№ 21-7042

ORIGINAL

In the

Supreme Court of the United States

CRAIG NELSEN,

petitioner,

v.

SOUTHERN POVERTY LAW CENTER,

respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the US Court for the 8th Circuit 1) wrongly allowed the District Court's improper statement of a Missouri Supreme Court ruling, which held—following *Milkovich*—that the existence of an underlying objective statement of fact *removes* constitutional protection from a defamatory statement of opinion, and 2) wrongly let stand the District Court's wrongful application of that misstated ruling, which *bestowed* constitutional protection on a defamatory statement of opinion directly contrary to the plain text of the ruling?

II. Whether the US Court for the 8th Circuit wrongly let stand the District Court's improper granting of a motion for summary judgment despite genuine issues of material fact—pleaded and shown—that were rightfully questions for a jury and despite Plaintiff's production of evidence demonstrating the requisite "actual malice" required by the designation—itself in error—of Plaintiff as a limited purpose public figure?

PARTIES TO THE PROCEEDINGS

Craig Nelsen petitioner plaintiff-appellant below	**Southern Poverty Law Center** respondent defendant-appellee below

PROCEEDINGS

This diversity civil action filed November 11, 2018 in US District Court for the Western District of Missouri seeks $4.755 million in compensatory damages on a defamation claim:

U.S. Court of Appeals for the Eighth Circuit: *Nelsen v. SPLC Southern Poverty Law Center; No.* 21-1440 (May 21, 2021) motion granted for leave to proceed on appeal *en forma pauperis* / motion denied for leave to proceed on appeal [Appendix A]

U.S. Court of Appeals for the Eighth Circuit: *Nelsen v. SPLC Southern Poverty Law Center; No.* 21-1440 (June 25, 2021) petition for *en banc* rehearing denied / petition for panel rehearing denied [Appendix D]

U.S. District Court for the Western District of Missouri: *Nelsen v. SPLC Southern Poverty Law Center et al*; No. 4:18-cv-00895-RK (July 31, 2019) motion to dismiss granted in part [Appendix C] / (Jan. 19, 2021) motion for summary judgment granted [Appendix B]

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ptf	Motion for Appeal	DENIED	May 21, 2021	Dkt 154	[Appendix A]
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ptf	Motion for Rehearing/en banc	DENIED	Jun 25, 2021	undkt	[Appendix D]

US District Court for the Western District of Missouri

ptf	Motion To Proceed *en forma pauperis*	GRANTED	Nov 14, 2018	Dkt 3	[Appendix E-1]
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STATEMENT OF JURISDICTION

The jurisdiction of this Court is properly invoked:

> *Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...* 28 U.S.C. § 1254(1)

On March 19, 2020, this Court issued an order that extended the time for filing a petition for a writ of certiorari from 90 to 150 days from the date of the lower court's denial of a timely petition for rehearing, that is, in my case, through November 22, 2021. In a letter from the Clerk of this Court dated December 1, 2021, a period of 60 days from that date, that is, through January 30, 2022, was provided for the correction of deficiencies.

A US District Court properly had jurisdiction because the amount in controversy is for more than $75,000 and is between citizens of different states 28 U.S. Code § 1332(a)(1) and, in particular, jurisdiction properly belongs to the US District Court in Kansas City, Missouri, which has jurisdiction over Lafayette County. 28 U.S. Code § 105(b)(1) The Eighth Circuit appellate jurisdiction is based on 28 U.S. Code § 1291, which provides for jurisdiction over a final judgment from a U.S. District Court and, in particular, under 28 U.S. Code § 41, a final judgment from the US District Court for the Western District of Missouri.

INTRODUCTION

On January 24, 2018, Defendant Southern Poverty Law Center (SPLC) published a reckless and defamatory article linking me to Nazi atrocities that left readers with the false belief that a boxing club for men at risk of suicide or opioid overdose that I was opening in Lexington, Missouri with co-founder Sherman Davis, who is black, was whites-only. The attack by the SPLC, the latest in a string of *political* attacks on me stretching back two decades, destroyed our effort and left us ruined. The adverse court rulings I've suffered below are not an accurate reflection of the merits of the case, any more than the SPLC's Statement of Undisputed Facts are an accurate reflection of events and circumstances. They are a reflection of my inability to obtain a lawyer's help in this just cause. Limited financial resources has been one impediment in this regard, admittedly, but not at all an insurmountable one. After approaching hundreds of attorneys and/or firms in the Kansas City area, across Missouri, and nationwide, I'm convinced that the real impediments to obtaining legal representation has been, on the one hand, the low pay-off potential and high risk of failure written into defamation case law, but, even more, the widespread fear in the legal community of becoming the targets themselves, were they to represent me, of the SPLC's caustic brand of scorched-earth defamation. Thus, the amateurishness you'll encounter as you read on in this *pro se* effort is, itself, an argument for how desperately the country needs this Court to give us a reasonable way to defend ourselves from the socially destructive depredations of the poison pen industry.

STATEMENT OF THE CASE

Background

In 1998, I started a non-profit in New York called ProjectUSA, which raised money for billboards with messages concerning US immigration policy. *Amended Complaint* ECF Dkt. 6 ¶¶1-4 [Appendix F-1].

Our position on immigration made ProjectUSA the *political* enemy of the Southern Poverty Law Center. In several attacks on me and ProjectUSA between 1999 and 2004, inclusive, the author of the attacks, SPLC writer Heidi Beirich,[1] sought to neuter any political effectiveness my organization might have had by portraying me and ProjectUSA as racist, thus rendering our political position socially repugnant. *Id.* ¶5 .

There was nothing in my history, activities, or associations the SPLC could use to paint me as a racist, so Beirich fell back on her skill as a character assassin. In one article, she noted the possibility raised on our website that mass immigration could eventually lead to Balkanization in the United States. According to Beirich, this altogether reasonable concern put the lie to my disavowal of racism. *SPLC Article from 2001* [Appendix W].

In another line of attack, Beirich focused on a grant from a foundation on the board of which in the 1930s sat a man interested in eugenics—a common interest at the time. In

1 Heidi Beirich, by that time the editor of the SPLC's Hatewatch blog when it published the Article at issue in the present suit, was named as a defendant initially. Her motion to dismiss for lack of personal jurisdiction Dkt 27 was granted by the court Dkt 45 [Appendix C] on the strength of her affidavit, Dkt 28 [Appendix V] and the statement therein that she did not undertake activities to report or write the Article. SPLC internal emails show that she did. *Defendant Internal Emails* #2,8,9,10,11,20, and 41 [Appendix X-2].

the SPLC's telling, I took money from a foundation with a long history of supporting eugenics, "the 'science' of breeding superior human beings that was discredited by various Nazi atrocities." *Am. Compl.* Dkt 6 ¶54 [Appendix F-2].

The SPLC also attacked our billboards as racist. Of the couple of dozen or so billboards ProjectUSA put up in New York City, all were text-only except two. On both of those displaying images, a young black girl was depicted. One of these two also depicted a white boy. In support of the SPLC's claim that our billboards were racist, Beirich explained that "one in New York City featured a white boy and the message 'Immigration is doubling US population in my lifetime... .'" *Id.*, ¶¶5, 54, 121.

In January 2018, nearly twenty years later, the SPLC attacked me again, publishing the Article at issue in this case. The 2018 article repeated two of the three charges of racism from two decades previous—the same false-by-omission claim concerning the white-boy billboard in Brooklyn and the same guilt-by-strained-historical-association claim concerning the foundation grant.[2] *Id.*, ¶54.

First SPLC Attack

In January 2018, I was in Lexington, Missouri, opening the first Robinson Jeffers Boxing Club. (RJBC). *Id.* ¶46 Joining me in the effort was co-founder, Sherman Davis. *Reply Suggestions to Motion to Intervene*, Dkt 62 [Appendix L] We called it a "life treatment"

2 The Article's author, Stephen Piggott, stated in his deposition: "There [were] previous articles written about you from SPLC and I took some of the information from those previous articles and included it." *Piggott Deposition, Tr.* 14:14-17, [Appendix S-1] It should be pointed out that I requested those documents during discovery and on August 18, 2020, I informed the Court the requests had been ignored.

program. It was a 13-week, closed campus, residency program for men in distress and at risk of suicide or drug overdose. The program combined a whole-foods diet, daily exercise, Great Books-inspired academic study, and daily two-hour boxing training sessions.[3] The cost was 250 dollars per week. To help those unable to cover the cost, I wrote a web application that created a personal crowd-funding page for each boxer.

The RJBC program was designed as a way to stem the epidemic of "deaths of despair" devastating so many American families by recognizing the challenges unique to the demographic most impacted by far—white males.[4] However, the program was open to (and would have benefited) any male in distress, and such was always clearly stated on our website and in any correspondence.[5] *Am. Compl.* Dkt 6 ¶44; [Appendix F-3].

We had the use of an 8000 sq ft building on Lexington's Main St, start-up funding from Pat Welch, the building's owner, a fundraising video, and a functioning and complete website at https://robinsonjeffersboxingclub.com.[6]

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3 In my rebuttal to the SPLC's hired expert, Dr. Bill Geis, I laid out the philosophy behind the RJBC in depth. *Expert Witness Unqualified* Dkt 124 [Appendix N] I explain not only why Dr. Geis was in no way qualified to expound on the RJBC, but also why the real experts—family members who had lost a loved one to suicide, law enforcement officers and sheriffs, and addicts themselves were one hundred percent behind the idea.

4 In 2018, white males were 30 percent of the US population and 70 percent of the nation's suicides. *On top of that,* white males were at greater risk of opioid overdose deaths. The epidemic of "deaths of despair" is an urgent public health crisis within a specific and identifiable demographic and is receiving far too little attention.

5 There were several reasons to state explicitly that the RJBC was "focused" specifically on the challenges unique to white males. One reason was because there really are challenges unique to white males, and society is not addressing them (and this case is a good example of why). Another reason was to grab the attention of those who were just about to go under in the sea of despair and say to them, "Yes, our program is really different. Give it one more try."

6 Now at https://craignelsen.com/rjbc/

Lexington's population, according to the 2010 census, is 4,726, which was almost exactly the number of members of a local Facebook group called Lexington Bulletin Board (LBB). On January 5, 2018, the RJBC became a topic for discussion on the LBB when a user posted a question about the activity at the old Snooze-U-Lose on Main Street.

The LBB community was initially supportive overall, although there were some concerns expressed that the RJBC would be "bringing drug addicts to Lexington." Sherman Davis monitored the postings and made a handful of comments, while I, remaining silent, used the community input to make adjustments to our policy (for example, committing to returning clients to their original pickup locations) and adjusting the policy statement on the RJBC website (for example, emphasizing we would be "closed campus").

On January 5, 2018, a local resident named Deborah Starke-Bulloc posted a message to the LBB in which she called me an "alt-right, anti-immigration political activist." *See Facebook Messages* [Appendix AA-1] She was ignored, though LBB owner Doug Booker cautioned her against "slam[ming]" a potential new business in town. Deborah Starke Bulloc apologized, stating she "was only trying to point people to the truth." *Id.* (3) *Am. Compl.* Dkt 6, ¶52 [Appendix F-2] *Facebook Messages* [Appendix AA-2].

On January 8, having discovered one of the old SPLC smears described above, Deborah Starke Bulloc posted it to the LBB. The impact of the article from two decades earlier was like a sledge hammer. What had been a normal conversation among curious locals instantly transformed into a maelstrom of denunciation. One person threatened to boycott "that whole part of town" if the city allowed the RJBC to open. Another was going to pull her

kids out of school and move away. Lexington residents Mike McCoy, Karen Miles, and Tim Ketner were so alarmed they separately contacted the SPLC. *see Defendant's Internal Emails* 1, 13, 15 [Appendix X-3].

Unfortunately, this wasn't my first experience with an old SPLC smear rearing up from the past and sabotaging the present, so I knew there wasn't much we could do more than patiently explain the disreputable "poison pen" tactics the SPLC uses to destroy their political enemies and wait for the public controversy they had ignited to run its course.

Obviously, the effort to disabuse Lexingtonians of the belief that Sherman Davis and I had traveled to Lexington to establish a beachhead for white supremacy wasn't made any easier by the fact I had designed the RJBC with the particular challenges unique to white males in mind. But, the epidemic of deaths of despair is, in fact, real, it is overwhelmingly concentrated in a specific, identifiable demographic, and it represents an ocean of actual human suffering. We believed our idea could relieve some of that suffering and were committed to trying. So we met or talked with reporters, met with the owner of the LBB, and talked to residents and city council members we ran into around town. We explained the interest the two of us shared in the overlooked—about BuddyClubs, a program to match the lonely and under-housed with the lonely and over-housed through which we became friends, about the Vacant Building Rescue League, taking on speculators in Baltimore's forgotten neighborhoods (the beneficiaries of which effort would have been overwhelmingly black),[7] and otherwise did what we could to show how scurrilous and hateful the SPLC's article was.

7 Vacant Building Rescue League is now at https://craignelsen.com/vbrl/

Part of the process of opening a business in Lexington involves submitting plans to the city's Planning and Zoning Committee, which meets monthly in a room in the basement of City Hall. With our project derailed by the posting of the old SPLC article, I made the decision to address their January 16th meeting as part of the effort to get the project back on track. My plan was to go into the meeting and serve as a kind of lancet. As I explained to Pat Welch and City Administrator Joe Aull *Text Messages* 1/15/2018 4:42:48 PM [Appendix Y-2] before the meeting, I was going to announce a change of plans at the start of the meeting—that we had decided to open a gym instead of the boxing club. The idea was to remove any objections or concerns over "bringing drug addicts to Lexington" so the meeting could focus one hundred percent on the racism controversy ignited by the old SPLC article.

By the 16th, the venue for the meeting had been moved from the basement of City Hall across the street to The Lex, the city auditorium, to handle the expected crowd. On the day of the meeting, two Kansas City television crews arrived in Lexington to cover it, sending local interest—already sky-high—into the stratosphere.

The temperature was in the single digits and dropping that Tuesday evening when Sherman Davis and I walked the three blocks from the RJBC location to The Lex. On the streets around the auditorium, city cops were directing traffic. Inside, there was standing room only. City Manager Joe Aull addressed the crowd first, asking for civility. George Danner, the chair of the Planning and Zoning Committee, called the meeting to order. Old business was quickly got through and it was time for me to try to salvage our project.

I walked to the front of the auditorium, turned to face the hostile crowd, and said I was sorry things had gotten off to such a rocky start. Sherman Davis and I had heard the concerns of the community and, obviously, the boxing club wasn't going to work. We wanted to make a new beginning, so we'd been going around Lexington, talking to as many people as possible, and, judging by the feedback, it was clear to us that what Lexington really needed was a gay bath house.

Everybody started laughing, and George Danner said, "Good one."

"In all seriousness," I said, "it looks like the best option right now is to ditch the boxing club and just open a regular gym, like a Planet Fitness."

There were some questions about the RJBC from committee members, but my responses were purposely vague and noncommittal. As I told Pat Welch, Joe Aull and others before the meeting, that night was not the night to discuss details of the RJBC. *Text Messaages* Jan 15, 2018 [Appendix Y-2]. That night was devoted to trying to undo the damage the SPLC had done.

Then the meeting was opened to questions from the floor. A long line had formed behind the microphone—locals waiting to publicly declare their loathing of me. And I had to stand there and take it. The only thing most of them knew about me was what they had learned from the old SPLC smear Deborah Starke Bulloc had dug up and posted on the LBB. To them, I was a monster—linked to Nazi atrocities, for crying out loud. My job was to let them see for themselves how dishonest the SPLC smear was. I knew there were

plenty of people in the audience who weren't at the microphone, who were just sitting back and watching and listening—cooler heads who, in the cars heading home after the meeting, would begin the softening process with calmer words—helping to drain the SPLC toxin away.

The meeting had gone on for nearly three hours by the time everybody who wanted to denounce me had done so. Then a black lady stepped up to the microphone. "I live two houses away from that old Snooze-U-Lose," she began sternly, "and I want to know: were you serious at the beginning of this meeting when you said you were going to open a gay bath house up in there?"

Everybody in the place burst out laughing again and I said, "Well, if you only live two houses away, you'll get a discount on your entrance fee."

"I don't *want* a discount on my entrance fee," she shrieked, but she was laughing, too, and so was I, and so was everybody else in the auditorium, except, probably, Deborah Starke Bulloc, if she was there. And then the meeting was adjourned. *Nelsen Tr* 106:21-107:9 [Appendix U-2]

In the days following the meeting at The Lex, Sherman Davis and I grew increasingly optimistic that we had survived the old SPLC smear. *Response to Motion for Summary Judgment* Dkt 138 pp. 22-24 [Appendix P-1] My growing sense of optimism is particularly discernible in the text messages between Pat Welch and me in the week following the town meeting. *Text Messages* January 16 – 23, 2018 [Appendix Y-1] Also encouraging, a

city councilman saw me walking my dog after the meeting and stopped to tell me not to make any hasty decisions as we had a lot of quiet support. *Nelsen Tr.*, 123:8-21 [Appendix U-3] We also had locals stopping by the location to offer to work for free to help us get open. *Text Messages* 1/22/2018 5:34:52 PM [Appendix Y-1] A recent college grad, who had added the most thoughtful content to the debate on the LBB, stopped by the location on an invitation from Sherman Davis. After a long talk with us, he, too, became very excited by the program and he, too, offered to help us get up and running with a view to being an RJBC teacher when we opened.

Second SPLC Attack

"Clint," a personable, 32-year-old native Lexingtonian, father, and heroin addict, had heard about the RJBC thanks to the controversy swirling around it and checked out our website. *Am. Compl.*, Dkt 6 fn#46 [Appendix F-5] He said he knew immediately that the program was exactly what he'd always needed.[8] For the first time he saw a way out of his addiction, he said, and more than anything he wanted to be in his son's life—a father his son could be proud of. He read us a text from his mother that was eloquent and deeply moving. We asked him whether he would let us use him and his story and that amazing text message from his mother in a fund-raising video and he was enthusiastic about the idea. We had begun to feel excited again for this once-in-a-lifetime opportunity. But the SPLC wasn't through with us yet.

8 We heard that repeatedly from addicts and their loved ones.

Around noon on January 23 Clint, Sherman Davis, and I were in the store working out the details of the video when City Administrator Joe Aull walked in and handed me a "stop-work order." The order falsely alleged we were doing illegal construction work and threatened arrest if we continued. I protested we'd done no construction. "Craig," he said, almost pleading, "as a friend, I'm telling you. It's just not going to work. Not here. You have to leave." *Plaintiff's Opposition to Motion for Summary Judgment* Dkt 138 p. 25 [Appendix P-2] *Also see* below *The Reverse Chilling Effect.*

The baseless stop-work order caught us completely by surprise *see Timeline* [Appendix Z] and I could see how hugely deflating it was to Clint—how a hopeless resignation seemed to settle over him as Joe Aull delivered the "stop work" order. A few minutes after Joe Aull left, Clint mumbled something and he, too, left. We never saw him again. *Nelsen Tr.* 45:17–46:16 [Appendix U-1]

What we didn't know at the time was that on January 22, the day before Joe Aull showed up at the RJBC location, Stephen Piggott sent an email to the City of Lexington's general inbox: "Dear City of Lexington officials," the email began, "My name is Stephen Piggott and I work for the Southern Poverty Law Center tracking hate groups. It has come to my attention that Craig Nelsen is attempting to start a Robinson Jeffers Boxing Club in the town..." *Defendant's Internal Emails,* #25 [Appendix X-1], *also Piggott Tr.,* 103:12 - 105:12 [Appendix S-3] Within hours of that email, the city concocted a false allegation of illegal construction, put it in writing, and delivered it to us with an order *threatening us with*

arrest if we didn't abandon our legal effort to start a legal business downtown helping members of the community who were at risk of suicide or drug overdose.

Third SPLC Attack

The next day, January 24, the SPLC Article at issue in this suit, authored by Stephen Piggott, *Amend. Compl.* ¶54 [Appendix F-2] was posted on the SPLC's Hatewatch blog and promptly re-posted on the LBB by the indefatigable Deborah Starke Bulloc. A blizzard of vitriol greeted the new Article. Deborah Starke Bulloc and Marty Hackler openly called for vigilante violence against Sherman Davis and me. Complete strangers were yelling insults like "Go home, Nazi" at me on the street. *Id.* ¶63

We hung on for some weeks more trying to save the golden opportunity to do something that could have been so great, but we were no match for the awesome power of the world-class poison pens of the SPLC. On February 25, I sent a text to Pat Welch admitting defeat.

In November, I filed this lawsuit, *pro se,* in the US District Court for the Western District of Missouri in Kansas City. Of the six counts included in the original complaint, two are germane to this petition: Count I, in which I claimed the SPLC defamed me by falsely stating no one was convinced by my assertion the Robinson Jeffers Boxing Club would be open to all races, and Count V, in which I claimed the SPLC defamed me by stating I put up racist billboards in New York City and then describing them with a false statement of fact it knew to be false.

In the 38 months since filing this suit I believe I've distinguished myself, even among *pro se* filers, by the number and extravagance of my blunders. The last one in the District Court involved my response to the Defendant's Motion for Summary Judgment. I got hung up on the SPLC's long list of "Undisputed Facts," most of which were neither and had already been refuted, not just disputed, sometimes more than once, earlier in the suit. My response was too long, too detailed, and insufficiently attentive to the argument. I ran out of time and I failed to set out my response in the proper format. The Court could have given me the chance to correct my errors under Fed. R. Civ. P. 56(e)(1).[9] Instead, possibly in exasperation over my wide-ranging 37-page response, possibly because I didn't ask, the highly prejudicial, intentionally misleading, and error-packed Statement of Undisputed Facts was deemed admitted in its entirety and, I was surprised to see, incorporated into the Court's January 19, 2021 order granting the motion for summary judgment.[10] I say "surprised" because, having been a party to our two-and-half-year battle, the Court could have had reason to question the integrity of the SPLC's Statement of Undisputed Facts.

A jury would probably work from a substantially different set of facts. When the Defense told the jurors that I told the crowd at The Lex I was qualified to run a treatment center because I was a six-time heroin user myself, I'll be right there to clarify what I actually said: as someone who had to try six times before I finally succeeded in getting and remaining free from heroin myself over 30 years ago, I know what these men are going

9 If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact[.]

10 I set out a point-by-point response as I should have in the first place and submitted it to the Appellate Court, but it is too lengthy to include it here and it did no good anyway. It can be seen at: https://craignelsen.com/appendix/facts

through—how hard it is, and what worked for me. *NelsenTr* 121:2-5 [Appendix U-3]. When the Defense reported it was clear from the meeting at The Lex I "had only a vague idea as to how [I] would supervise [my] clientele and what kind of educational activities [I] would be providing them," I'll be able to make sure the jurors understand that my intent going into the meeting was to remain vague about the details of the RJBC. *Text Messages* 1/15/2018 3:45:16 PM - 4:44:48 PM [Appendix Y-2]. When the Defense informed the jurors I had no permits, no security, no medical staff, and no proposals submitted to the Planning and Zoning Committee, I'll be right there to fill in the missing detail that we'd just gotten the electricity and water turned on when the SPLC struck. When the Defense told the jurors I advertised for White Men in Distress I'll be able to make sure the jurors understand that the ad wasn't for RJBC clientele as the SPLC lawyers want them to believe—that the ad was a Craigslist ad I posted after the meeting at The Lex with the idea of making a video to respond to the SPLC's racist venom. With the jurors in the room, I'll be able to correct in real time those and all the other prejudicial errors in Defendant's well-crafted *Statement of Undisputed Facts*.

REASONS FOR GRANTING THE PETITION

There were two actionable defamatory statements included in the Article published by Defendant Southern Poverty Law Center on January 24, 2018. The first did not survive the SPLC's Rule 12(b)(6) motion to dismiss for failure to state a claim. The second did not survive the SPLC's motion for summary judgment. Both should have survived and the Appellate Court erred in letting the District Court's decisions stand. By granting this

petition, not only can this Court remove an unwarranted bar to justice, but can also keep alive a case well-suited to address two major social issues in urgent need of the Court's attention.

QUESTION I

> *Whether the US Court for the 8th Circuit 1) wrongly allowed the District Court's improper statement of a Missouri Supreme Court ruling, which held—following Milkovich—that the existence of an underlying objective statement of fact removes constitutional protection from a defamatory statement of opinion, and 2) wrongly let stand the District Court's wrongful application of that misstated ruling, which bestowed constitutional protection on a defamatory statement of opinion directly contrary to the plain text of the ruling?*

Opinion Made Actionable by Underlying False Statement of Fact

The first challenged statement is composed of two sentences: 1) [Nelsen's] group made a name for itself by sponsoring racist billboards. 2) One on display in New York City depicted a white boy and the words, 'Immigration is doubling U.S. population in my lifetime.' *Article, Am. Compl.* Dkt 6, ¶54 [Appendix F-2]

The statement that I put up racist billboards is non-actionable opinion since it can be proven objectively neither true nor false whether the billboards were racist. But the SPLC sought "to raise the term 'racist' above mere vituperative opinion by alleging a *factual justification* for the charge the billboards were racist." *Am. Compl.* Dkt 6, ¶123 [Appendix F-4] The factual justification, "[o]ne on display in New York City depicted a white boy...", adds the rhetorical force of fact to the opinion the billboards were racist.

Consistent with the rejection in *Milkovich* of a blanket privilege for anything that might be called opinion, Missouri courts have held First Amendment protections for privileged speech do not apply when the statement of opinion rests on an underlying statement of fact. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 21 110 S.Ct. 2695, 2705 111 L.Ed.2d 1 (1990); *Nazeri v. Missouri Valley College*, 860 S.W.2d 303 (Mo. 1993) en banc; *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 73 (Mo. 2000); *Benner v. Johnson Controls, Inc.*, 813 S.W.2d 16, 20 (Mo. App.1991); *see also* Restatement (Second) of Torts § 566

If a defamatory statement of fact is false, it is actionable. *Farrow v. Saint Francis Med. Ctr.*, 407 S.W.3d 579 (Mo. 2013) (en banc). If the defamatory statement is *privileged*, i.e., opinion, "[t]he issue of falsity relates to the defamatory facts implied by the privileged statement—whether the underlying fact about the plaintiff is demonstrably false." *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 73 (Mo. 2000)

Since both billboards in New York City that featured images included an image of a black girl, the underlying fact in the challenged statement, "[o]ne on display in New York City featured a white boy..." is false by omission *Am. Compl* Dkt 6, ¶124 [Appendix F-4] and materially misleading. *see Campbell v. Transgenomic, Inc., 916 F.3d 1121, 1125 (8th Cir. 2019)* (concluding that omissions from proxy statement may have presented a company in "a false light that was materially misleading"); *United States v. Austin*, 823 F.2d 257, 259 (8th Cir. 1987) (holding that material omissions supported a finding of "false entry" in bank records) The falseness of the underlying fact renders the defamatory opinion that I put up racist billboards non-privileged and actionable. The opinion loses its privilege as a

matter of law and must therefore be put before a jury to determine whether damage flowed from it. *Mason v. Funderburk*, 247 Ark. 535, 446 S.W.2d 551 (1969)

The SPLC addresses this point in bad faith, arguing: "Nelsen further acknowledges that the term 'racist' is at least arguably an opinion, but argues that because some of the anti-immigrant billboards in 2000 by Nelsen's organization 'featured a young black girl,' the Article's use of the term 'racist' is 'false.'" *Defendant's Reply Suggestions in Support of Motion To Dismiss*, Dkt 35 p. 3 [Appendix J-1] But, that is not my actual argument at all. My claim has never been that the term "racist" in the challenged statement is "false." Indeed, I explicitly state in the pleading that "[c]harging a person with being racist constitutes mere name calling because it does not contain a provably false assertion of fact as is required to state a claim for defamation." *Amend. Compl.* Dkt 6 ¶122 [Appendix F-4] My claim is that the SPLC published the defamatory opinion that I put up racist billboards, then described them with a false statement of fact, painting a racially false picture of the billboards it just described as racist. *Plaintiff's Response to Motion To Dismiss*, Dkt 33 pp. 6-8 [Appendix H-1]; *Plaintiff's Motion for Relief*, Dkt 49 pp. 2-3 [Appendix K-1] That was my claim then. That is my claim now.[11] That should be more than enough, it seems to me, to pass muster as a valid claim. *Appellate Brief* pp. 47-49 [Appendix R-2]

Improperly Stated Rule of Law

In ruling for the SPLC, the District Court wrote:

11 When I first filed this suit, I wasn't absolutely sure these were the only two billboards in New York carrying images (it was 20 years ago), so there was some confusion, but that was cleared up in discovery. The full explanation can be found in an excerpt from the *Appellate Brief* pp 50-57 [Appendix R-1] Either way, it is impossible to believe the SPLC thought its description of the billboards wasn't misleading.

> *SPLC argues that Nelsen's defamation claims should be dismissed because the alleged defamatory statements are constitutionally protected opinions. Although statements in the form of opinions do not enjoy absolute protection, Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 18, 21 110 S.Ct. 2695, 2705 111 L.Ed.2d 1 (1990), *a statement is a constitutionally protected opinion if "a reasonable factfinder could conclude that the statement implies an assertion of objective fact." Overcast v. Billings Mut. Ins. Co., 11 S.W.3d 62, 73 (Mo. 2000) (citations omitted); Order,* Dkt 45 §4 [Appendix C]

This is simply a misreading of the *Overcast* decision (which found for the plaintiff) and an improperly stated rule of law. If the ostensible opinion implies an assertion of objective fact, it is constitutionally *un*protected, not protected, and the opinion is actionable pending determination of the truth or falsity of the underlying fact. In *Benner v. Johnson Controls*, on which, with *Milkovich*, the *Overcast* decision relied, the Court held "that the alleged statement could be determined by the finder of fact to be an implied statement of objective fact and therefore *not* protected by the First Amendment." (emphasis added) *Benner v. Johnson Controls, Inc.*, 813 S.W.2d 16, 20 (Mo. App.1991)

Not only was a rule of law stated improperly, it was applied improperly, as the District Court's application wrongly granted constitutional protection to the defamatory statement that I put up racist billboards when, in fact, it removed constitutional protection. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303 (1993) Mo. *banc*

The SPLC claims "it would be impossible for Nelsen to plead facts showing that SPLC knew any alleged implications relating to racism were false." *Motion to Dismiss for Failure To State a Claim* Dkt 25, III, p. 14 [Appendix G-1] I maintain the real difficulty would be to

convince a jury it *wasn't* intentionally misleading to call the billboards below "racist" and then describe them as "one in New York City depicted a white boy."

Brooklyn, New York, 2000 - These were the only two ProjectUSA billboards in New York City to carry images. January, 2000, left, at the Brooklyn approach to the Williamsburg Bridge, and October, 2000, at the foot of the Brooklyn Bridge on the Brooklyn side.

The Appellate Court wrongly allowed the District Court's improper statement of the finding in *Overcast* and wrongly let stand its improper application.

QUESTION II

> *Whether the US Court for the 8th Circuit wrongly let stand the District Court's improper granting of a motion for summary judgment despite genuine issues of material fact—pleaded and shown—that were rightfully questions for a jury and despite Plaintiff's production of evidence demonstrating the requisite "actual malice" required by the designation—itself in error—of Plaintiff as a limited purpose public figure?*

In the second challenged statement, "Nelsen claimed the club is open to all races, but he isn't convincing anyone," the first clause is true and non-defamatory, but the second clause, "he isn't convincing anyone," suggests the speaker's view that my claim in the first clause is a lie. Moreover, regarding the second clause, "a reasonable factfinder could conclude that the statement implies an assertion of objective fact." *Milkovich v. Lorain*

Journal Co., 497 U.S. 1, 21, 110 S. Ct. 2707, 111 L. Ed. 2d 1 (1990); *Nazeri v. Missouri Valley College* 860 S.W.2d 303 (1993)

From Count I of my complaint:

> *Regarding the statement in the article, "Nelsen claimed the club is open to all races, but he isn't convincing anyone." a) A reasonable factfinder would conclude that "he isn't convincing anyone" is an assertion of objective fact." b) The assertion "he isn't convincing anyone" is false as there were and are many in Lexington who were convinced RJBC was to be open to men of all races. c) That false assertion is hurtful in its own right because it places Plaintiff in a pariah position, but Defendant amplifies its offense by using it to mislead the public into believing another falsehood—that Plaintiff was lying when he "claimed the club is open to all races." Am. Compl. Dkt 6, ¶78 [Appendix F-6]*

I make no claim in Count I having to do with whether the future RJBC would be "whites-only," but the SPLC sees it there, anyway, arguing "the Amended Complaint alleges that accurate quotations of Nelsen's statements convey defamatory inferences that he sought to open a 'whites-only' program (Counts I, II, and III)..." *Defendant's Motion To Dismiss for Failure To State a Claim*, Dkt 25, p. 6 [Appendix G-2] and again later "Counts I, II, and III fail to state a claim because the Article does not reasonably convey that RJBC expressly excluded non-whites or that Nelsen is a neo-Nazi." *Id.*, p. 8 [Appendix G-3]. And, again,"[t]he Court has found one statement in the Article to be potentially actionable—an alleged implication that the club was 'whites-only.'" *Defendant's Motion for Summary Judgment*, Dkt 131, p. 1 [Appendix O-3]. Again, the damage claimed in Count I does not derive from any defamatory claim concerning the actual racial breakdown of the

membership of the future RJBC. It derived from the false statement of fact that I wasn't convincing anyone I was accurately presenting *my plans for the future club.*

Having conjured the imaginary issue over the racial make-up of the future club, Defendant throws it to the ground and hog-ties it. "[W]hether or not the Boxing Club would have been substantially 'whites-only,' was a prediction about the future, which is not for purposes of defamation law a provable fact." *Defendant's Motion for Summary Judgment* Dkt 131, p. 19 [Appendix O-4]

"The future club is not the plaintiff in this case," I responded, "the present me is." *Plaintiff's Opposition to Summary Judgment* Dkt 138, p. 2 [Appendix P-4] My claim was over the harm caused in the present, but the SPLC continues to argue as if my claim were about damage to the future club. Even though there is nothing in the challenged statement having anything to do with predictions, Defendant argues that "because the challenged statement was a prediction" my claim about this imaginary future club is non-actionable.

My claim is also non-actionable, the Defendant continues,"because Nelsen's only 'evidence' to support his allegation that the program would have been open to all races are his own assertions" or, to put it another way, I've only said what my plans are for the future and haven't provided hard evidence of future results. Thus, concludes Defendant, "there is no dispute of material fact about this element of his claim and summary judgment is warranted." *Defendant's Motion for Summary Judgment* Dkt 131, p. 20 [Appendix O-4]

The SPLC's argument may have metaphysical interest, but it has no legal worth since both the challenged statement and my claim are firmly grounded in the present: Piggott: "Nelsen claimed the club ***is*** open to all races, but he ***isn't*** convincing anyone." Unfortunately, the District Court, despite my repeated protestations, hewed to the SPLC's false characterization of my claim throughout the course of this litigation.

In the Order granting summary judgment, the District Court wrote, concerning the racial breakdown of a future club's membership: "Having determined as a matter of law that Nelsen is a limited purpose public figure on the issue of whether his Boxing Club would be whites only..." *Order Granting Summary Judgment* Dkt 141, p.12 [Appendix B]

Meaning of "He Isn't Convincing Anyone" a Genuine Issue of Material Fact

The Defendant *did* address the *actual* claim in Count I, but only once, and early on. According to the SPLC, the clause, "he isn't convincing anyone," isn't about convincing anyone, but "clearly offers an opinion about the public controversy, rather than stating as a fact that literally no one believed him." *Defendant's Reply Suggestions in Support of Motion To Dismiss* Dkt 35 ¶4 [Appendix J-2] I think "he isn't convincing anyone" means what it says, that no one believed me when I said the club would be open to all races. Perhaps the extreme weakness of the SPLC's argument here induced the Defense to abandon the argument entirely and argue against a claim I haven't made.

Nevertheless, the SPLC's interpretation of "he isn't convincing anyone" is at odds with mine, and the issue is genuine and material. Since it is certainly possible a reasonable jury could agree with my definition and not the SPLC's definition, there exists a genuine issue of material fact

concerning the meaning of the challenged statement itself and the motion for summary judgment is doubly defeated.

Outcome of Meeting at The Lex a Genuine Issue of Material Fact

The SPLC claims the January 16th meeting at The Lex "was a disaster for [me]". *Defendant's Motion for Summary Judgment* Dkt 131, ¶27 [Appendix O-1] I claim the meeting was a success. *Response to Motion for Summary Judgment* Dkt 138 pp. 22-24 [Appendix P-1] I point to multiple indicators that it *was* a success and show that that was my honest assessment at the time. *Nelsen Tr* 123:15-125:1 [Appendix U-3], also *Text messages* January 16-23 [Appendix Y-1]

This is an issue of material fact because it assigns blame for the "stop-work" order we received from the city and whether and to what degree it played a role in the demise of the RJBC. First, the SPLC attempts to mislead the reader: "Nelsen testified under oath that the meeting was a '15-minute hate,' that every single Lexington resident who spoke was against his plan, and that in light of the vocal and unanimous dissent he told the crowd that he would instead open a gym." The natural way to read that sentence is that, as a result of the vocal and unanimous dissent at the "disaster" of a meeting, I finally knuckled under and announced we would open a gym instead of the RJBC. (And I even testified to that under oath!) It is a blatant falsehood. I announced the change of plans up front, at the beginning of the meeting as I told others I was going to do before the meeting even started. *Text Messages* Jan 15 [Appendix Y-2]

The SPLC also emphasizes the stop-work order came before the Article's publication, but once again needs to misstate the argument in order to make the case. "Nor does Nelsen dispute his own testimony that he was served a stop-work order *prior* to the publication at issue in this defamation action, instead only speculating that officials must have taken that step because they knew Piggott was working on a story." (emphasis in original) *Defendant's Reply Suggestions in Support of Motion for Summary Judgment*, Dkt 139 p. 3 [Appendix Q-1] Piggott's email to the city did not say he was "working on a story," it said he was "tracking hate groups." *SPLC Internal Emails* #25 [Appendix X-1]. Consequently, I never "speculated" officials must have taken that step because "they knew Piggott was working on a story." I argue the stop-work order was triggered by the intentionally alarming way Piggott introduced himself—as "tracking hate groups."

If the SPLC's characterization of the meeting at The Lex as a disaster is believed, then Defendant has a better shot at making the case that the "stop-work" order was fallout from the meeting at The Lex(albeit unaccountably delayed by a week), which was the effective end of the project. But if the meeting at The Lex was a success, I can make the case that we had overcome the old SPLC smear, and that the stop-work order was surmountable—the panicked and ill-considered response by timorous city officials to the email Stephen Piggott had sent just hours earlier. I would show the jury that the overwhelming and fatal opposition to the RJBC in Lexington, when *all* of our allies fled, came, then, from the incendiary January 24 SPLC Hatewatch Article suddenly bathing in the harshest of public glares for its national readership quiet, charming little small-town Lexington. *Plaintiff's Opposition to Motion for Summary Judgment*, Dkt 138 pp 22-24

[Appendix P-1] Thus, another genuine issue of material fact exists over the outcome of the meeting at The Lex by virtue of which alone the District Court should not have granted summary judgment.

Author's Intent a Genuine Issue of Material Fact

The SPLC claims its intent in publishing the Article was to "provide an update about Nelsen and to provide greater context about him" *Defendant's Motion for Summary Judgment,* Dkt 131 ¶40 [Appendix O-2] and a "backstory." *Piggott Tr.* At 91:5-92:11 [Appendix S-2] I claim the intent was to do as much harm as possible to my reputation. *Plaintiff's Opposition to Motion for Summary Judgment* Dkt 138 p. 27 [Appendix P-3]

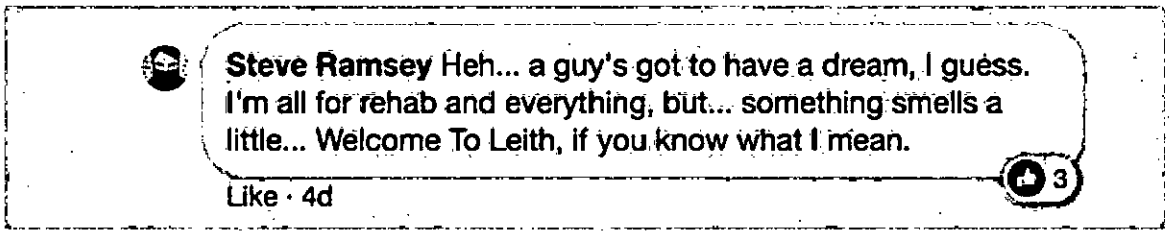
According to Heidi Beirich, former head of the SPLC's "Intelligence Project" and editor of their Hatewatch blog, the SPLC's "main responsibility was to monitor and expose activities of the radical right." *BeirichTr,* 12:16-17 [Appendix T-3] Or, as long-time SPLC Senior Fellow Mark Potok explained it in a 2007 speech to the Michigan Alliance Against Hate Crimes' Hate Crimes Conference, "Sometimes the press will describe us as monitoring hate groups. I want to say plainly that our aim in life is to destroy these groups, completely destroy them."[12] And what does it take to qualify as a hate group marked for destruction by the SPLC? Well, holding a different view from the SPLC on immigration policy is one way to get yourself tagged as a racist hate "group." In their depositions, neither Heidi Beirich nor Stephen Piggott could point to a single immigration restrictionist group the SPLC had *not* attacked. *Id.*, 83:8-87:6 [Appendix T-2]

12 https://youtu.be/fnTz2ylJo_8

and *PiggottTr.* 118:2-119:12 [Appendix S-6] (In every attack on an immigration restrictionist organization that I'm aware of, the SPLC's mode is always the same—an accusation of being motivated by racial hatred.)

THE RAMSEY POST

Of the many hundreds of posts on the LBB available to choose from, Stephen Piggott chose just one to include in the Article:



In the Article, the Ramsey message was transformed into:

> *A number of Lexington's 4,000 residents are not happy at the prospect of Nelsen relocating to their town and setting up this club. One resident compared Nelsen's arrival in Lexington to that of neo-Nazi Craig Cobb, who attempted to start a whites-only colony in the tiny town of Leith, North Dakota, in 2012. Article, Am. Compl., Dkt 6, ¶54 [Appendix F-2]*

I asked Piggott in his deposition:

Nelsen: Of all the comments, the thousands – well, I'll say the hundreds of comments on – on the Lexington Bulletin Board, pro, con, you know, ran the gamut, you chose one to include in your article in which I was compared to neo-Nazi Craig Cobb. Why did you choose that one?

Piggott: I – I – I don't recall why exactly I chose that.

Piggott Tr, 154:1-24 [Appendix S-4]

I don't believe him. I think he knows exactly why he chose that message. I think he knows he chose it for the opportunity it provided to use the word "Nazi" for the third time in this seven-paragraph piece about an effort in Missouri in 2018.[13] "The law can't assign a motive to Stephen Piggott's choice, but a jury can. A jury will see instantly that Piggott chose that quote out of all of them to do as much damage as possible to my reputation." *Am. Compl.* Dkt 6, ¶54 [Appendix F-2] *Opposition to Motion for Summary Judgment* Dkt 138 p. 27 [Appendix P-3].

GO GET HIM

I also pointed to the explicit January 16 order given to Stephen Piggott by Heidi Beirich: "Go get him." *Defendant's Internal Emails,* No. 9 [Appendix X-2]

I asked Beirich in her deposition,

Nelsen: ... "Go get him," speaking of me, does that sound like an attack, Heidi?

Beirich: It was not an attack. It was to say, go and write this story.

Nelsen: But you didn't say, go and write this story; you said, "Go get him"?

Beirich: I'm just telling you the intention was to go write the story.

Beirich Tr: 54:10-21 [Appendix T-1]

"Go get him" is a command one gives to an attack dog or a hired assassin, but I would be very surprised if anyone even once in the past century has told someone to go write a

13 In addition to using the word "Nazi" three times in seven paragraphs, the article used "racist" once, "white nationalist" twice, and "anti-immigrant" four times plus once in the title.

story by saying "Go get him." Despite what must be the extreme rarity of that use of that sentence, Piggott testified under oath that when Beirich ordered him to "Go get him," he, *too,* thought she meant, "Go write a story." Personally, I think they are both lying, and that the lying was coordinated. It seems far more likely that Beirich meant "Go get him" in the attack dog sense, intending Piggott to go do as much damage to my reputation as possible. And I believe that is how he understood it, too, since that is what he did do. *PiggottTr* 72: 10-19 [Appendix S-5] *Plaintiff's Opposition to Motion for Summary Judgment* Dkt 138 p. 27 [Appendix P-3] It is beyond doubt a reasonable jury could agree with me.

A defendant's intent is material. The Eighth Circuit has held that a plaintiff "may overcome summary judgment by producing evidence that, if believed, would allow 'a reasonable jury to reject defendant's proffered reasons of its actions.'" *Korbin v. University of Minnesota*, 34 F.3d 698, 702-03 (8th Cir. 1994) The evidence cited above—the selection of the one Facebook message that references neo-Nazis, the command from Beirich to "Go get him", the self-described institutional mission to destroy—would allow a reasonable jury to reject the SPLC's claim that the goal of the article was simply a well-informed readership. On that basis alone, I should have survived the SPLC's motion for summary judgment.

The SPLC claims that "Nelsen has failed to proffer any evidence of actual harm to his reputation" from the Article. "Indeed, he has conceded that no one ever told him that they thought less of him because of the Article." *Defendant's Motion for Summary Judgment,* Dkt 131 p. 28 [Appendix O-5] The SPLC appears to be arguing that, unless the guy in the red pick-up truck yells, "Go home, Nazi, and I think less of you because I read the SPLC article

about you Deborah Starke Bulloc posted to the Lexington Bulletin Board," as he drove past, it's not possible to know *where* he got the idea to call a complete stranger a Nazi.

"Even if the Article might be deemed to have caused *some* damage to Nelsen's reputation," continues the SPLC, "[Nelsen] 'cannot differentiate between the damages, if any, attributable to defendant and the damages attributable to' statements on the Lexington bulletin board and at these public meetings." *Defendant's Motion for Summary Judgment* Dkt 131, p. 29 [Appendix O-5].[14] In other words, if the damage—the lowered opinion of me in the eyes of others—from the defamatory Article finds expression among those with the lowered opinion of me, the SPLC is off the hook because now I can't tell: did the SPLC do the damage or did the damage the SPLC did do the damage?

"Ultimately, the question of whether a plaintiff's damages were caused by the defamatory statement is for the jury to decide." *Topper v. Midwest Division* 306 S.W.3d 117, 130 (2010) (quoting *Johnson v. Allstate Indem. Co.*, 278 S.W.3d 228, 236 (Mo.App. E.D.2009). It is certainly possible that a reasonable jury could conclude the SPLC Article was the source of the severe damage to my reputation when hundreds of people I had never met suddenly began publicly calling me a racist in their online comments on either of the two SPLC Articles calling me a racist posted by Deborah Starke Bulloc. A successful Defense claim

14 It is worth noting that the circumstances of the case law cited to support Defendant's argument here, *Taylor v. Chapman*, 927 S.W.2d 542, 545 (Mo. App. 1996) is not, in fact, applicable to the circumstances of this case. In *Taylor,* the manager of a condominium sued two residents for defamation, but could show no evidence of any damage she suffered and testified she couldn't tell how much and from which resident any of the unproven damage she was alleging came because, in her words, "they ran along together." In the present case, the damage was overwhelming, stark, and, as I've alleged and shown, one hundred percent the fault of a single entity, the SPLC. This practice of citing inapplicable case law has been a constant theme throughout this litigation.

that I "would not be entitled to recover under any and all circumstances" is therefore unquestionably precluded, making summary judgment unreachable. *Clair et al. v. Sears Roebuck and Company*, 34 F. Supp. 559, District Court, W. D. Missouri, W. D., July 22, 1940 *see also* Fed. R. Civ. P. 56(a).

Limited Purpose Public Figure

In 1964's *New York Times v Sullivan*, this Court, in the interest of healthy democratic debate, established the actual malice standard, which made it more difficult for public officials to succeed on a defamation claim against "the press." But both the "public officials" and the "press" categories have since expanded to the point that the original intent of the ruling has long since sunk below the horizon. We are now in strange waters, where the "press" is the SPLC, a rich and powerful attack-charity with a hundred attorneys on staff, and I am the public official against whom the law is weighted lest I intimidate the SPLC into self-censorship.

Actual malice is established if the evidence demonstrates that "the statements were made with knowledge that they were false or with reckless disregard for whether they were true or false at a time when defendant had serious doubts as to whether they were true." *Rice v. Hodapp*, 919 S.W.2d 244 (Mo. banc 1996) In order to apply the "actual malice" disadvantage to a private individual plaintiff in a defamation suit, they must first be designated a "limited purpose public figure."

A limited purpose public figure is someone who has "thrust themselves to the forefront of *particular* public controversies in order to influence the resolution of the issues involved."

(emphasis added) *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 345, 351, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). In determining public figure status, courts "must first identify the *particular* public controversy (if any) giving rise to the complained-of speech. (emphasis added) *Porous Media Corp. v. Pall Corp.,* 173 F.3d 1109, 1119-20 (8th Cir. 1999); *Lundell Mfg. Co. v. ABC, Inc.,* 98 F.3d 363 (8th Cir. 1996). The particular public controversy at issue here began in January, 2018. However, in its argument that I am a public figure regarding that January, 2018 controversy, the SPLC laid out a selective, distorted, and highly prejudicial 52-paragraph version of my personal history stretching back to the 1980s. I rose to the bait and my wide-ranging 37-page response was too long, too detailed, and too exasperating. The District Court chucked the whole thing, deemed the defense version accepted in full, then based its determination I am a "limited purpose public figure" on it.

However, it can hardly be claimed I thrust myself forward in this particular controversy. As the RJBC became a topic of conversation on the LBB, Sherman Davis made a handful of comments, while I remained silent. With Deborah Starke Bulloc's posting of the old SPLC smear, I was forced to respond publicly in order to defend myself. Defendant now portrays that response as voluntarily thrusting myself forward. The District Court, in accepting the SPLC's argument, has rendered me defenseless as a consequence of defending myself, and by attacking me, the SPLC has created its own defense, something this Court has disallowed. *Hutchinson v. Proxmire,* 443 U.S. 111, 135, 99 S.Ct. 2675, 61 L.Ed.2d 411 (1979)

I should not have been designated a "limited purpose public figure." But, even so, "[a] public figure plaintiff is required only to submit evidence which shows a genuine issue of material fact from which a reasonable jury could find actual malice with convincing clarity." *DiLorenzo v. New York News, 7 Media* L.Rep. (BNA) 1452, 1453 (N.Y.A.D. May 7, 1981) I alleged the statement of fact the SPLC used to describe the billboards it had just labeled racist in the previous sentence was intentionally and knowingly false. *Am. Compl.* Dkt 6, ¶121 [Appendix F-4] and I alleged Piggott knew his assertion that I wasn't convincing anyone about my plans for the future was a false statement of fact. *Id.*, ¶78 [Appendix F-6] "Whether the defendant acted with malice is a question of fact for the jury." *Bugg v. Vanhooser Holsen & Eftink P.C.,* 152 S.W.3d 373, 377 (Mo.App. W.D.2004) *Topper v. Midwest Div.*, 306 S.W.3d 117, 130 (Mo. App. 2010) Moreover, whether I suffered damage from the challenged statements is also a jury question. *Johnson v. Allstate Indem. Co.*, 278 S.W.3d 236 (Mo.App E.D.2009) ("Ultimately, the question of whether a plaintiff's damages were caused by the defamatory statement is for the jury to decide.")

Summary judgment "should never be entered except where the defendant is entitled to its allowance beyond all doubt" *Traylor v. Black, Sivalls & Bryson, Inc., 189 F.2d 213 (8th Cir. 1951)* There is no way the SPLC can be said to be entitled to summary judgment beyond all doubt. "As its name indicates, a summary judgment is an extreme and drastic remedy" that "cannot be substituted for a conventional trial of factual issues." *Hotchner v. Castillo-Puche*, 551 F.2d 910, 913 (2d Cir.), cert. denied, 434 U.S. 834, 98 But that is exactly what has happened.

I suffered a severe injury. I identified the source of the injury. And, however amateurishly, I made my case. I have been wrongly denied the jury trial guaranteed by the Seventh Amendment to the Constitution of the United States.

TWO ISSUES OF GREAT PUBLIC IMPORTANCE

In addition to the two Questions for Review listed above, I respectfully ask this Court to take into consideration, when deciding whether to grant this petition, the suitability of my lawsuit as a means to address two very important public issues.

The Reverse Chilling Effect

If it is too easy to prevail on a defamation claim, said this Court in *New York Times v. Sullivan,* fear of being sued for defamation may have a "chilling effect" on public debate. So the Court took steps to make it harder to prevail on a defamation claim. But the Court may not have given enough consideration to the impact on public debate that making it too *hard* to prevail on a defamation claim could have. Today there is fear—real fear—concerning defamation, but the fear isn't of being sued for it. The fear is of defamation itself.

The reaction of the Lexington officials to the email from hate-tracker, Stephen Piggott, provides an example of how strongly the fear of defamation is felt in modern America. They received the email in the afternoon and by the following morning the city had gone to the extreme length of concocting a false charge ("an investigation has revealed illegal

construction"), putting it in writing, and *threatening the arrest of two men who had done nothing wrong.* Better to commit that outrage than risk the possibility of being defamed.

Another example of the reverse chilling effect can be seen in my search for legal representation in this case—a search on which, as the District Court in Western Missouri is painfully aware, I spent a very long time. *Motion for Extension of Time To Obtain Counsel* Dkt 74, p.7 [Appendix M-1] And, as the District Court is even more painfully aware, my search was unsuccessful. Some of the attorneys from whom I sought representation were sympathetic to my case and thought it legally viable, but declined to represent me nonetheless. One of these I prevailed upon to tell me why. In a telephone conversation lasting more than an hour, this attorney told me it wasn't even the difficulty of overcoming the actual malice hurdle that deterred him. "If I represented a white supremacist," he said, "I would be finished."

What that attorney was expressing was a legitimate fear of defamation—defamation so toxic even the reflection of it off me was enough to cow him. That I'm not a white supremacist was immaterial and offered no protection. That he was satisfied that I wasn't a white supremacist was immaterial and offered no protection. That he himself was not a white supremacist was immaterial and offered no protection. Truth had no role to play in his calculations.

If, for fear of defamation, an attorney is afraid to advocate in a court of law for a citizen of whose right he is convinced, what must the effect of that same fear be on the individual

who wants to advocate in the court of public opinion for a cause the importance of which they are convinced but that doesn't align with the views of the SPLC?

The self-censorship of the press was a primary concern in the *New York Times v. Sullivan* decision, but is an individual any less susceptible to self-censorship? And is the individual's voice any less important to robust democratic debate?

The protections put in place by *New York Times v. Sullivan* for media defendants also shields the poison pen industry, amplifying the threat to the reputations of individuals, and, perversely, increasing the impetus to self-censor. The first to fall silent are those who don't feel so strongly about politics and public issues. For them, the risk of defamation quickly outweighs any desire to participate in the national conversation. Public discourse is thereby driven to the extremes, polarizing it until the only players left on the field are venom and volume and, waiting impatiently on the sidelines, violence.

Online Libel Is Forever

Sherman Davis and I had been given a once-in-a-lifetime opportunity in Lexington, Missouri, and we gave it everything we had. By the time we finally threw in the towel and headed back east—Sherman Davis to Washington, DC and I to Baltimore—we were both jobless and penniless. I spent the summer living on the streets of Baltimore among the very people for whom six months earlier I had been devising a rescue program.

But the SPLC still wasn't through with me. While in Baltimore, I decided to pursue an idea I had for starting a newspaper panhandlers could sell for a dollar. I was able to secure a 30

dollar per month co-working safe space in Baltimore called Impact Hub. On the first day there, within the first few hours, staff at Impact Hub pulled up the SPLC Article. They called the police (!) and, though I had a signed contract and had done nothing wrong, their commitment to being a welcoming community was their first priority and they had me escorted out of the building by men with guns. *Am. Compl.* Dkt 6 ¶73 also *Defendant's Internal Emails* 45, 46, 48 [Appendix X-4]

Impact Hub, Baltimore, Summer, 2018: Baltimore police officers wait as I pack up my things before escorting me out of the building at the request of Impact Hub management, who felt that having someone around who had been defamed by the SPLC would make other customers feel unwelcome. Once I was safely away, one of those other customers, Rachel Micah-Jones,contacted the SPLC seeking their help in "analyzing" my "visit" and wondering whether they needed to be concerned. *Defendant's Internal Emails* 45, 46, 48 [Appendix X-4]

And still, the SPLC wasn't done with me. After returning to Missouri to file this lawsuit, I got a job washing dishes at a restaurant in North Kansas City called "The Outpost." On my fourth day I was fired without explanation. When I went back to pick up my pay, a server told me another server had Googled me and then informed management I was a "white supremacist." Assuming she found the SPLC Article, can you blame The Outpost for firing me? Could they risk the defamation they might themselves incur for having someone linked to Nazi atrocities washing their dishes?

And still, the SPLC isn't done with me. Just now, when I searched my name on Google, the defamatory SPLC Article, with its falsehoods and its naked intent to cause harm, came up in position #3. I can't pry them off me. Even turning to the courts for help has produced nothing but years of bleak poverty and wasted effort. They defame and destroy—completely destroy—with impunity—forever.

CONCLUSION

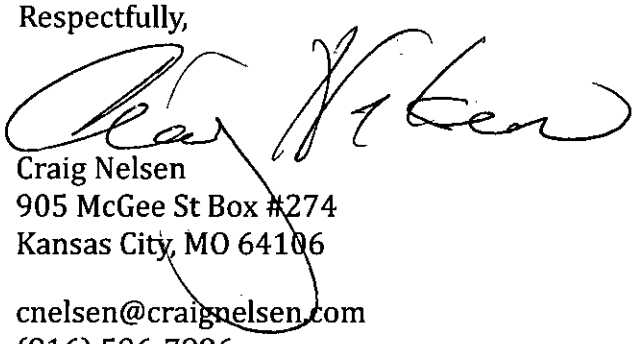
It used to be generally believed in this country that anyone, however humble their station, who was the victim of an injustice, could, *if they had truth on their side*, turn to an American court and find a strong ally in the pursuit of justice. This view is no longer widespread—perhaps no longer even a majority view—perhaps no longer even true. I cannot say to what degree the *New York Times v. Sullivan* decision has played a role in bringing us to this point, but I can say it is a very big deal we are brought to this point.

In his analysis of American democracy, Alexis de Tocqueville saw both the courts of justice and the free press as important safeguards against tyranny because both were powerful institutions capable of protecting the weak from the strong. The courts in particular were bulwarks against despotism, in de Tocqueville's view, as a consequence of their institutional indifference to power and because they were set up to be...

> ...always at the disposal of the humblest of those who solicit it; their complaint, however feeble they may themselves be, will force itself upon the ear of justice and claim redress, for this is inherent in the very constitution of the courts of justice." *Democracy in America*, Alexis de Tocqueville, Vol II, Ch. VII, (1835)

Stations don't get much humbler than mine, but, perhaps, as my adversary has a seat at the very center of power, this will recommend itself to the suitability of my complaint as a means to improve and modernize defamation law. And, it is hoped, however feeble my *pro se, in forma pauperis* effort may be, my claim for redress will force itself upon the ear of justice.

Respectfully,



January 29, 2022
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