lie is to speak or act against the truth in order to lead someone into error. By injuring man's relation to truth and to his neighbor, a lie offends against the fundamental relation of man and of his word to the Lord. Lying is a mortal sin when it does grave injury to the virtues of justice and charity. Lying is a profanation of speech, whereas the purpose of speech is to communicate known truth to others.

The respondent (NPR) attempted to create scandal, contrary to the duty of journalists as stated by NPR and the American Society of Professional Journalists.

The deliberate intention of leading a neighbor into error by saying things contrary to the truth constitutes a failure in justice and charity. The culpability is greater when the intention of deceiving entails the risk of deadly consequences for those who are led astray. By violating the virtue of truthfulness, a lie does real violence to another. It affects his ability to know, which is a condition of every judgment and decision. It contains the seed of discord and all consequent evils. Lying is destructive of society; it undermines trust among men and tears apart the fabric of social relationships. The Catholic Church

A) The lower courts' decision is perceived as conflicting directly with controlling Supreme Court precedents, see S. Ct. R. 10(c)

For example, the consideration of the petitioner as a limited-purpose public figure having to prove actual malice (this issue is addressed in Question # 1) is a blatant disregard of Supreme Court precedent.

B) There is a serious legal error in the lower courts' decision (regarding the alternative grounds for dismissal which are addressed in Questions # 9 and # 10) which is not just erroneous, but outlandishly so.

C) Constitutional / Bill of Rights Violations.

D) This writ should be Granted because it is of NATIONAL Importance. This writ contains serious vital questions about 1st Amendment violations, in regards to the media's "protected abilities to take freedom of the press and turn it into a "free 4 all"

which allows the media to be able to fabricate lies, state them as facts, and be protected as opinions. (MANY Recent "**verified accurate polls**" reveal that over 86% of the American Public DO NOT TRUST THE MEDIA ANYMORE!) Just recently your own Supreme Court Justice Brett Kavanaugh was defamed in a NY Times "smear campaign" who twittered blatant unverified libelous information to over 100 million Americans, and then simply removed it 24 hours later; over 357 million people's Right to receive facts and crucial truths about even our own government officials is being violated by the media and this is against every single principle of the Founders of this Nation who wrote the Constitution.

They say NY Times called for dancing in the streets, but who's dancing? Below in the conclusion, I address Justice Story's quotes stating that when a man has been unjustly attacked and destroyed, he has every right to take up arms and kill another who has destroyed his life. My entire life and my wife's life was destroyed; if my case was dismissed and leave me with no choice, mentally depressed, on medications, a ruined reputation, what am I left with, do I set myself on fire on the steps of the Supreme Court making myself a martyr for the cause?

Am I expected with my wife to be able to live the American dream of "liberty justice and the pursuit of happiness" with a tarnished reputation and labeled as frauds?

And what about the 445 million dollars a year of American citizens tax dollars used to support a "Public Radio" that DESTROYED MY LIFE; pouring gasoline on the fire . . . consider my OWN taxes that I paid for as a U.S. Citizen were used to put a rope around my neck.

Reasons for granting Question # 1:

NPR thrust the petitioner into a controversy, falsely accusing him without proof of being the perpetrator of a fraudulent sale of a record album he had recorded over 29 years ago.

Although the Plaintiff was "*thrust*" into the "matter of public concern" by NPR, and his participation in this matter was zero; although the seller and the buyer of the album were willing to testify in court and present the record album as evidence; although NPR had been informed by Discogs - prior to the publication of their story and broadcast- that there was a buyer and a seller who were located in 2 different states; the District Court found that the fact that the petitioner had recorded the album (*"part in the story"*) made him a limited-purpose public figure.

The District Court stated:

> The court finds that the article and the interview described in the complaint involve a matter of public concern and that **plaintiff's part in the story makes him in a limited-purpose public figure.** See Ruebke, 738 P.2d at 1251 (an individual who voluntarily injects himself or is drawn into a particular public controversy may become a public figure for a limited range of issues). The court reaches this conclusion for the following reasons. Plaintiff's album's sale on Discogs for $18,000 broke by $3,000 the mark set by a Prince album for most money paid for an album on Discogs. Prince is a world-famous musician of course, who died approximately eleven months before the publication of the article and the interview at issue in this case. Discogs publicized the sale with an email received by defendants Flanagan and Ganz, who considered it sufficiently newsworthy to investigate (2) and compose an article for a major national news source.(2)As explained in detail in the Statement of the Case, there was no investigation conducted.

This ruling abandoned the precedent set by Gertz; in the opinion of the majority, written by Justice Powell, he rejected the idea that the mere public interest of the subject should outweigh any consideration of Gertz's status as a private or public figure. The latter, he noted, have access to more ways of counteracting allegations about them than private figures do, and thus they deserved a higher standard to prove libel. He also highly doubted that one could involuntarily become a public figure.

By being considered a limited purpose public figure the petitioner lost his chance not only to recover damages but having a trial of any kind to let the truth be known and vindicate his reputation absent a showing of actual malice.

> The district court ruled: *"The court finds that the article and the interview described in the complaint involve a matter of public concern and that plaintiff's part in the story makes him in a limited- purpose*

public figure. See Ruebke, 738 P. 2d at 1251 (an individual who voluntarily injects himself or is drawn into a particular public controversy may become a public figure for a limited range of issues)."

The petitioner believes the court's findings represent a serious error and a fairly blatant disregard of Supreme Court precedent.

(In fact the court of appeals for the 10th circuit stated that the petitioner may have preserved his argument as to whether he is a limited public figure.)

To support their ruling the District Court cited *Ruebke*; Arnold Ruebke, Jr., was being tried for three counts of first-degree murder and three counts of aggravated kidnapping in the district court of Reno County, Kansas; even in this type of case, the court of appeals stated: "Public figure status is rather the result of acts or events which by their nature are bound to invite comment. The triple murder was by nature an event of great concern to the public.

The resulting investigation thrust Ruebke into the forefront of *602 public attention. Thus, the district court was correct in holding that Ruebke was a limited public figure."

This case *(Ruebke)* though belongs to a lower court than the one that ruled in *Gertz*. Considering the mandatory precedent established by *Gertz* if the petitioner didn't thrust himself into the "matter of public concern," and there was no participation from him in the matter, and he had no access to any media platform to defend himself, these key factors should have been considered before deciding to unload the insurmountable odds to overcome (even for a public figure such as a politician, celebrity or business leader) onto the everyday person who has no power or influence.

Gertz *"had achieved no general fame or notoriety in the community,"* despite some public service in his past, and therefore did not meet the *Sullivan* or *Curtis* tests. *"He plainly did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome."*

"For these reasons, we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual," Justice Powell said.

Reasons for granting Question # 2 are included in the question.

Reasons for granting Question # 3:

Justice White dissenting in *Gertz v. Welch*: *In any event, if the Court's principal concern is to protect the communications industry from large libel judgments, it would appear that its new requirements with respect to general and punitive damages would be ample protection. Why it also feels compelled to escalate the threshold standard of liability I cannot fathom, particularly when this will eliminate in many instances the plaintiff's possibility of securing a judicial determination that the damaging publication was indeed false, whether or not he is entitled to recover money damages.*

Under the Court's new rules, the plaintiff must prove not only the defamatory statement but also some degree of fault accompanying it. The publication may be wholly false and the wrong to him unjustified, but his case will nevertheless be dismissed for failure to prove negligence or other fault on the part of the publisher.

I find it unacceptable to distribute the risk in this manner and force the wholly innocent victim to bear the injury; for, as between the two, the defamer is the only culpable party. It is he who circulated a falsehood that he was not required to publish.

It is difficult for me to understand why the ordinary citizen should himself carry the risk of damage and suffer the injury in order to vindicate First Amendment values by protecting the press and others from liability for circulating false information.

This is particularly true because such statements serve no purpose whatsoever in furthering the public interest or the search for truth but, on the contrary, may frustrate that search and at the same time inflict great injury on the defenseless individual.

The owners of the press and the stockholders of the communications enterprises can much better bear the burden. And if they cannot, the public at large should somehow pay for what is essentially a public benefit derived at private expense.

Petitioner:

Does this court consider it reasonable, fair, that the human being that in the first place has done nothing wrong to deserve his reputation to be besmirched has to *"carry the risk of damage and suffer the injury in order to vindicate First Amendment values by protecting the press and others from liability for circulating false information"*?

Considering history and precedent, are there sufficient grounds to understand and use the first amendment to protect any other libelous statements but those referring to "the official actions of public servants"; in the words of Justice White, has this court *"pushed through what I consider the outer limits of the First Amendment protection against liability for libelous statements and have further eroded the interest of non-public figures in their personal privacy"*?

Considering history and precedent, is there any evidence to support the idea that the 1st Amendment was intended for the purpose of protecting the press when they circulate false information at the cost of the much more vulnerable innocent individual who has been defamed?

Excerpts from Justice White Dissent in *Gertz*:

> *Simply put, the First Amendment did not confer a "license to defame the citizen."*
>
> *But the Court apparently finds a clean slate where in fact we have instructive historical experience dating from long before the first settlers, with their notions of democratic government and human freedom, journeyed to this land. Given this rich background of history and precedent and because we deal with fundamentals when we construe the First Amendment, we should proceed with care and be presented with more compelling reasons before we jettison the settled law of the States to an even more radical extent.*
>
> *"[i]t is conceded on all sides that the common-law rules that subjected the libeler to responsibility for the private injury, or the public scandal or disorder occasioned by his conduct, are not abolished by the protection extended to the press in our constitutions." 2 T. Cooley, Constitutional Limitations 883 (8th ed. 1927).*
>
> *"If by the Liberty of the Press were understood merely the Liberty of*

> *discussing the Propriety of Public Measures and political opinions, let us have as much of it as you please: But if it means the Liberty of affronting, calumniating, and defaming one another, I, for my Page 384 part, own myself willing to part with my Share of it when our Legislators shall please so to alter the Law, and shall cheerfully consent to exchange my Liberty of Abusing others for the Privilege of not being abus'd myself.*" 10 B. Franklin, Writings 38 (Smyth ed. 1907).

"*The people shall not be deprived of their right to speak, to write, or otherwise to publish anything but false facts affecting injuriously the life, liberty, or reputation of others . . . .*" F. Mott, Jefferson and the Press 14 (1943).

The Court's consistent view prior to New York Times Co. v. Sullivan, 376 U.S. 254 (1964), was that defamatory utterances were wholly unprotected by the First Amendment. In Patterson v. Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907), for example, the Court said that although freedom of speech and press is protected from abridgment by the Constitution, these provisions "*do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare.*" This statement was repeated in Near v. Minnesota ex rel. Olson, 283 U.S. 697, 714 (1931), the Court adding:

"*But it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that the common law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the protection extended in our constitutions.*"

Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942) (footnotes omitted), reflected the same view:

"*There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or `fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.*" Beauharnais v. Illinois, 343 U.S. 250, 254-257 (1952) (footnotes omitted), repeated the Chaplinsky statement, nothing also that nowhere at the time of the adoption of the Constitution "*was there any suggestion that the crime of libel be abolished.*"

Petitioner:

The media in the business of reporting the news should stick to the facts, not to influencing people towards liking or disliking the people they report on.

Quoting the the words of Justice Byron White
(who could word this question much better than a pro se plaintiff with an 8th grade education),

> *"what were the grounds for the Supreme Court in NYT v. Sullivan and its progeny to order to put the risk of falsehood on the victim (private/limited purpose public figure) of a defamation case, even in the case when this individual has done nothing to invite calumny, is wholly innocent of fault, and is helpless to avoid his injury; was jurisprudential resistance to liability without fault (1) sufficient ground for employing the First Amendment to revolutionize the law of libel prior to 1964; did/does that body of legal rules pose a realistic threat to the press and its service to the public, or should the decisions in NYT v. Sullivan and its progeny such as Gertz be reconsidered, considering that the press today is more vigorous and robust than it ever was and it is quite incredible to suggest that threats of libel suits from private citizens (or limited purpose public figures) would cause the press to refrain from publishing legitimate news factually and truthfully?*
>
> *(1)The Court evinces a deep-seated antipathy to "liability without fault." But this catch-phrase has no talismanic significance and is almost meaningless in this context where the Court appears to be addressing those libels and slanders that are defamatory on their face and where the publisher is no doubt aware from the nature of the material that it would be inherently damaging to reputation. He publishes notwithstanding, knowing that he will inflict injury. With this knowledge, he must intend to inflict that injury, his excuse being that he is privileged to do so — that he has published the truth. But as it turns out, what he has circulated to the public is a very damaging falsehood. Is he nevertheless "faultless"? Perhaps it can be said that the mistake about his defense was made in good faith, but the fact remains that it is he who launched the publication knowing that it could ruin a reputation.* - Justice White

Petitioner:

And if the interest of the general public and the whole country is what is paramount, how can protecting the media when they publish defamatory lies, due to negligence and abandonment of standards of reasonable care, be more beneficial than challenging the journalist like any other professional to do his job properly?

And if the first amendment clause Freedom of Press was created to guarantee the people through their press a constitutional right of being informed and able to participate in making their country great, doesn't this amendment thereby place on the press/media a particular responsibility?

Someone said that journalism demands of its practitioners not only industry and knowledge but also the pursuit of a standard of integrity proportionate to the journalist's singular obligation.

No one is helped by being allowed to act with a lack of integrity, because that path leads towards evil. We teach our children integrity because we know that path leads towards goodness; in this earth there is nothing greater than goodness, the more goodness a person has the more beautiful a person is; our bodies die but our goodness brings us closer to our father in heaven.

Allowing the standards of the media to be low is only going to produce less quality news. We value the food we eat very much, why do we think that the food for the body needs to be more carefully produced than the food for the mind?

Justice White Dissent in *Gertz:*

> *The communications industry has increasingly become concentrated in a few powerful hands operating very lucrative businesses reaching across the Nation and into almost every home. Requiring them to pay for the occasional damage they do to private reputation will play no substantial part in their future performance or their existence.*
>
> *Newspaper owners have profited greatly from the consolidation of the journalism industry. Several of them report yearly profits in the tens of millions of dollars, with after tax profits ranging from seven to 14 percent of gross revenues. Unfortunately, the owners have made their profits at the expense of the public interest in free expression.*
>
> *As the broad base of newspaper ownership narrows, the variation of facts and opinions received by the public from antagonistic sources is*

increasingly limited. Newspaper publication is indeed a leading American industry. Through its evolution in this direction, the press has come to be dominated by a select group whose prime interest is economic.

"The effect of consolidation within the newspaper industry is magnified by the degree of intermedia ownership. Sixty-eight cities have a radio station owned by the only local daily newspaper, and 160 television stations have newspaper affiliations. In 11 cities diversity of ownership is completely lacking with the only television station and newspaper under the same control." Id., at 892-893 (footnotes omitted).
See also Congress, FCC Consider Newspaper Control of Local TV, 32 Cong. Q. 659-663 (1974).

I have said before, but it bears repeating, that even if the plaintiff should recover no monetary damages, he should be able to prevail and have a judgment that the publication is false.

The Court fears uncontrolled awards of damages by juries, but that not only denigrates the good sense of most jurors — it fails to consider the role of trial and appellate courts in limiting excessive jury verdicts where no reasonable relationship exists between the amount awarded and the injury sustained. Available information tends to confirm that American courts have ably discharged this responsibility.

Judicial review of jury libel awards for excessiveness should be influenced by First Amendment considerations, but it makes little sense to discard an otherwise useful and time-tested rule because it might be misapplied in a few cases.

Petitioner:

Considering that the press is immensely more powerful than a private individual; considering that all evidence proves that the main purpose of the first amendment was to protect the media from prior restraint from the government; considering that the constitution doesn't state that the rights of the press should receive more consideration than those of the individual; considering that there is no evidence that the first amendment is meant to protect defamatory speech that violates the rights for privacy and reputation of the individual; considering that the jury's verdict is always supervised by the lower courts who have the

power to make sure the award of damages is correct and fair; considering that the interest of the public which is what is paramount when creating the first amendment will always be much more protected by learning what the truth is instead of being misinformed by lies; considering all the information provided by justices in this court who don't believe there were sufficient grounds or compelling reasons for the decisions in *NYT v. Sullivan* and its progeny; and considering the media is concentrated even in fewer hands and their profits are much higher than they were in 1973 when Justice White made his good observations mentioned above, meaning that the cost of going to court wouldn't come close to what "the cost" of losing his reputation represents to the defamed ordinary citizen (who has no other choice but to try to vindicate his reputation in court); is the court willing to reconsider libel law precedent, and to consider the recommendations that Justice White made at least twice, when he suggested that standards of proof be eliminated for defamation plaintiffs who seek merely to vindicate their names through declaratory judgments, specially when this alternative would not provide any restriction on speech?

The media claims they really care about serving the public and that "debate on public issues should be uninhibited, *robust*, and wide-open," so that to get as closer to the truth as possible; if we apply the wisdom of Solomon we realize this claim is false, because if that was the case they wouldn't have to be "forced" to tell the other side of the story and give the person being attacked the "right of reply"; also they would be willing to go to court so that the truth would rule; also they would leave on their website information that they know is false.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1964). *The premise that in a free society erroneous opinion is "corrected" by "the competition of other ideas" provides the foundation for our system of free speech and press. It is felt that such freedom of expression is a necessary condition to our society's quest for truth.*

Petitioner:

This premise, unfortunately, is not always right.

> As Justice Powell stated in Gertz: *[T]here 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. They belong to that category of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and*

morality." 418 U.S. at 340 (citations omitted).

Furthermore, since a statement of fact can only be evaluated in terms of truth or falsity, there is no infringement on freedom of expression by permitting a judge or jury to determine the veracity of such statements.

MIAMI HERALD PUBLISHING CO. v. TORNILLO(1974)

> *But though a newspaper may publish without government censorship, it has never been entirely free from liability for what it chooses to print. See ibid. Among other things, the press has not been wholly at liberty to publish falsehoods damaging to individual reputation.*
>
> *At least until today, we have cherished the average citizen's [418 U.S. 241, 262] reputation interest enough to afford him a fair chance to vindicate himself in an action for libel characteristically provided by state law.*
>
> *He has been unable to force the press to tell his side of the story or to print a retraction, but he has had at least the opportunity to win a judgment if he has been able to prove the falsity of the damaging publication, as well as a fair chance to recover reasonable damages for his injury.*
>
> *Reaffirming the rule that the press cannot be forced to print an answer to a personal attack made by it, however, throws into stark relief the consequences of the new balance forged by the Court in the companion case also announced today. Gertz v. Robert Welch, Inc., post, p. 323, goes far toward eviscerating the effectiveness of the ordinary libel action, which has long been the only potent response available to the private citizen libeled by the press.*
>
> *Under Gertz, the burden of proving liability is immeasurably increased, proving damages is made exceedingly more difficult, and vindicating reputation by merely proving falsehood and winning a judgment to that effect are wholly foreclosed.*
>
> *Needlessly, in my view, the Court trivializes and denigrates the interest in reputation by removing virtually all the protection the law has always afforded.*

Of course, these two decisions do not mean that because government may not dictate what the press is to print, neither can it afford a remedy for libel in any form. Gertz itself leaves a putative remedy for libel intact, albeit in severely emaciated form; and the press certainly remains liable for knowing or reckless falsehoods under New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and its progeny, however improper an injunction against publication might be.

One need not think less of the First Amendment to sustain reasonable methods for allowing the average citizen [418 U.S. 241, 263] to redeem a falsely tarnished reputation.

Nor does one have to doubt the genuine decency, integrity, and good sense of the vast majority of professional journalists to support the right of any individual to have his day in court when he has been falsely maligned in the public press.

The press is the servant, not the master, of the citizenry, and its freedom does not carry with it an unrestricted hunting license to prey on the ordinary citizen.

- *"In plain English, freedom carries with it responsibility even for the press; freedom of the press is not a freedom from responsibility for its exercise." "Without . . . a lively sense of responsibility a free press may readily become a powerful instrument of injustice." Pennekamp v. Florida, 328 U.S. 331 , 356, 365 (1946) (Frankfurter, J., concurring) (footnote omitted).*

To me it is a near absurdity to so deprecate individual dignity, as the Court does in Gertz, and to leave the people at the complete mercy of the press, at least in this stage of our history when the press, as the majority in this case so well documents, is steadily becoming more powerful and much less likely to be deterred by threats of libel suits.

Reasons for granting Question # 4:

There is no evidence, or reasonable argument, to prove that inflicting a fair penalty on a media outlet for negligently and without reasonable care publishing information that represents defamatory falsehoods would cause self-censorship and danger of determent of news that are legitimate; it is more reasonable to say that the result would be journalists

would take more time and effort to follow journalistic standards and correct procedure when reporting or broadcasting the news.

When you punish someone for doing some thing that is wrong, it doesn't deter him to do what is right, but what is wrong.

Does this court consider that allowing an innocent individual who has been defamed having a jury trial, whether he can recover money or not, to vindicate his reputation and let the public know the truth about what was falsely said about his character, honesty, integrity, mission and purpose in life, would represent such a terrible punishment to the media as to induce self-censorship?

Going to court will always be more expensive and stressful on the individual that has been defamed than on any media corporation. Litigating this case is costing nothing to any of the people that defamed and damaged the petitioner; NPR's insurance is taking care of it and this insurance is being paid by public and governmental funding. The respondents are moving on with their jobs; three attorneys hired by NPR are taking care of the case; while the petitioner is not free to move on with his life doing what he loves to do, his chosen profession, his chosen mission, his chosen cause.

NPR's article sits on top of the google search when searching for the petitioner's name.

The first information people get to read about the plaintiff is that he is dishonest, a trickster and a booster, purposeless, obsessed with fame and infamy. The internet makes an article exist forever, like if it was being republished every day.

The average reader will read this article and believe everything it says and will never know to which extent the info was manipulated and false, and published with negligence and actual malice... Not only this, but many people, without even bothering to visit the petitioner and his wife's websites and check that the information is true, will tell someone else about this "sensational" story...

If the interest of the public is what is primary, whether the public receives the wrong information because the journalist acted with actual malice or negligence (and the fact is that the publication of false defamatory statements will always involve some degree negligence) does not make a difference; the present libel law is not taking into account this interest when establishing a threshold for liability which in many cases will not allow a person to have a trial to defend himself and the truth, meaning that many people will never have the chance to learn the truth.

In the interest of the public, it would be better if the media, especially when reporting or broadcasting the news, would only publish what is known for a fact, instead of publishing wrong information that has not been properly investigated.

People are very busy these days and are not constantly rechecking the news, which means that when wrong information is delivered many of those people will never get to know the truth and many people will continued to be misinformed; and in many cases this can lead to serious implications.

In the case of NPR, it is even more important that the code of rules, standards and ethics when investigating and reporting the news is followed; National Public Radio claim to be an example of professionalism, and they claim to be transparent and have accountability; that is not what happened in this case.

Regarding this case, does the court believe it is in the interest of the public for National Public Radio to make people believe that an artist whose work is dedicated to seeking truth, raising consciousness and helping those who can't help themselves is instead dedicated to pull wool over people's eyes, to hoax them, to scam them; would the audience have any interest to find about this person's work if they think he is dishonest and that he is going to trick them; and will they not be deprived of things they could have received for their benefit if they would have been told the truth?

Do history and precedent contain any evidence to prove that the First Amendment was created for anything else but in regards to seditious libel; if the interest of the public is what is paramount, shouldn't the truth be allowed a chance to a trial so that the public are well informed; aren't the media supposed to serve the public, instead of the interest of the public in the truth being sacrificed to save the media a litigation cost...?

Reasons for granting Question # 5 are included in the question.

Reasons for granting Question # 6 A)

From Wikipedia 2019: National Public Radio is an American privately and publicly funded non-profit membership media organization based in Washington, D.C. NPR differs from other non-profit membership media organizations, such as AP, in that it was established by an act of Congress[2] and most of its member stations are owned by government entities (often public universities).

National Public Radio is partially funded by 329 Million Americans; $445 million American tax dollars a year, over 13 billion since 1970.

No matter how NPR and others want to "spin the truth" NPR is government funded by using American Citizens tax dollars, and the question is whether this makes the Government a joint participant. In *Columbia Broadcasting System v. Democratic National Committee* Douglas, J., concurring stated that ***"activities of licensees of the government operating in the public domain are government actions."***

- Justice Douglas argued repeatedly that government licensing of an activity constitutes sufficient government involvement to qualify that activity as state action subject to constitutional standards.

- Over two-thirds of the stations receiving federal funds from the CPB in 1988 were licensed to state and municipal government licensees, the Supreme Court should conclude that the actions of a large number of public stations satisfy the state action requirement.

It is not constitutional for the central government to be in the "nonprofit" *business* of television and radio, nor does the Constitution grant the federal government the authority to subsidize any media conglomerate. Government licensees of public stations is sufficient proof that the government is a state actor a question to first amendment challenges.

In order to invoke the first amendment's protection, a plaintiff must first demonstrate sufficient federal, state, or municipal government involvement ("state action") in the infringing conduct.

The conduct of a public station, acting under authority of a state or local government licensee, will likely constitute state action for first amendment purposes.

- Licensing of private conduct makes it state action (Justice Doug- las). *"Activities of licensees of the government operating in the public domain are government actions."*

- The editorial and operational deci-sions made by a public station licensed to a government entity do constitute state action for first amendment purposes.

- Public broadcasters' actions constitute state action since the public correctly associates these stations with the government institutions that operate them.

- A licensee's conduct is state action,"secure the public's First Amendment interest in receiving a balanced presentation."

- The editorial and operational decisions made by a public station licensed to a government entity DO constitute state action for first amendment purposes.

- The government cannot use its dollars to promote favored speech (or restrict unfavored speech) when the speech is not "a governmental message" made as part of a government program (*Legal Services Corporation v Velazquez*).

- Under the Spending Clause, Congress cannot use its spending power to "induce the recipient to engage in unconstitutional activity" (*South Dakota v Dole*).

Thus, if the Congress conditions a grant of money on the recipient taking some action that would violate the First Amendment rights of others, the action of Congress would be unconstitutional.

The "ultimate purpose" of our Constitution's separation of powers "is to protect the liberty and security of the governed." Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc. , 501 U.S. 252, 272 (1991).

That is why the Framers "viewed the principle of separation of powers as the absolutely central guarantee of a just Government." Morrison v. Olson , 487 U.S. 654, 697 (1988) (Scalia, J., dissenting).

The United States Supreme Court has held 176 Acts of the U.S. Congress as Unconstitutional since 2014.

This case calls upon the Court to vindicate that principle by striking down the unlawful action of an administrative agency FCC built around a single unaccountable and unchecked administrator.

Reasons for granting Question # 7

Considering and analyzing the broadcasters' claim that the Fairness Doctrine and two of its component rules violated their freedom of expression, we held that "*[n]o one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because `the public interest' requires it `is not a denial of free speech.*'" *Id.*, at 389.

Although the broadcaster is not without protection under the First Amendment, *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948), "*[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. . . . It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.*" *Red Lion, supra*, at 390.

The Supreme Court ruled unanimously in favor of the FCC and found the Fairness Doctrine to be constitutional. Justice White delivered the opinion of the Court and came to the conclusion that the federal government could place restrictions on broadcasters that could not be placed on ordinary individuals. The Fairness Doctrine required that those who were talked about be given chance to respond to the statements made by broadcasters.

The First Amendment must therefore safeguard not only the right of the public to *hear* debate, but also the right of individuals to *participate* in that debate and to attempt to persuade others to their points of view. See, *e.g., Thomas* v. *Collins*, 323 U.S. 516, 537 (1945); cf. *NAACP* v. *Button*, 371 U.S. 415. 429-430 (1963). Justice Powell Opinion

The FCC eliminated the fairness doctrine policy in 1987 and removed the rule that implemented the policy from the *Federal Register* in August 2011.

On August 22, 2011, the FCC voted to remove the rule that implemented the Fairness Doctrine, along with more than 80 other rules and regulations, from the *Federal Register* following an executive order by President Obama directing a "government-wide review of regulations already on the books" to eliminate unnecessary regulations.

NOTE: The executive order by Obama to remove the Fairness Doctrine on August 22, 2011 however is not Finite, (see Census Question: executive order by Donald Trump that was annulled by the Supreme Court)

> Article [X] (Amendment 10 - Reserved Powers states "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
>
> If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply. Marbury v. Madison, 5 U.S. 137 (1803)
>
> Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then

written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.

It is emphatically the province and duty of the Supreme Court to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

Page 5 U. S. 178

The judicial power of the United States is extended to all cases arising under the Constitution.

Page 5 U. S. 179

Separation of powers is a political doctrine originating in the writings of Charles de Secondat, Baron de Monttesquieo in The Spirit of the Laws, in which he argued for a constitutional government with three separate branches, each of which would have defined abilities to check the powers of the others.

This philosophy heavily influenced the writing of the United States Constitution, according to which the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power. This United States form of separation of powers is associated with a system of checks and balances.

The Communications Act of 1934 is a United States federal law signed by President Franklin D. Roosevelt on June 19, 1934 and codified as Chapter 5 of Title 47 of the United States Code, 47 U.S.C. 151 et seq. The Act replaced the Federal Radio Commission with the Federal Communications Commission (FCC). It also transferred regulation of interstate telephone services from the Interstate Commerce Commission to the FCC.

In Red Lion, the Supreme Court stated that "*[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than countenance monopolization of that market, whether it is by the Government itself or a private licensee.*" The Court went on to say that it was consistent with this First Amendment purpose for the Commission "to require a broadcaster to permit answers to personal attacks occurring in the course of discussing controversial issues."

36.

Reasons for granting Question # 8

On March 23, 2017, and on March 24, 2017, National Public Radio published and broadcasted numerous defamatory falsehoods against the petitioner.

> NPR's CODE: *We make every effort to gather responses from those who are the subjects of criticism, unfavorable allegations or other negative assertions in our stories. In all our stories, especially matters of controversy, we strive to consider the strongest arguments we can find on all sides.*
>
> *When a person or company has been charged with wrongdoing by official sources, we must carefully avoid presenting facts in a manner that presumes guilt.* (NPR are supposed to be careful even when a person has been officially charged; the petitioner hadn't even been accused.) *If the subject of the story doesn't know what you're going to report, how can we be fair to them?*
>
> *When news is breaking, make sure the people we're attempting to reach know about our deadlines — for the next newscast and the next program, for example. Look for proxies who may be able to defend their side.*

In complete violation to NPR's CODES of Rules, Standards, and Ethics, NPR never even attempted to give the petitioner the chance to reply and defend himself (from the attacks on his character, which destroyed his reputation and work, and led him into severe depression and 2 suicide attempts); the petitioner was never informed about the breaking news; nor was he contacted after the publication of the news; nor was he contacted to be invited to the broadcast; nor was he contacted afterwards.

3 months later, the Petitioner and his wife contacted NPR and were directed to NPR's in-house General Counsel Ashley Messenger and stayed 3 weeks in correspondence until the petitioner decided to file his lawsuit. The Statement of the Case explains all that happened, but in brief, I will explain the information required to understand this question.

NPR stated to the petitioner: ***"We have always wanted to hear your viewpoint."*** This is not true; again, NPR never contacted and invited the petitioner to participate, neither before the breaking news, nor after.

Together with NPR's corporate team, Messenger came up with an "offer" for the Petitioner, obviously hoping that the petitioner didn't realize that NPR had violated their rules.

NPR offered the petitioner to write his own story, but this "offer" as they called it, had "conditions/restrictions" to it, when stating, "...***NPR is not promising to publish it; we will decline to do so if...***"

Complete quote: "*We think our audience would be best served by having you say for yourself what your purpose has been. You may write up to 1500 words in a response that addresses what you would like the public to know about your career, your motives, your desire to change the world.*

I hope you'll take us up on this offer to allow you to communicate your vision to our audience. To be clear, NPR is not promising to publish it; we will decline to do so if we believe it would not serve our audience or might create liability." - Ashley Messenger General Counsel NPR

The 10th Circuit Court stated: that; "*He contacted attorney Messenger and requested that NPR remove the article and the interview from its website. She refused, but offered Mr. Yeager the opportunity to respond in an NPR forum. He declined.*"

This above statement by the 10th Circuit Court (in my humble opinion) is simplified with poor discernment of what was presented as facts. Yes, the Petitioner "declined" because of the "conditions/restrictions," which were Unconstitutional according to the First Amendment. *(This was all explained in my original filings in intricate detail to both Courts.)*

It is obvious that the only thing that could raise concern that "*might create a liability*" was not going to be a story about my purpose and mission in life, but if the petitioner was to address the truth; NPR itself and their breach of their144,000 word code of ethics; their extremely biased, unprofessional, malicious, unethical journalist, AND the false accusations made without proof, and the destruction of my reputation and entire "*40 year career overnight*" (Id. Judge) and personal life; yes, liability would be a factor, for instance, if an attorney happened to read this: *"...we will decline if..."*

Viewpoint discrimination . . .

is the term the Supreme Court has used to identify government laws, rules, or decisions that favor or disfavor one or more opinions on a particular controversy.

In *Perry Educ. Ass'n v. Perry Educators' Ass'n*, 460 U.S. 37 (1983), the Supreme Court divided forums into three types: traditional public forums, designated forums, and nonpublic forums. Traditional public forums include public parks, sidewalks and areas that have been traditionally open to political speech and debate. Speakers in these areas enjoy the strongest First Amendment protections. Sometimes, the government opens public property for public expression even though the public property is not a traditional public forum.

These are designated public forums. (NPR is government funded, therefore an official public forum.)

After opening a designated public forum, the government is not obligated to keep it open. However, as long as the government does keep the forum open, speech in the forum receives the same First Amendment protections as speech in traditional public forums. Examples of designated public forums include municipal theaters and meeting rooms at state universities.

In a 4-4 split decision the Justices unanimously agreed with the Federal Circuit that denying registration of a trademark based on the allegation that the mark disparages or offends certain groups, is unlawful viewpoint discrimination.

As Justice Alito explained in the Court's majority opinion (joined by Chief Justice Roberts, Justice Thomas, and Justice Breyer):

Our cases use the term *"viewpoint"* discrimination in a broad sense, "*Giving offense is a viewpoint.*"

"Commercial speech is no exception," the Court has explained, to the principle that the First Amendment "requires heightened scrutiny whenever the government creates a regulation of speech because of disagreement with the message it conveys." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (internal quotation marks omitted).

Unlike content based discrimination, discrimination based on viewpoint, including a regulation that targets speech for its offensiveness, remains of serious concern in the commercial context. See *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60-72 (1983).

Reasons for granting Question # 9

In contradiction to the mandatory precedent established in *Gertz v. Welch,* the district court in Kansas considered the petitioner a limited-purpose public figure (because he recorded the record album in 1989) and ordered that he had to prove actual malice.

There are several statements of opinion (in NPR's news article) that the district court declared protected stating:

> Even if an expression of opinion may have been skewed by a vindictive motive, if it is "'based on disclosed or assumed non defamatory facts [then it] is not itself sufficient for an action of defamation, no matter how unjustified or unreasonable the opinion may be or how derogatory it is.'" Piccone, 785 F.3d at 774 (quoting Yohe v. Nugent, 321 F.3d 35, 42 (1st Cir. 2003))).

With the understanding that in the brief to the court of appeals the issues needed to be narrowed, the pro se petitioner chose to address one of the most defamatory statements (written towards the end of the news article) which stated that the life of the plaintiff is *" one of purposeless obfuscation."*

(Another defamatory statement, written in the last paragraph of NPR's article, states that the petitioner *"has repeatedly poured more of his creative energy into being a trickster-booster than he has an artist."*

These statements severely harmed the petitioner's reputation (his work, his mission and in consequence his health) reflecting badly on his morality and integrity by describing him as a dishonest person. All comments made by NPR's audience (exhibits were provided in hyperlinks in the original filing) show that the result of the news article was not a debate about the official news that were reported by Discogs (because the news article was not written in good faith), but a direct attack on the petitioner's character, work and career. A day after the article was published, NPR continued to disgrace the petitioner in their news radio program "All Things Considered," stating that the petitioner was interested in *"infamy"* and in *"pulling wool over people's eyes."*

These statements are obviously defamatory, but also highly offensive, because they are clearly describing the petitioner as a corrupt person, having a willingness to act dishonestly for money or personal gain.)

The petitioner proved to the court of appeals that the reporter had acted with actual malice when making the statement stating that the life of the petitioner is one of *"purposeless obfuscation."*

The petitioner first proved the crucial omissions (of information and factual evidence) that were made by the respondent; the petitioner proved that the respondent willfully ignored evidence, facts, sources/witnesses, and statements that were adverse to his agenda.

In *Harte Hanks v. Connaugthon*, the U.S. Supreme Court ruled that the purposeful failure to interview a person with an opposing viewpoint can be evidence of actual malice. If it appears that the reporter is trying to "build a case" and is intentionally avoiding any information that would be contrary to the point he is trying to make, such an approach may be view as evidence of actual malice.

Secondly, the petitioner proved that the disclosed facts to support the respondent's opinion were false, defamatory, and had been made with (besides extreme negligence) actual malice (with either knowledge of falsity or reckless disregard for the truth); there was an intentional distortion of information; information was made up; and the respondent purposely republished information that he knew was false and defamatory or with reckless disregard for the truth.

> The court of appeals ruled:
>
> Although **Mr. Yeager may have preserved his argument as to whether** he is a limited public figure and whether **Mr. Flanagan made the "purposeless obfuscation" statement with actual malice,** he does not address the court's **alternative grounds for dismissal** of the defamation claims. *See also* Aplt. Opening Br. at 5.

41.

At Aplt. Opening Br. at 5, pro se petitioner states:

In January 2017, a test pressing of the album '301 Jackson St.' became the most expensive record sold on Discogs. On March 23, 2017, Discogs cancelled the transaction. Hours later, NPR published the article 'The Most Expensive Record Album Never Sold. [Discogs, Billy Yeager And The $18,000 Hoax That Almost Was]"

The article accused Plaintiff numerous times of "selling the record album to himself, motivated by a hunger for fame, or infamy." Discogs never provided information about the seller and the buyer, however, they stated that the accounts of the buyer and the seller were different (different ip addresses) and were located in different parts of the United States. Despite this knowledge they received from Discogs, NPR not only accused Plaintiff of selling the record to himself, but they decided to compensate for the lack of proof by manipulating the truth and fabricating false information regarding Plaintiff's work, career, and mission and purpose to support their accusations.

The district court considered that 'the statement of fact couched as an opinion' which is accusing the petitioner of being the perpetrator of a fraudulent sale (the seller and buyer of the record album deny the sale being fraudulent and were willing to testify in court) wasn't defamatory even if it was false; the district court also considered this statement was one of the 'disclosed facts' upon which the respondent based his statement stating that the life of the petitioner is "*one of purposeless obfuscation*"; therefor, the court of appeals concluded that, as one of the 'disclosed facts' upon which the defamatory claim "life of purposeless obfuscation" is made (the district court stated) is not defamatory even if it is false, the defamatory claim (and other defamatory falsehoods in the news article) is protected.

The petitioner considers this an outlandish error. First, the court of appeals is not stating any other reasons but the alternative grounds stated at Aplt. Opening Br. at 5, and these alternative grounds (referring to an action that happened in 2017) alone would not be able to provide privilege and protection to make the defamatory statement declaring the whole life of the petitioner (born in 1957) is one of purposeless obfuscation; again, on these alternative grounds alone no reasonable person would find it reasonable to summarize/label the life of the petitioner as one of purposeless obfuscation.

Secondly (although the petitioner didn't argue the alternative grounds in his brief to the court of appeals, because he had already argued them in the district court and thought that the court of appeals would be reading all of the information that had been forwarded to them from the district court) the information contained in Aplt.

Opening Br. at 5 shows the knowledge that defendant had prior to the publication of his article which proves that he acted with actual malice, either knowing something is false or with reckless disregard towards the truth. Discogs told the defendant that there was a buyer and a seller in 2 different states; instead of publishing the information received from Discogs, and in serious violation of NPR's standards, NPR decided to publish an accusation that they knew would damage someone very badly without any reasonable care.

(Note: *The district court never stated that the statement of fact couched as an opinion accusing the petitioner of being corrupt and perpetrating a fraudulent sale would not be considered defamatory even if actual malice was proven, which was proven by showing the knowledge the defendant had prior to the story. This information was ignored by the court of appeals. The crucial omission of factual information that the petitioner received from Discogs proves without a doubt the statement was made with actual malice (if the interest of the public is paramount, in this case the audience was never informed that Discogs had said there was a seller and a buyer in 2 different states and with 2 different IP addresses*).

Also, in his motions such as in his motion for reconsideration (295-300), the petitioner argued that this 'statement of fact couched as an opinion' was an allegation of dishonorable motives (specially in the context of the article in which the accusation was made multiple times attributing it to disgraceful motives) and that there was plenty of factual evidence that proved without a doubt that it diminished the esteem and confidence in which the plaintiff was held, excited adverse, derogatory and unpleasant feelings and opinions against him; and involved the idea of disgrace. The plaintiff also argued that the disclosed facts were false and had been made with actual malice/ negligence.)

Thirdly, all the relevant 'disclosed facts' to support this 'statement of fact couched as an opinion' that was made with actual malice, were defamatory and were proven to have been made with actual malice; information was purposely misrepresented to distort the truth and defamatory statements from 22 years ago were republished with knowledge of falsity.

Lastly, the facts upon which the statement stating that the life of the petitioner is one of *"purposeless obfuscation,"* which the petitioner argued in his brief to the court of appeals were false and made with actual malice, to which the court of appeals stated that *"Mr. Yeager may have preserved his argument as to whether Mr. Flanagan made the "purposeless obfuscation" statement with actual malice,"* were essentially the same disclosed facts upon which the court stated that the respondent based his 'statement of fact couched as an opinion' (accusing the petitioner of being the perpetrator of the sale), which means that based on the mandatory precedent in *Milkovich v. Lorain Journal*, this statement is not protected; the Supreme Court in *Milkovich* stated: Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact...As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.'"

Reasons for granting Question # 10:

After recounting the case history and the court's recent rulings in libel cases, Chief Justice Rehnquist wrote for the majority that the statement from *Gertz* was not "intended to create a wholesale defamation exemption for anything that might be labeled 'opinion'" since "expressions of 'opinion' may often imply an assertion of objective fact. [3] Diadiun's column, it found, strongly suggested that Milkovich perjured himself and was not couched hyperbolically, figuratively or in any other way that would mean the writer didn't seriously mean it. And since that statement could easily be found true or false by comparing Milkovich's statements at the OHSAA hearing with his court testimony (which the column did not do), it was moot whether it was intended as opinion or not since it asserted a matter of objective fact. "The connotation that petitioner committed perjury is sufficiently factual to be susceptible of being proved true or false," the Court concluded.

The district court in Kansas wrote:

> A valid defamation claim requires proof of: (1) false and defamatory statements; (2) the defendant communicated these statements to a third party; and (3) the plaintiff's reputation was injured by the statements.

El-Ghori v. Grimes, 23 F.Supp.2d 1259, 1269 (D.Kan. 1998)

"A statement is defamatory if it diminishes the esteem, respect, goodwill or confidence in which the plaintiff is held or excites adverse, derogatory or unpleasant feelings or opinions against him. A defamatory statement necessarily involves the idea of disgrace." Clark, 242 F.Supp.3d at 1217 (interior quotations omitted).

"Subjective statements and statements of opinion are protected by the First Amendment as long as they do not present or imply the existence of defamatory facts which are capable of being proven true or false." Milkovich v. Lorain Journal Co., 497 U.S. 1, 18- 19 (1990).

Even if an expression of opinion may have been skewed by a vindictive motive, if it is "'based on disclosed or assumed nondefamatory facts [then it] is not itself sufficient for an action of defamation, no matter how unjustified or unreasonable the opinion may be or how derogatory it is.'" Piccone, 785 F.3d at 774 (quoting Yohe v. Nugent, 321 F.3d 35, 42 (1st Cir. 2003))).

If the subject of an alleged defamatory statement is a matter of public concern, then the First Amendment requires that the alleged defamatory statement be published with actual malice. Brokers' Choice of America, Inc. v. NBC Universal, Inc., 861 F. 3d 1081, 1109 (10th Cir. 2017). "[P]ublic concern is something that is a subject of legitimate news interest; that is, a subject of general interest and of value and concern

> to the public at the time of publication." City of San Diego v. Roe, 543 U.S. 77, 83-84 (2004).

The 'statement of fact couched as an opinion' (accusation against the petitioner) was repeated many times, and it was clear the statement accused the petitioner of being the perpetrator of a fraudulent sale that was attributed to dishonest and dishonorable motives. Although Discogs stated there was a buyer and a seller located in 2 different states, the respondents omitted this crucial evidence and instead manipulated information from the petitioner's websites, misrepresented information, took information out of context, fabricated material, and republished defamatory information (from over 22 years ago) against the petitioner with actual malice, distorting the truth about the petitioner's character, work, career, and his purpose and mission in life.

The 'statement of fact couched as an opinion' presented the existence of defamatory facts which were capable of being proven false such as the accusation against the petitioner, which could be proven false (for the seller and the buyer of the record album were willing to testify in court and present the record album which NPR also stated without any proof may not exist.)

The 'statement of fact couched as an opinion/accusation' was considered by the district court as one of the disclosed facts that supported other defamatory statements such as *"The story of Billy Yeager is one of purposeless obfuscation," "Yeager has repeatedly poured more of his creative energy into being a trickster-booster than he has an artist," "He's a huckster," "He's a charlatan," "This guy is far more interested in infamy...and the chase of pulling the wool over people's eyes."*

> The court stated: Flanagan referred to Yeager as "a complete unknown" who sold the album on Discogs to himself to "get this strange type of publicity that he's been seeking his entire life."
>
> Ganz concluded that this was a use of the Internet by plaintiff to gain attention and "part of the long story of people in the

music industry doing crazy things." Doc. No. 13-2, p. 22. This supplies the factual basis for the opinion that plaintiff was a "huckster" or a "charlatan."

The alleged fact that plaintiff bid on his own album on Discogs is not defamatory, even if it is false.[3] Therefore, the statement is not defamatory because it is an opinion drawn from an alleged non- defamatory fact.

[3] Plaintiff also has not alleged facts which would plausibly demonstrate actual malice by defendants in concluding that plaintiff bid on his own album.

Doc 29 Page 16

The court allowed the petitioner to file an amended complaint in which the petitioner proved the 'statement of fact couched as an opinion' accusing the petitioner of perpetrating a fraudulent sale was false and had been published with actual malice.

The district court never stated that this statement would not be defamatory if actual malice was proven (which was proven by showing the crucial information that was omitted (the statement from Discogs that there was a seller and a buyer in 2 different states and different IP addresses.)

In any case, **all the relevant disclosed facts to support this 'statement of fact couched as an opinion' were declared and proven false and to have been made with actual malice** (either with knowledge of falsity or with reckless disregard for the truth), even though, by the test established by Gertz (which is mandatory precedent), the petitioner, not having thrust himself into the controversy and having had no participation and no chance for rebuttal on any media platform doesn't meet the standard to be considered a limited purpose figure but an involuntarily limited-purpose public figure or a private figure that only needs to prove negligence (negligence was strongly proven).

Although there was no proper investigation conducted, no verification / corroboration

done, no talk to relevant sources, no contacting the petitioner, and no reasonable care, but a great violation of the standards and code of rules of NPR and The Society of American Journalists, this was not only a case of negligence. Not only did the respondents falsely accuse the petitioner without proof, but they used this unverified accusation as the basis of their sensational story defaming the character, work and life of the petitioner.

The petitioner's work, his fictional film *Jimmy's Story* (which received 5 awards at the Palm Beach International Film Festival and the Dahlonega Film Festival where it premiered) was purposely misrepresented; information from the petitioner's websites was manipulated and misrepresented to create a sensational story that had the potential to be spread all over the world...

The main disclosed facts that the district court stated protected the 'statement of act couched of an opinion' accusing the plaintiff of perpetrating the fraudulent sale on Discogs because he is a "huckster," a "charlatan," "far more interested in infamy...and the chase of pulling the wool over people's eyes...", were:

1) ***a Miami Herald article published in 1996.*** This article couldn't be found any where else but in the petitioner's website; the respondents found this article in petitioner's website where it was clearly explained that this article was false and defamatory and that one of the petitioner's co-producers in the film "Jimmy's Story," Glenn DeRosa, had demanded a retraction (the article in the Miami Herald was also defamatory against Glenn DeRosa), but the newspaper never did it. **Having this knowledge, it indicates actual malice to republish information that was indicated on the petitioner's website** to be false and defamatory and not to make a single attempt to contact the petitioner or Glenn DeRosa. (A certified letter by Glenn DeRosa explaining all this was provided as an exhibit in one of the petitioner's motions to the district court.)

2) ***an article reviewing the plaintiff's film "Jimmy's Story" (specifically the first cut of the film), published in 1997 in the Broward Palm beach New Times.***

The respondents falsely and purposely stated Jimmy Story's was "a documentary about Yeager's life." All the official information regarding this award winning film that

took the petitioner over 22 years to complete was located also in the petitioner's website www.billyyeager.com (about page), where it was clearly explained that the movie was mostly fictional (involving 4 different film genres such as mockumentary and pseudo-docu), including the performance artwork undertaken by the fictional film character Jimmy Story played by Billy Yeager. The respondents purposely manipulated and misrepresented the petitioner's film work and performance artwork, the same way that it was done 22 years ago, trying to discredit the petitioner as a serious artist and activist against the sensational and lying media, which in the opinion of the petitioner is trying to mislead and stupefy people to advance their agendas.

(The media omitted the fact that I am a media activist, and why I am a media activist.)

3) **the statements from the author of the Broward Palm Beach New Times article reviewing the film "Jimmy's Story."**

This person had not been in contact with the petitioner for 17 years. He had never met the petitioner's wife Anais. He never responded to Chris Von Weinberg or Damon Blalack who contacted him when they were co-producing an independent film documentary about Billy Yeager's musical career. With no knowledge, he stated statements of opinion accusing the plaintiff of being Chris Von Weinberg and stating Anais had come to the U.S. attracted by the character Jimmy Story. These statements are false and defamatory and for NPR not to contact a single relevant source and not to make any attempt to verify the statements of opinion made by someone that had not been in contact with the petitioner for 17 years before publishing them is complete reckless disregard for the truth.

4) **a statement from Discogs that the sale was cancelled.**

That was not the only information Discogs stated; they stated there was a buyer and a seller located in two different states, therefor this disclosed fact is "incorrect and incomplete."

5) **an email conversation with the "buyer" of *301 Jackson St.* who used the name "Al Sharpton" and would not respond to the question of whether the buyer was Yeager.**

The court wrongly stated "Al Sharpton" was the buyer of the album; he was the seller.

He offered his written statement and that was all he wanted to say. He and the buyer of the album are willing to testify in court.

6) **very pricey collectible items selling on-line.**

Some of these items where being sold by the petitioner's manager, some were not.

Argued previously in district court filings.

In brief: There were only 22 seats for the benefit concert; it included a 14 piece band; all proceeds were going to go for charity; the concerts were being promoted to the well-to-do; the price was $7500 per person; also Damon Blalack and Chris Von Weinberg were pressing limited editions of the petitioner's music for the 10th anniversary of Record Store Day; all proceeds were going to be used for charity.

https://www.brownpapertickets.com/event/2596931

CONCLUSION

It is certain that a man is indefeasibly the owner of what he has been able to produce by his own labour out of his own material, employing his own resources. In much the same way his reputation, which is the outcome of his meritorious activity, is his property. To despoil him of this without adequate cause is to be guilty of formal injustice more or less grievous according to the harm done.

It is a personal injury, a violation of commutative justice burdening the perpetrator with the obligation of restitution.

Indeed St. Thomas, in attempting to measure the comparative malice of the sin of detraction (defamation, libel, slander, calumny, mudslinger) decides that whilst it is less than homicide or adultery it is greater than theft. This, because amongst all our external possessions a good name holds the primacy.

One who has injured another's reputation is bound to rehabilitate his victim as far as possible. A calumnious statement must be retracted. If as a result of the backbiting or slander there has followed, for example, the loss of money or position, this must be made good. The tale-bearer or slanderer is bound in conscience to find a way to undo the harm and compensate the person whose reputation he has damaged. Catholic Encyclopedia (1913)/Reputation (as Property)

I respectfully ask the court's Justices to allow me this introduction.

I am self-represented, I have no help except for my wife. I am on several medications, anti-depressants, PSTD medications; I was prescribed these medications after I attempted suicide and due to severe depression. I am not happy about this, the medications have side effects, some times I can't stop sweating, but they have helped me; still nothing completely removes the sadness/pain that can turn into anger for the injustice to be robbed from what I have earned through much effort and hard work. I did not have an easy childhood.

Please understand not only do I have an 8th grade education, but I made D's in elementary school, I had learning disabilities, attention deficit disorder, and pee my pants all the way until I quit. I got tired of being shouted at and ran away from home as I turned 14 years of age; I lack much in this regard.

My wife has been helping me through all my filings trying to repair our lives that were damaged by the media due to laws that were passed that allow the media and press to destroy people's lives.

I am still trying to hang on dearly for life, but that is not easy when the world is told you are a fraud, how can you sell tickets to a benefit concert and who is going to hire a fraud?, and the courts don't allow you even the chance to present your evidence and truth to a court of law and a jury.

When my wife was 10 years old, she put a note in a bottle and threw it off the cliff into the ocean where she lived in Spain, the long story short is that what she asked for was myself (a friend and soulmate), it was a miracle the way it all happened, and 14 years ago, in our 3rd letter to each other we decided to get married, we knew the Creator had brought us together and we were true soul-mates and had the same desires to use our talents to help change the world for the better of humanity, raising consciousness and bringing awareness to the suffering and the injustice

How could all this happen?

I believe because of Sullivan and its progeny.

To put this in a perspective and show you how the media and press sees itself, and the power that they KNOW they have retained, thanks to Sullivan, consider these words of NPR attorney's assistant; when I asked him,

"If you were in my shoes and your whole life was destroyed, wouldn't you sue if you were me?" He answered, "No."
I asked him why, and he said coldly, confidently and matter of factly, "Because you won't win."

And that is where we are at today. 1964.

The American People deserve more, society is not bettered by lies, in the words of Justice Story:

Justice Story, expounding the First Amendment, which declares "Congress shall make no law abridging the freedom of speech or of the press," said (§ 1880): "*That this amendment was intended to secure to*

every citizen an absolute right to speak, or write, or print whatever he might please, without any responsibility, public or private, therefor is a supposition too wild to be indulged by any rational man. This would be to allow to every citizen a right to destroy at his pleasure the reputation, the peace, the property, and even the personal safety of every other citizen. A man might, out of mere malice and revenge, accuse another of the most infamous crimes; might excite against him the indignation of all his fellow citizens by the most atrocious calumnies; might disturb, nay, overturn, all his domestic peace, and embitter his parental affections; might inflict the most distressing punishments upon the weak, the timid, and the innocent; Page 283 U. S. 733 might prejudice all a man's civil, and political, and private rights, and might stir up sedition, rebellion, and treason even against the government itself in the wantonness of his passions or the corruption of his heart. Civil society could not go on under such circumstances. Men would then be obliged to resort to private vengeance to make up for the deficiencies of the law, and assassination and savage cruelties would be perpetrated with all the frequency belonging to barbarous and brutal communities. It is plain, then, that the language of this amendment imports no more than that every man shall have a right to speak, write, and print his opinions upon any subject whatsoever, without any prior restraint, so always that he does not injure any other person in his rights, person, property, or reputation, and so always that he does not thereby disturb the public peace or attempt to subvert the government. It is neither more nor less than an expansion of the great doctrine recently brought into operation in the law of libel, that every man shall be at liberty to publish what is true, with good motives and for justifiable ends. And, with this reasonable limitation, it is not only right in itself, but it is an inestimable privilege in a free government. Without such a limitation, it might become the scourge of the republic, first denouncing the principles of liberty and then, by rendering the most virtuous patriots odious through the terrors of the press, introducing despotism in its worst form."

Consider the excerpts from a article written by attorney Ashley Messenger NPR's General Counsel:

From the UNC School of Law THE PROBLEM WITH *SULLIVAN by Ashley Messenger*

"The Supreme Court should acknowledge the importance of providing constitutional protection to statements with an expressive purpose by narrowing the field of "factual assertions." "The problem with New York Times, Co. v. Sullivan and its progeny is the assumption that an expression of knowing falsity is always harmful. The analysis

proposed herein would also be consistent with Sullivan that constitutional protection does not depend on truth," "I argue that there are nevertheless occasions when false statements-even knowing false statements-are, in fact, useful and should be afforded constitutional protection, false beliefs are part of the truth of the way the world is," "it would make sense, therefore, to rethink the basis for constitutional protection for speech in libel cases so that these valuable types of expression can receive constitutional protection."

In short, Sullivan isn't enough, the media wants more from you, they want COMPLETE freedom.

I have always had deep respect for those who have served our country, but I want you all to know something . . . I have the utmost deepest respect for what you do, the most difficult decisions of what is best for this great country. I have read about our founding fathers, the Constitution, and about each of you, reading the Supreme court cases, watching your interviews, understanding the process, listening to the audios of arguments, reading the SCOTUS blog, and in doing so,

I have learned to respect those who took great risk to write these amendments and Bill of Rights, and I have learned to fully understand what I once thought were cluttered words that had no meaning; "ask not what your country can do for you, but what you can do for your country" and knowing and understanding this, I will tell you a truth, I KNOW what I can do "for my Country" (JFK). This is not about myself anymore, this fight is for my Country, because even myself with an 8th grade education understands something is not right with our libel laws, and so I am fighting for you, me, all the American citizens, and deep down in my spirit and soul I know these great men are looking down and know I do it for them and for the "original intent," and to bring what what was stolen by the devil.

But most of all I do it for the Creator, if I conquer, and if I so called "win" it is not for my Glory, but for the Lords, because in all our righteousness it says, we are but dirty filthy rags according to the Supreme perfection of Holiness.

I am a servant of God, and that is all, and I will Glorify His Name, and I will pray the devil be defeated, because the first sin of man began from a "little deceptive lie," and the fall of man began. This war is not just about us, or the media, it is about right and

wrong, and the commandment "thou shall not lie." It was "commanded" and the command was good, because it was meant to protect us from our own self destruction. To defend the liar and punish the good is evil, William Yeager v. NPR.

If the good prayer says, "My Will be done on earth as it is in heaven" then there is only one question for you to answer amongst my many above; in heaven . . . will there be a place for lies in God's Kingdom of Heaven?

Our only petition should be "Thy kingdom come, Thy will be done"... ask the Creator, "what is your will?"

The answer in this case is not as complicated as actual malice, limited public figure, thrusting or not thrusting, God's "small voice inside your head" is clear and lucid and simple.

Edmund Burke stated, "The only reason that evil exists, is that good men do nothing."

Solomon the wisest man known said, "Cut the baby in half," and the real mother said, "give the child to her," and Solomon then knew who the real baby's mother was, it wasn't complicated, God's ways and judgments are not; make the path straight, be not lukewarm, remove lawlessness "NY Times v. Sullivan" serve Baal, or serve God, but you cannot serve both, there is no middle ground.

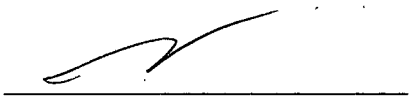
I do not speak on my own authority, but moved by the Spirit of God, "Thou Saith the Lord your God, "Repent, for the day of the Lord will come, I send my Watchman as my Voice in days of violence; let each do what is good, pure and nobel, never forsaking the Lord your God, Repent oh thy Nation, for what does profit to quench the Spirit for the lust of the flesh; seek you will find, and there may be your own child in waiting," Thus saith the Lord.

May I pray for your understanding and wisdom, and may God's blessings and revelation of "truth" be bestowed upon you. Amen

"It is only in the heart that one can see rightly; what is essential is *invisible to the eye*." The Little Prince

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: OCT. 19, 2019