No. 21-1369

In The

Supreme Court of the United States

CARTER PAGE,

Petitioner,

v.

OATH, INC.

Respondent.

On Petition for Writ of Certiorari to the Delaware Supreme Court

BRIEF FOR AMERICA FIRST LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

America First Legal Foundation (AFL) is a public interest law firm providing citizens with representation in cases of broad public importance to vindicate Americans' constitutional and common law rights, protect their civil liberties, and advance the rule of law.

SUMMARY OF ARGUMENT

The Court should grant Dr. Carter Page's petition for a writ of certiorari and reconsider *New York Times v. Sullivan,* 376 U.S. 254 (1964).

First, *Sullivan* is judge-made law that bears no relation to Constitutional text, structure, or history. This is reason enough for the Court to revisit the doctrine. *Berisha v. Lawson,* 141 S. Ct. 2424, 2425 (Thomas, J., dissenting).

Second, if ensuring an informed democratic debate is indeed the doctrinal goal, *see Sullivan,* 376 U.S. at 269 citing *Stromberg v. People of State of Cal.*, 283 U.S. 359, 369 (1931), then there are compelling additional reasons for the Court to reconsider *Sullivan* and its extensions. Neither the intentional lie nor the careless error materially advances society's interest in uninhibited, robust, and wide-open debate on public issues. *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 340, (1974) (citation omitted). Historically, libel

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[1] This brief was not written in whole or in part by counsel for any party, and no person or entity other than the amicus has made a monetary contribution to the preparation and submission of this brief. Counsel of Record for all parties received timely notice of the amicus curiae's intention to file this brief, and it is filed with their consent.

law checked such lies and errors. Yet *Sullivan* requires defamed individuals to meet an "almost impossible" standard, thereby providing corporate media with effective immunity from liability. *See McKee* v. *Cosby,* 139 S. Ct. 675 (2019) (Thomas, J., concurring) citing *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 771 (1985) (White, J., concurring). This immunity, in turn, has become an "ironclad subsidy for the publication of falsehoods by means and on a scale previously unimaginable." *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting).

Dr. Page's case highlights *Sullivan's* worst excesses. It arises from an unimaginable lie. *United States of America v. Michael Sussman,* No. 1:21-cr-00582-CRC, Doc. 97 at 1-2, 5-11, 13-15, 18 (D.D.C. Apr. 25, 2022), Doc. 70 at 20 (D.D.C. Apr. 15, 2022);[2] *United States of America v. Igor Y. Danchenko,* No. 1:21-cr-00245-AJT, Doc. 1 ¶¶ 3-6, 10-12, 18-22, 27-36, 41, 45-57, 49, 51-52 (E.D. Va. Nov. 3, 2021). Yet, citing the doctrine, the court below held Dr. Page has no right to vindicate his reputation in court, and no remedy for the harm he has suffered. Pet. App. 33-35.

Accordingly, this case is a uniquely appropriate vehicle for the Court to reconsider *Sullivan*. By reconnecting the legal rules with constitutional text, history, and structure, the Court will restore libel law as an effective check on and balance to corporate media power. Unchecked and unbalanced, such power is a significant threat to freedom and self-government.

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[2] Dr. Page is the person identified as "Trump Advisor-1" in the Special Counsel's pleadings.

ARGUMENT

I. *Sullivan* lacks constitutional basis.

Justice Thomas has persuasively demonstrated that *Sullivan* and its extensions have no relation to or grounding in Constitutional text or history. *McKee,* 139 S. Ct. at 678-80 (Thomas, J. concurring). On this basis alone, a second look at the Court's doctrine is proper. *See, e.g., West Virginia Bd. of Ed. v. Barnette,* 319 U.S. 624, 641-42 (1940).

There are compelling additional reasons for the Court to revisit *Sullivan* and its extensions. The stated purpose of the Court's doctrine is to protect the marketplace of ideas necessary for informed debate and political self-government. *See Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 308 (2012) (citations omitted); *Sullivan,* 376 U.S. at 679-71 (citations omitted). However, the practical effect of the doctrine is at odds with this purpose. *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting) (citations omitted).

To protect ordered liberty, our system of government is infused with checks and balances. For instance, the separation of government into coordinate branches checks the abuse of political power. The Federalist 48, pp. 308, 313 (New Am. Library Mentor ed. 1961) (J. Madison); *Morrison v. Olson*, 487 U.S. 654, 693 (1988). Public access to trials checks the abuse of judicial power. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 596 (1980) (Brennan, J., concurring) (citations omitted). And the Sherman Act checks the abuse of economic power. *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

In our Republic, where the people govern themselves through their elected representatives, the concentration and abuse of corporate media power threatens liberty, just as much as the concentration of political, judicial, and economic power. "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969). The business of the media "is the promotion of truth regarding public matters by furnishing the basis for an understanding of them." *Associated Press v. United States*, 326 U.S. 1, 28 (1945) (Frankfurter, J., concurring). But if corporate media have functionally unchecked and unbalanced power to lie, and if technology corporations have functionally unchecked and unbalanced power to control the channels of information, then the marketplace of ideas is corrupted, and the First Amendment's core purpose is frustrated. *See id.* at 20 (Black, J.).[3]

Historically, libel law checked the abuse of corporate media power. Pet. App. 39-40 (citation omitted); *see generally Lawson,* 141 S. Ct. at 2426 (Gorsuch, J., dissenting); *McKee,* 139 S. Ct. at 678-79

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[3] "The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society .... Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests." *Associated Press*, 326 U.S. at 20 (Black, J.) (citations omitted).

(Thomas, J., concurring). In fact, a person's common law right to protect his or her reputation formed the backdrop against which the First and Fourteenth Amendments were ratified. *Id.* at 679-80. Civil society was understood to have a "pervasive and strong interest in preventing and redressing attacks upon reputation", and the right to protect one's reputation from unjustified invasion and wrongful hurt was long understood to be critical to ordered liberty. *See Rosenblatt v. Baer,* 383 U.S. 75, 86, 92 (1966); *see also McKee,* 139 S. Ct. at 678-80 (Thomas, J., concurring).

In *Sullivan,* however, the Court first federalized and then eviscerated the common law. 376 U.S. at 269-70. In doing so, almost certainly unintentionally, *see Red Lion,* 395 U.S. at 390, it unchecked corporate media power.[4]

The *Sullivan* doctrine clearly bears the imprint of its origins; it was judge-made law based on policy considerations arising from the unique economic and political circumstances of 1964 America. *Lawson,* 141 S. Ct. at 2426-29 (Gorsuch, J., dissenting); *McKee,* 139 S. Ct. at 675 (Thomas, J. concurring); *see also Tah v. Global Witness Publishing, Inc.,* 991 F.3d 231, 251 (D.C. Cir. 2021) (Silberman, J., dissenting). But times and technology change, and the Court's policy-driven decision in *Sullivan,* detached from the Constitution's

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[4]"It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." *Red Lion* 395 U.S. at 390.

text, history, and structure, has had baleful unintended consequences.

For example, when the Court originally adopted the actual malice standard, a requirement "cut from whole cloth," *id.*, it decided that the publication of *some* false information was a necessary and acceptable cost to pay to ensure truthful statements vital to democratic self-government were not inadvertently suppressed. *Sullivan*, 376 U.S. at 270-272; *see also Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting). Although the Court subsequently disclaimed any intention to "accord the press absolute immunity in its coverage of public figures," *Harte-Hanks Commc'ns, Inc. v. Connaughton,* 491 U.S. 657, 688 (1989), the *Sullivan* doctrine has done precisely that, becoming "an effective immunity from liability." *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J.). As a result, the rules intended to ensure a robust debate over actions taken by high public officials carrying out the public's business, *Sullivan,* 376 U.S. at 268,[5] leave ordinary citizens without recourse.

The Court has long acknowledged that *Sullivan* may have struck an improvident balance between media companies and the right of those who have been defamed to vindicate their reputation. *See Dun & Bradstreet, Inc.,* 472 U.S. at 767 (White, J.,

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[5]"Respondent relies heavily, as did the Alabama courts, on statements of this Court to the effect that the Constitution does not protect libelous publications. Those statements do not foreclose our inquiry here. None of the cases sustained the use of libel laws to impose sanctions upon expression *critical of the official conduct of public officials*." *Sullivan*, 376 U.S. at 268 (emphasis added) (citations omitted).

concurring). In theory, *Sullivan* protected the marketplace of ideas by advancing the principle that "debate on public issues should be uninhibited, robust, and wide-open." 376 U.S. at 270. However, in application, *Sullivan* and its extensions immunize media companies from liability for even the most outrageous lies, incentivizing the publication of falsehoods. *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting). The First Amendment's core purpose is to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, *Red Lion,* 395 U.S. at 390 (citations omitted). But legal doctrine that unchecks and unbalances corporate media power by empowering it to lie facilitates the corruption of this marketplace, threating self-government and ordered liberty.

II. *Sullivan* is an ironclad subsidy for falsehoods.

This case starkly demonstrates that *Sullivan* is an "ironclad subsidy for the publication of falsehoods…". *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting).

Dr. Page was grievously defamed and harmed by a lie through "means and on a scale previously unimaginable." *See Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting). But the court below, citing *Sullivan,* denied him the opportunity to defend his reputation in court. Pet. App. at 17-18. The facts here should outrage every American who cares about the rule of law. And if the Delaware Supreme Court applied *Sullivan* correctly, then to protect the First Amendment's core purpose, it should be overruled.

A. The origin of "Russia collusion."

For partisan political gain, Michael Sussman, Mark Elias, Perkins Coie LLP, Hillary for America, Inc., the Democratic National Committee, Fusion GPS, and their ideological allies in the government and the media, including Michael Isikoff and Yahoo! News, combined to manufacture and disseminate the lie that former President Donald J. Trump was a "Manchurian candidate" who colluded with Russia. *Sussman,* Doc. 97 at 1-2, 5-11, 13-15, 18; *id.*, Doc. 70 at 20; *Danchenko,* Doc. 1 ¶¶ 3-6, 10-12, 18-22, 27-36, 41, 45-57, 49, 51-52. Dr. Page was the scheme's "fall guy," an innocent victim of a political dirty trick without parallel in our history. Pet. App. 41-43, 46-51, 57, 60-64; *Sussman,* Doc. 97 at 8.

To distract the public from Hillary Clinton's use of a private email server when she served as Secretary of State, and from Wikileaks's disclosure of Democrat National Committee emails disclosing that top officials were actively working to harm the Bernie Sanders campaign, the Clinton campaign and its allies developed and executed a plan to fabricate and disseminate the lie that then-candidate Donald J. Trump was colluding with Russia. The Russian collusion lie was first made publicly by Robby Mook, the Clinton campaign manager, on July 24, 2016. *See* Jake Tapper, "Interview with Hillary Clinton Campaign Manager Robby Mook", CNN Transcripts (July 24, 2016), https://cnn.it/3LQt3li. However, the lie had been under construction for months before then.

According to the Special Counsel, Perkins Coie LLP, acting on behalf of the Clinton campaign, hired an opposition research company called Fusion GPS

earlier in 2016 "to collect and disseminate derogatory information into the public sphere" for the purpose of triggering negative news stories about then candidate Trump. *Sussman,* Doc. 97 at 6. Fusion GPS, in turn, hired Christopher Steele in or about May 2016 to produce work product falsely claiming that Russia could blackmail Trump. This was the fake "Steele Dossier."[6]

Dr. Page was a centerpiece in this artifice. *Sussman,* Doc. 97 at 7. On May 14, 2016, a Fusion GPS employee emailed a Slate reporter to share "research" that Fusion GPS had conducted regarding Dr. Page. *Id.* For his part, Steele shared his "research" about Dr. Page with his FBI contact on or about July 5, 2016. *Danchenko*, Doc. 1 ¶¶ 1-6.

On July 26, 2016, Fusion GPS emailed a Wall Street Journal reporter and lied about Dr. Page. *Id.* In the email, the Fusion GPS co-founder stated, in part, *"Well this thing is only gonna get bigger. You know the Russians aren't done dumping. OTR the easy scoop waiting for confirmation: that dude* [Dr. Page] *met with Igor Sechin when he went to Moscow earlier this month. Needless to say, a Trump advisor meeting with a former KGB official close to Putin. . . would be huge news."* In a subsequent email on the same date, the Fusion GPS co-founder urged the reporter to *"call [a named U.S. Representative] or [a named U.S.*

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[6] Margot Cleveland, "Spygate 101: A Primer on the Russia Collusion Hoax's Years-long Plot to Take Down Trump", The Federalist (Mar. 18, 2022) (linking to source documents), https://bit.ly/3KKW3cU; Jonathan Turley, "Clinton lawyer's indictment reveals 'bag of tricks", The Hill (Sep. 18, 2021), https://bit.ly/3LUkyWo.

Senator]," stating, *"I bet they are concerned about what* [Dr. Page] *was doing other than giving a speech over 3 days in Moscow." Id.* at 7.

According to the Director of National Intelligence, U.S. intelligence agencies obtained insight into Russian intelligence analysis alleging that Hilary Clinton had approved a plan to stir up a scandal against candidate Trump by tying him to Putin in late July 2016. Handwritten notes by former Central Intelligence Agency Director Brennan show that on July 28, 2016, he briefed President Obama and other senior national security officials on the intelligence, including the "alleged approval by Hillary Clinton on July 26, 2016, of a proposal from one of her foreign policy advisors to vilify Donald Trump by stirring up a scandal claiming interference by Russian security services." Then, on September 7, 2016, the CIA sent a memorandum to Peter P. Strozk of the FBI's Counterintelligence Division regarding "Clinton's approval of a plan concerning U.S. Presidential candidate Donald Trump and Russian hackers hampering U.S. elections as a means of distracting the public from her use of a private mail server." *See* Letter from John Ratcliffe, Director of National Intelligence, to the Hon. Lindsey Graham, Chair. Senate Judiciary Committeee (Sept. 29, 2020), https://bit.ly/3LT3kZD.[7]

On September 23, 2016, Michael Isikoff and Oath Media packaged Fusion GPS's lies into a false story

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[7] *See also* Brooke Singman, "DNI declassifies Brenan notes, CIA memo on Hillary Clinton 'stirring up' scandal between Trump, Russia", Fox News (Oct. 6, 2020) (text of CIA memorandum), https://fxn.ws/3Ne15Av.

regarding non-existent "significant and disturbing ties" between the Trump campaign and the Kremlin. Isikoff referenced "multiple sources who have been briefed on the issue" of Dr. Page's alleged "private communications with senior Russian officials" but failed to disclose that the "briefings" were provided by the Clinton campaign, through Fusion GPS, or that the "intelligence reports" of Page's activities were fabricated by Christopher Steele. *See* Michael Isikoff, "U.S. intel officials probe ties between Trump advisor and Kremlin", Yahoo! News (Sept. 23, 2016), https://yhoo.it/3PekYcq.

Notwithstanding the government's knowledge that Russia collusion was a Clinton campaign falsehood, the lies about Dr. Page, laundered through the Isikoff article, were used as pretext for intelligence operations against him. Pet. App. at 8 (citation omitted). In four separate filings with the Foreign Intelligence Surveillance Court, Dr. Page was described as part of a "well-coordinated conspiracy of co-operation" between Trump's campaign and the Russian government. *Danchenko*, Doc. 1 ¶ 6; Office of the Inspector General, U.S. Dep't of Justice, "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation" at vi (2019). At all times relevant, the FBI knew that Dr. Page was working for the CIA as an "operational contact," not for the Russians. *Id.* at viii.

Former President Trump defeated Hillary Clinton and won the 2016 election. However, the Russia hoax generated years of poisonous controversy,

damaging the Nation's social fabric and cohesion.[8] And along the way, Dr. Page – the pawn in the scheme – had his reputation and business destroyed.

B. Dr. Page's defamation claim.

In 2020, Dr. Page sued Oath, Inc., publisher of the false Isikoff story, for defamation. Pet. App. 2, 41. His suit centered on factual statements alleging that he met with Russian officials close to Vladimir Putin in the Kremlin ("Sechin and Ivanov"); that U.S. officials had received intelligence reports of these meetings; and that a well-placed Western intelligence source had told Yahoo! News that U.S. officials had received these reports. Pet. App. 4-5, 41-42. These "facts", however, were fabrications, and Isikoff knew it. *See Sussman,* Doc. 97 at 7-10. Specifically:

- The referenced "meeting" between Dr. Page and Russians with ties to Putin never happened. In the words of a Washington Post official to whom Fusion GPS had shopped this lie, "That [Dr. Page] met with Sechin or Ivanov. 'Its bullshit. Impossible,' said one of our Moscow sources." In an email back later that day, Fusion GPS wrote: "No worries, I don't expect lots of people to

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[8] *See generally* J. Peder Zane, "Russiagate, America's Greatest Scandal," Real Clear Politics (Dec. 8, 2021), https://bit.ly/388fZJm; Letter from Sen. Charles Grassley and Sen. Lindsey Graham to Susan Rice (Feb. 8, 2018), https://bit.ly/3shmKj9; Lee Smith, "Here Comes the Limited Hangout", Tablet (Dec. 2, 2021), https://bit.ly/3ygnVDf; Matt Taibbi, "It's official: Russiagate is this generation's WMD," TK News by Matt Taibbi (Mar. 23, 2019) https://bit.ly/3PfpK9F.

believe it. It is, indeed, hard to believe." *Id.* at 8.

- The "intelligence reports" were the Steele Dossier. *Danchenko,* Doc. 1 ¶¶ 3-6, 10-12, 18-22, 27-36, 41, 45-57, 49, 51-52.
- The "well-placed Western intelligence source" was Fusion GPS. *Compare Sussman,* Doc. 97 at 9-10, 18-19 (fabrication of the Alfa Bank lie) *with* Hillary Clinton, "Computer scientists have apparently uncovered a covert server linking the Trump Organization to a Russian-based bank.", Twitter (Oct. 31, 2016, 8:36 pm), https://bit.ly/3yhtkKf.

The Delaware Supreme Court dismissed Dr. Page's complaint. In so doing, it decided important questions of federal law, including whether the "gist" or the "sting" of an allegedly defamatory article is a question for the jury, and whether, in considering the question of truth, "the truth must be as broad as the defamatory imputation…of the statement." *Compare* Pet. App. 19, 29, 31, 33-36 (Isikoff article was "substantial truth" and Page failed to plead actual malice) *with* Pet. App. 41-42, 44-52 ("Even in a world where the 'truth' struggles to find its true north in the midst of the whirlwind of political strife, Page's allegations that the Article is not substantially true easily pass muster.") It declared that the Isikoff article was "truth or substantial truth", that the publisher of the articles was not responsible for their content, and that "*Sullivan* is clear that defamation claims…require a showing that those responsible for the publication of a defamatory content must have acted with actual malice." Pet. App. at 33-35.

III. This case is a proper vehicle for the Court to rein in *Sullivan's* worst excesses.

Corporate media, secure in its *Sullivan* subsidy, has immense power to lie and defame, and to censor and suppress the truth. *See Id.* at 2425 (Thomas, J., dissenting); *Tah,* 991 F. 3d at 251, 255 (Silberman, J., dissenting). Recent events have confirmed the Court's long-standing concern that media power unchecked, whether in the hands of the government, private concerns, or the two in combination, is destructive of the marketplace of ideas and a danger to self-government. *See Associated Press*, 326 U.S. at 20, 28; *see also Red Lion,* 395 U.S. at 390.[9]

Dr. Page's case starkly demonstrates that *Sullivan* and its extensions have rendered libel law ineffective to check corporate media power. *See Lawson,* 141 S. Ct. at 2427 (Gorsuch, J., dissenting); *Tah,* 991 F. 3d at 251, 255 (Silberman, J., dissenting). The doctrine, as it is applied today, both subsidizes

[9] *Accord* Media Research Center, "Biden Voter Messaging Survey Analysis" at 7-9 (Nov. 2020) (suppression of the Hunter Biden laptop story affected 2020 Presidential election voting behavior), bit.ly/38Yk2YK; Jerry Dunleavy, "Musk critiques Twitter over Hunter Biden laptop censorship and Trump-Russia story," The Washington Examiner (Apr. 27, 2022), https://washex.am/3wdwpYS; Letter from the Hon. Jim Jordan to Mr. Mark Zuckerberg at 1, n.3 (Mar. 31, 2022), https://bit.ly/3yjssol; Matt Taibbi, "The Media Campaign to Protect Joe Biden Passes the Point of Absurdity", TK News (Mar. 25, 2022), https://bit.ly/3shbDXn; Ian Schwartz, "WH's Psaki: We're Flagging Problematic Posts for Facebook That Spread Disinformation," Real Clear Politics (July 15, 2021), https://bit.ly/3shs6KW. Freedom from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. *Associated Press,* 326 U.S. at 20.

falsehood and leaves far more people without redress than anyone could have predicted. *Lawson,* 141 S. Ct. at 2427, 2429 (Gorsuch, J., dissenting). The fact is that what happened to Dr. Page can happen to anyone, most likely without any hope of vindication. "We are all public figures now." *Lawson,* 141 S. Ct. at 2425 (Thomas, J., dissenting) (citing cases); *see e.g. Berisha v. Lawson*, 378 F. Supp. 3d 1145, 1158 (S.D. Fla. 2018) ("Plaintiff did not choose to be the former Albanian Prime Minister's son, but that is what he is, and other 'children of famous parents' have been held to be public figures on no wider grounds than that.")

For constitutional questions, the Court necessarily places a high value on getting the matter settled right. Therefore, even if the Court is not prepared to fully reconsider *Sullivan*, at a minimum it should use this case to clarify its parameters and rein in some of its worst consequences.

For example, a key legal issue here is whether courts or juries should decide "substantial truth" as a matter of federal "constitutional" law. This issue remains open almost sixty years after *Sullivan* was decided. *See* Pet. App. 51 ("At the very minimum, the disagreement over what the 'gist' or the 'sting' of the Article is should be a question for the jury," (citing *Schiavone Construction Co. v. Time, Inc.,* 847 F. 2d 1069 (3d Cir. 1988)). The question whether the courts or juries should decide whether an allegedly defamatory statement can be shown to be untrue is delicate and sensitive and has serious implications for the right to freedom of expression. *Nat'l Rev., Inc. v. Mann*, 140 S. Ct. 344, 346 (2019) (Alito, J., dissenting).

Also, this case allows the Court to consider the continuing viability of the rule that the malice of a

person who authors an article may not be attributed to the article's publisher. Pet. App. at 33-34. Publishing without investigation, fact-checking, or editing has become the optimal legal strategy, for under the current doctrine ignorance is bliss. "Combine this legal incentive with the business incentives fostered by our new media world and the deck seems stacked . . . in favor of those who can disseminate the most sensational information as efficiently as possible without any particular concern for truth." *Lawson,* 141 S. Ct. at 2428 (Gorsuch, J., dissenting). Holding a publication accountable for an author's defamatory articles would usefully rebalance incentives and help limit corporate media abuses.

CONCLUSION

"The business of the press .... is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts or potatoes." *Associated Press* 326 U.S. at 28 (Frankfurter, J., concurring).

In the fullness of time, *Sullivan* and its extensions have proven antithetical to the "pervasive and strong interest in preventing and redressing attacks upon reputation," *Rosenblatt,* 383 U.S. at 86, and therefore destructive of the First Amendment's core purpose of preserving an uninhibited marketplace of ideas in which truth will ultimately prevail. *Red Lion,* 395 U.S. at 390 (citations omitted). Public figure or private, lies impose real harm. *Lawson,* 141 S. Ct. at 2425 (Thomas, J., dissenting). But citizens depend on media companies for information about matters of public concern and rely on such information for republican self-government.

Therefore, corporate media's partisan falsehoods such as the defamation of Dr. Page to promote "Russia collusion" and the suppression of the political corruption evidence from Hunter Biden's laptop, have particularly dangerous and widespread consequences. To check and deter this abuse, corporate media that perpetrate such lies should not be insulated from libel suits. *Lawson,* 141 S. Ct. at 2425 (Thomas, J., dissenting); *Gertz,* 418 U.S. at 340.

The court below denied Dr. Page any opportunity to vindicate his reputation for "constitutional reasons" that bear no relation to the text, history, or structure of the Constitution itself. Accordingly, this case is an appropriate vehicle for the Court to revisit *Sullivan*, reground the doctrine in Constitutional text, structure, and history, and restore a critical check on corporate media power. If *Sullivan* indeed must be read as it was below, then, to protect the integrity of the marketplace of ideas, it should be overruled.

Respectfully submitted,

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