

No. 21-802

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In The  
**Supreme Court of the United States**

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CORAL RIDGE MINISTRIES MEDIA, INC., d/b/a  
D. JAMES KENNEDY MINISTRIES,

*Petitioner,*

v.

SOUTHERN POVERTY LAW CENTER,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**BRIEF OF AMICI CURIAE  
REGINA CAELI ACADEMY AND  
TRUE FREEDOM MINISTRIES IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI**

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**IDENTITY AND INTERESTS  
OF *AMICI CURIAE*<sup>1</sup>**

Regina Caeli Academy (RCA) is a private, independent, University-Style Hybrid® academy operating in 17 states across the country with affiliates in the United Kingdom. It offers accredited academic and extracurricular classes to students from preschool through twelfth grade. RCA’s mission is to form classically educated young men and women according to the tradition and teaching of the Catholic Church, training them to speak, write, and act as gracious human beings.

RCA is a faithful adherent to the Magisterium, which is the official teaching office of the Catholic Church. Catholics believe that this office can be trusted to interpret Scripture and make authoritative statements as to Church doctrine, in part because of Jesus’s promise to send the Holy Spirit to guide them. The Catholic Church believes that Holy Scripture makes clear that homosexual behavior is always

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<sup>1</sup> As required by Rule 37.2(a), all parties with counsel listed on the docket consented to the filing of this brief. Counsel of record for all listed parties received notice at least 10 days prior to the due date of the *Amici Curiae*’s intent to file this brief.

Pursuant to Rule 37.6, the *Amici Curiae* state that no counsel for a party authored this brief in whole or in part, and no person other than the *Amici Curiae* made any monetary contribution intended to fund the preparation or submission of this brief. In the interest of full disclosure, counsel for *Amici* works at the same firm as Attorney David Gibbs III, counsel for Petitioner. Nonetheless, neither of Petitioner’s attorneys authored, edited, or reviewed this *Amici* brief prior to filing.

objectively sinful, and thus, no Catholic can live or condone such a lifestyle.

True Freedom Ministries (TFM) is an evangelical Christian organization dedicated to reaching persons across the state of Ohio who are incarcerated in jails and prisons, homeless, or trapped in addiction with the message of the true freedom found only in Jesus Christ. TFM produces weekly messages on social media, is frequently asked to speak on television and radio broadcasts, and is influential at the highest levels of Ohio's government and prison system. TFM also believes that Scripture makes clear that homosexual behavior is a sin.

Neither RCA nor TFM teaches or condones hate of any form against any person. In fact, they teach exactly the opposite—they teach love. Love for everyone, regardless of the sin one struggles with. While they do and must believe that Scripture condemns actions it identifies as sin, sin does not justify hate—which is itself a sin.

On this issue, *amici* agree with Petitioner Coral Ridge Ministries Media, Inc., d/b/a D. James Kennedy Ministries. Thus, *amici* have legitimate concerns that terms like “hate” and “extremist,” recklessly used by Respondent Southern Poverty Law Center (SPLC), have already and will continue to generate—not eliminate—intolerance, hate, and violence toward them and millions of peaceful, like-minded people and organizations across the nation. RCA and TFM have a strong interest in their own ability, and that of others

with similar views, to legally defend against reckless and false labels designed to fuel outrage against them.



### SUMMARY OF THE ARGUMENT

Words have meaning—sometimes dangerous, devastating meaning. Words such as “hate” and “extremist” can conjure up anger in even normally right-minded people. Indeed, when such words are accurately used to describe truly hateful, extremist organizations such as the Ku Klux Klan, Aryan Nations, and neo-Nazis—organizations with a history of hateful, violent acts—they *should* evoke negative reactions. But when such labels are recklessly and falsely applied—particularly when coupled with other tactics known to invoke fear and outrage—to peaceful, mainstream organizations that harbor no ill-will toward anyone and that, in fact, promote love rather than hate, those organizations unfairly suffer severe reputational damage and can potentially suffer the very hateful violence that SPLC pretends to condemn.

There must be an opportunity for remedy, not just for the inevitable reputational damage, but perhaps more importantly, to prove the label false. Without that opportunity, peaceful organizations can become the target of would-be attackers otherwise led to believe that their violent acts are somehow righteous.



## ARGUMENT

### I. ***Sullivan* effectively eliminates the historical opportunity for public figures to remedy the scorn associated with false and damaging name-calling.**

The right to defend one’s good name and reputation in a court of law is so highly valued in this country that it is embedded in the constitutions of at least twenty-five U.S. states and territories.<sup>2</sup> Prior to *New York Times v. Sullivan*, 376 U.S. 254 (1964), this Court affirmed that right. For example, in *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951), this Court confirmed that organizations—without regard to their public figure status—had a “common-law right to be free from defamation.” *Id.* at 139. It further noted that the “touchstone to justiciability is injury to a legally protected right and the right of a bona fide charitable organization to carry on its work, free from defamatory statements of the kind discussed, is such a right.” *Id.* at 140-141.

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<sup>2</sup> See, e.g., Ala. Const. art. I, § 13 (“That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law . . .”); see also, Ark. Const. art. 2, § 2; Conn. Const. art. I, § 10; Del. Const. art. I, § 9; Ill. Const., art. I, § 12; Ind. Const. art. 1, § 12; Kan. Const. B. of R. § 18; Ky. Const. § 14; La. Const. art. I, § 22; Me. Const. art. I, § 19; Miss. Const. Ann. art. 3, § 24; Neb. Const. art. I, § 13; N.C. Const. art. 1, § 18; N.D. Const. art. I, § 9; Ohio Const. art. I, § 16; Okla. Const. art. II, § 6; Or. Const. art. I, § 10; Pa. Const. art. 1, § 1; P.R. Const. art. II, § 8; S.D. Const. art. VI, § 20; Tenn. Const. art. I, § 17; Tex. Const. art. I, § 13; Utah Const. art. I, § 11; W. Va. Const. art. III, § 17; Wyo. Const. art. 1, § 8.

In *Sullivan*, however, this Court adopted an actual malice standard in defamation actions brought by elected public officials. In *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967), this Court expanded that standard to unelected “public figures.”

Now, in a post-*Sullivan*, technologically advanced world where there is ready internet access, not only can false and defamatory words spread in an instant, but the world of unelected “public figures” has expanded beyond count. Today, a lone pastor in a small church in a small town can become an internet phenom overnight, elevating him from relative obscurity to “public figure” at astonishing speed.

At the same time, the right of a public figure to protect his or her good name and reputation has diminished to the point of virtual extinction. As David Logan, Professor of Law at Roger Williams University and Adviser to the Restatement of Torts (Third): Defamation and Privacy project, wrote:

Proving “actual malice” is so daunting that it amounts to near immunity from liability and thus a license to publish falsehoods. . . . [T]he data show that very few public plaintiffs recover substantial damages because the “actual malice” standard is extremely difficult to satisfy, especially on appeal. This has resulted in little deterrence of liars and a systematic under-protection of the right to an unsullied reputation.

David Logan, *Rescuing Our Democracy by Rethinking New York Times Co. v. Sullivan*, 81 Ohio St. L.J. 759, 778 (2020).

At a time when the number of people and organizations handcuffed by *Sullivan*'s actual malice standard is dramatically increasing, the ability to clear one's name in court has never been more important. That is so because SPLC not only engages in reputational terrorism against its political opponents, it does so using tactics proven to incite the kind of fear and outrage known to motivate violent crusaders.

## **II. The SPLC's tactics can promote violence against peaceful people and organizations.**

The SPLC's false labels are not just reckless; they are dangerous. Violent reactions are foreseeable. While the SPLC claims not to advocate violence, its tactics show otherwise.

### **A. The SPLC uses inflammatory labels that incite outrage.**

Despite empty words to the contrary, the SPLC generates the very hate and intolerance it claims to decry. One of its tactics is inflammatory labeling. Although the English language accommodates countless accurate options for SPLC to describe its political opponents, it opts for such terms as "hate group" and "extremist"—inflammatory labels that incite outrage. It then assigns to those terms its own, self-sculpted

definitions that are not the common understanding and not the interpretation most people would give them.

The SPLC . . . understands the importance of language. It fights what it labels “hate,” “intolerance,” and “discrimination,” but it defines those terms very differently than most Americans would. Like Humpty Dumpty in *Through the Looking-Glass*, when SPLC uses a specific word, it means whatever SPLC chooses it to mean—neither more nor less.

Matthew Vadum, *The Southern Poverty Law Center: A Twisted Definition of Hate*, CAPITAL RESEARCH CENTER (Nov. 1, 2006).<sup>3</sup>

For example, SPLC claims that its definition of “hate group” “uses similar criteria” to the FBI’s definition of a “hate crime.” *Frequently Asked Questions about Hate Groups*, SPLC (Mar. 18, 2020).<sup>4</sup> In reality, the two are very different. The SPLC defines a “hate group” as:

an organization or collection of individuals that—based on its official statements or principles, the statements of its leaders, or its activities—has beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics. An organization does not need to have engaged in criminal

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<sup>3</sup> <https://capitalresearch.org/article/the-southern-poverty-law-center-a-twisted-definition-of-hate/>.

<sup>4</sup> <https://www.splcenter.org/20200318/frequently-asked-questions-about-hate-groups#hate%20group> (last visited Dec. 17, 2021).



conduct or have followed their speech with actual unlawful action to be labeled a hate group.

*Id.* Contrarily, the FBI defines a “hate crime” as:

a traditional offense like murder, arson, or vandalism with an added element of bias. For the purposes of collecting statistics, the FBI has defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” Hate itself is not a crime—and the FBI is mindful of protecting freedom of speech and other civil liberties.

*Hate Crimes*, FBI.gov.<sup>5</sup> While the FBI requires an objective, criminal offense “like murder, arson, or vandalism” before a “hate” label is applied, “hate” to the SPLC only requires a subjectively different political view.

Using its own peculiar definition of “hate”—one most people will never know—SPLC routinely aligns peaceful, mainstream, conservative organizations with cross-burning Klan members without distinction. Laird Wilcox, an independent researcher of both left and right extremist groups but who describes himself as a liberal, observed that SPLC has:

specialized a highly developed and ritualized form of defamation, . . . a way of harming and

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<sup>5</sup> <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (last visited Dec. 17, 2021).

isolating people by denying their humanity and trying to convert them into something that deserves to be hated and eliminated. They accuse others of this but utilize their enormous resources to practice it on a mass scale themselves.

Laird Wilcox, *An Expert on Fringe Political Movements Reflects on the SPLC's Political Agenda—An Exclusive Interview with Author and Researcher Laird Wilcox*, THE SOCIAL CONTRACT PRESS, Volume 20, Number 3 (Spring 2010).<sup>6</sup>

This form of intentional vilification of one's opponents is not new. As Vladimir Lenin famously wrote: "We can and must write in a language which sows among the masses hate, revulsion, and scorn toward those who disagree with us."<sup>7</sup>

The SPLC demonizes its political opponents with a hate label based on SPLC's own definition of hate. In so doing, SPLC fails to clarify for its fearful followers that when it comes to stating a view SPLC dislikes, there is no difference between a heinous, violent act and the peaceful, legal exercise of a constitutional right.

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<sup>6</sup> [http://www.thesocialcontract.com/artman2/publish/tsc\\_20\\_3/tsc\\_20\\_3\\_wilcox\\_interview.shtml](http://www.thesocialcontract.com/artman2/publish/tsc_20_3/tsc_20_3_wilcox_interview.shtml).

<sup>7</sup> AZQuotes.com, [https://www.azquotes.com/author/8716-Vladimir\\_Lenin](https://www.azquotes.com/author/8716-Vladimir_Lenin) (last visited Dec. 17, 2021).

**B. The SPLC invokes fear by wildly exaggerating the number of “hate groups.”**

A second tactic used by SPLC to trigger fearful reactions toward its political opponents is to dramatically exaggerate the number of “hate groups” in America. A review of SPLC’s extensive hate map can be terrifying to the uninformed reader. The map, however, is largely a political attack on peaceful organizations and a collection of imaginary fascists.

First, SPLC exaggerates the number of “hate groups” by, as in the present case, naming peaceful, respected, mainstream organizations to its list not because they are hateful, but simply as punishment for their social and political views. As syndicated columnist Don Feder writes: “What makes the Southern Poverty Law Center particularly odious is its habit of taking legitimate conservatives and jumbling them with genuine hate groups (the Klan, Aryan Nation, skinheads, etc.), to make it appear that there’s a logical relationship.” Don Feder, *The Southern Poverty Law Center—No Artistry in its Smears* (Dec. 10, 2007).<sup>8</sup>

As genuine “hate groups” such as the Ku Klux Klan have dwindled, the SPLC has broadened its target list in order to justify its continued existence. In recent years whole categories and new groups have been added, not because of actual “hate” activities, but because they hold conservative positions on controversial

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<sup>8</sup> <http://www.donfeder.com/articles/0712SPLC.pdf>.

political issues such as immigration and homosexuality.

*Debunking the SPLC “Hate Group” Myth*, LIBERTY COUNSEL (Oct. 5, 2015) (footnotes omitted).<sup>9</sup>

Second, SPLC exaggerates the number of “hate groups” by manufacturing them where none exist, or by counting them multiple times. Many of SPLC’s “hate groups” either cannot be verified at all or may consist of one radical individual with a Yahoo! account. Patrick Brennan, former senior communications official at the Department of Health and Human Services, observed:

[T]he SPLC hugely inflates their headline numbers with a bizarre counting system. Only on the site where you find the raw data, and in none of their media releases, do they make it clear that the “1,007 hate groups” number counts individual chapters of national or regional groups. . . . “When you filter the list for organizations with identical names, the list of 1,007 becomes a list of 358.”

Patrick Brennan, *The SPLC and Slant*, NATIONAL REVIEW (Mar. 15, 2013),<sup>10</sup> quoting J.M. Berger, *The Hate List: Is America really being overrun by right-wing militants?*, FOREIGN POLICY (Mar. 12, 2013).<sup>11</sup>

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<sup>9</sup> <https://www.lc.org/newsroom/details/debunking-the-splc-hate-group-myth>.

<sup>10</sup> <https://www.nationalreview.com/corner/splc-and-slant-patrick-brennan/>.

<sup>11</sup> <https://foreignpolicy.com/2013/03/12/the-hate-list/>.

Similarly, Laird Wilcox is quoted as saying: “Several years ago with minimal effort I went through a list of 800-plus ‘hate groups’ published by the SPLC and determined that over half of them were either non-existent, existed in name only, or were inactive.” John Vinson, *Fighting ‘Hate’ for Profit and Power: The SPLC’s Political Agenda Up Close*, THE SOCIAL CONTRACT PRESS, Volume 20, Number 3 (Spring 2010).<sup>12</sup> In fact, while SPLC “claims that the number of ‘hate groups’ in America increased by a staggering 66% from 2000 to 2010 . . . this is only as a result of their own expanding definition of what constitutes a ‘hate group.’ Actual hate crimes, as measured by the FBI, fell nearly 25% between 1996 and 2009.” *Debunking the SPLC “Hate Group” Myth*, *supra* n. 10 (footnotes omitted).

The reality is: “While decrying ‘conspiracy theorists,’ the SPLC itself is obsessed with ‘Terror from the Right’ that is, pardon us for noticing, so rare as to be nearly insignificant.” The Editors, *Everyone Who Disagrees with the SPLC is Hitler*, NATIONAL REVIEW (Nov. 1, 2016).<sup>13</sup> But by churning the imaginary pot, SPLC conjures up so many so-called “hate groups” that gullible followers tremble in fear. And some of them, as will be shown below, take up the fraudulent mantle in violent ways.

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<sup>12</sup> [http://www.thesocialcontract.com/artman2/publish/tsc\\_20\\_3/tsc\\_20\\_3\\_vinson.shtml](http://www.thesocialcontract.com/artman2/publish/tsc_20_3/tsc_20_3_vinson.shtml).

<sup>13</sup> <https://www.nationalreview.com/2016/11/splc-anti-muslim-extremists-list-scholars-reformist-muslims-hirsi-ali-daniel-pipes/>.

**C. The SPLC has never labeled a leftwing organization or individual a “hate group” or “extremist” no matter how heinous their actions.**

A third tactic used by SPLC to direct public hate and outrage toward its political opponents: make its followers believe that the only “hate groups” worth concern or mention are those alleged to be on the political right. The SPLC has never put a leftwing group on its map, no matter how hateful.

When activists associated with Occupy Wall Street—a radical leftwing group—attempted to bomb a major bridge in Cleveland, Ohio, Charles Cooke, a reporter for *National Review*, contacted SPLC to inquire whether Occupy Wall Street would be placed on the map. After delays, awkward silences, and failed efforts at redirect, the eventual response from SPLC was: “We’re not really set up to cover the extreme left.” Cooke wrote:

In my time covering Occupy Wall Street I have seen anti-Semitism, black nationalism, class hatred, and threats of violence; there have been rapes, a few murders, and now some domestic terrorism. One would have thought that these things would be sufficient warrant for a group like the Southern Poverty Law Center to stand up and take serious note, but, as I learned yesterday, there’s one problem: They’re just “not set up to cover the extreme Left.”

Charles C. W. Cooke, *Occupy the Southern Poverty Law Center*, NATIONAL REVIEW (May 4, 2012).<sup>14</sup>

Former Ohio Secretary of State Ken Blackwell shares a similar concern that SPLC does not consider the radical, leftwing Black Lives Matter a hate group. Blackwell writes:

BLM has been a major motivator for the attacks on police officers all over the country. With chants like “Pigs in a blanket, fry-em like bacon” and “What do we want? Dead Cops!” the simple fact is that BLM has created an atmosphere of anger and hatred and has incited violence against law enforcement officers across the country.

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Now it has been exposed through BLM’s own documents that they are unashamedly anti-Semitic.

\* \* \*

Now the SPLC is once again tacitly inciting violence through its support of BLM, this time against police, while portraying themselves as police supporters.

\* \* \*

By endorsing BLM, the Southern Poverty Law Center has demonstrated that it has no concerns about the consequences of its actions.

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<sup>14</sup> <https://www.nationalreview.com/corner/occupy-southern-poverty-law-center-charles-c-w-cooke/>.

Now they are complicit in the targeting of police and the condemnation of Israel, yet there seems to be no “hate” label anywhere in this.

Ken Blackwell, *The Hypocrisy of BLM and the Southern Poverty Law Center*, CNSNEWS.COM (Aug. 23, 2016).<sup>15</sup>

As to Antifa, a militant, leftwing political movement that uses violence to achieve its goals, former SPLC President Richard Cohen explained: “There might be forms of hate out there that you may consider hateful, but it’s not the type of hate we follow.” Steven Nelson, *Southern Poverty Law Center condemns antifa, but won’t call hate group*, WASHINGTON EXAMINER (Sept. 3, 2017).<sup>16</sup> Neither has the radical Muslim group Jumaat al-Fuqra (or any other radical Muslim group) made the hate list, despite SPLC’s acknowledgement of its link to seventeen homicides and thirteen fire bombings. *The Southern Poverty Law Center Exposed*, LIBERTY COUNSEL.<sup>17</sup>

The SPLC’s tactics betray what Wilcox calls its “dirty little secret,” which is that “they actually need racial violence, growing ‘hate groups,’ and more racial crime to justify their existence and promote their agenda.” Wilcox, *supra* n. 7.

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<sup>15</sup> <https://www.cnsnews.com/commentary/ken-blackwell/hypocrisy-blm-and-southern-poverty-law-center>.

<sup>16</sup> <https://www.washingtonexaminer.com/southern-poverty-law-center-condemns-antifa-but-wont-call-hate-group>.

<sup>17</sup> <https://lc.org/southern-poverty-law-centers-hate-group-label-is-false-propaganda>.



And the message is clear. Conservative individuals and organizations, no matter how peaceful or mainstream, are in SPLC's crosshairs. But if liberal individuals or organizations act violently toward conservatives, those offenders will never come under SPLC scrutiny. In fact, when it comes to SPLC's political opponents, its "aim in life is to destroy these groups, to completely destroy them." Bonnie Bucqueroux, *Mark Potok Speech I*, YOUTUBE (Sept. 11, 2007).<sup>18</sup>

Although SPLC pretends to condemn violence, it actually encourages it. Such violence only furthers its stated "aim in life."

### **III. There is a very real and potentially violent consequence to SPLC's reckless name-calling.**

Given SPLC's fearmongering tactics, it is no surprise that some people have reacted violently. The SPLC's reckless labels of hate and extremism are not just reputational death sentences; they can be literal death sentences. As SPLC creates the illusion that hateful bigots lurk around every corner, it makes people feel threatened, in some cases leading them to their own hateful acts. As noted by the Philanthropy Roundtable, SPLC's "hate group" label is intended to "spread stigma just by innuendo," and its "tactics lead directly to incendiary hate and violence." Karl

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<sup>18</sup> [https://www.youtube.com/watch?v=fnTz2ylJo\\_8&feature=relmfu](https://www.youtube.com/watch?v=fnTz2ylJo_8&feature=relmfu) (beginning at 1:37).

Zinsmeister, *Some People Love to Call Names*, PHILANTHROPY ROUNDTABLE.<sup>19</sup>

A gunman’s attack on the Family Research Council (FRC) is a well-known example. The SPLC placed FRC on its “hate map,” branding it an “Anti-LGBTQ” hate group because it advocates for traditional values of marriage and sexuality—values that were not even controversial until recent history but now, according to SPLC, are hateful and extreme. But far from being hateful or extreme, FRC is a “nonprofit research and educational organization dedicated to articulating and advancing a family-centered philosophy of public life.”<sup>20</sup> The liberal-leaning *Washington Post* described FRC as “a mainstream conservative think tank” that “advocates for a full range of conservative Christian positions, on issues from stem cells to euthanasia.” Dana Milbank, *Dana Milbank: Hateful speech on hate groups*, THE WASHINGTON POST (Aug. 16, 2012).<sup>21</sup>

Floyd Corkins, a gay-rights activist, learned of FRC from SPLC’s hate map. In 2012, he stormed FRC’s headquarters armed with a pistol and nearly 100 rounds of ammunition. Corkins began his violent rampage by shooting the building operations manager, but his would-be massacre was stopped when the injured

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<sup>19</sup> <https://www.philanthropyroundtable.org/philanthropy-magazine/article/some-people-love-to-call-names> (last visited Dec. 20, 2021).

<sup>20</sup> <https://www.frc.org/about-frc> (last visited Dec. 17, 2021).

<sup>21</sup> [https://www.washingtonpost.com/opinions/dana-milbank-hateful-speech-on-hate-groups/2012/08/16/70a60ac6-e7e8-11e1-8487-64e4b2a79ba8\\_story.html](https://www.washingtonpost.com/opinions/dana-milbank-hateful-speech-on-hate-groups/2012/08/16/70a60ac6-e7e8-11e1-8487-64e4b2a79ba8_story.html).

victim managed to disarm him. When questioned about his actions, Corkins told the FBI that he selected FRC because SPLC named it a hate group. Fred Lucas, *Domestic Terrorist Says He Targeted FRC After Finding It on Southern Poverty Law Center Website*, CNSNEWS.COM (Apr. 25, 2013).<sup>22</sup> His stated intent was “to kill as many people as possible.” FBI Press Release, *Virginia Man Sentenced to 25 Years in Prison in Shooting of Security Guard at Family Research Council* (Sept. 19, 2013).<sup>23</sup>

In addition to ammunition, Corkins carried the name and address of a second conservative organization that had also earned SPLC’s “Anti-LGBTQ” badge of hate. It, presumably, was Corkins’ next target had he not been stopped. Crimesider Staff, *Floyd Lee Corkins indicted in shooting at conservative Family Research Council headquarters*, CBS NEWS (Aug. 22, 2012).<sup>24</sup>

In February 2017, social scientist Charles Murray was scheduled to speak at Middlebury College in Vermont on his acclaimed book *Coming Apart*. Murray, a Libertarian, was falsely dubbed a “white nationalist” by SPLC. David French, *Charles Murray Finally Fights Back Against the SPLC*, NATIONAL REVIEW (Mar.

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<sup>22</sup> <http://cnsnews.com/news/article/domestic-terrorist-says-he-targeted-frc-after-finding-it-southern-poverty-law-center>.

<sup>23</sup> <https://archives.fbi.gov/archives/washingtondc/press-releases/2013/virginia-man-sentenced-to-25-years-in-prison-in-shooting-of-security-guard-at-family-research-council>.

<sup>24</sup> <https://www.cbsnews.com/news/floyd-lee-corkins-indicted-in-shooting-at-conservative-family-research-council-headquarters/>.

27, 2017).<sup>25</sup> Students enraged by the implications of SPLC’s label violently attacked Murray and the Middlebury College professor escorting him. Murray and the professor were forced to retreat, and the professor was hospitalized due to injuries sustained in the riot. Tom Ciccott, *Angry Mob Derails Charles Murray Event at Middlebury College, Sends Professor to Hospital*, BREITBART.COM (Mar. 6, 2017).<sup>26</sup>

In June 2017, James Hodgkinson, a leftwing political activist, gunned down House Majority Whip Steve Scalise, R-La. Rebecca Beitsch, *FBI reclassifies 2017 baseball field shooting as domestic terror*, THE HILL (May 17, 2021).<sup>27</sup> The SPLC had published an article strongly suggesting that Scalise was a white supremacist associated with a true hate group founded by a former KKK member. *House Whip Survives Hate Group Scandal, at Least for Now*, SPLC INTELLIGENCE REPORT (Mar. 10, 2015).<sup>28</sup> Prior to the attack, Hodgkinson “liked” SPLC on Facebook. Penny Starr, *Southern Poverty Law Center Admits Shooter “Liked” Its Facebook Page, Doesn’t Retract Repeated Attacks on Rep. Scalise*, BREITBART.COM (Jun. 14, 2017).<sup>29</sup> Similar to Corkins,

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<sup>25</sup> <https://www.nationalreview.com/corner/charles-murray-finally-fights-back-against-splc/>.

<sup>26</sup> <https://www.breitbart.com/tech/2017/03/06/angry-mob-derails/>.

<sup>27</sup> <https://thehill.com/policy/national-security/553958-fbi-reclassifies-2017-baseball-field-shooting-as-domestic-terror>.

<sup>28</sup> <https://www.splcenter.org/fighting-hate/intelligence-report/2015/house-whip-survives-hate-group-scandal-least-now>.

<sup>29</sup> <http://www.breitbart.com/big-government/2017/06/14/southern-poverty-law-center-admits-shooter-liked-its-facebook-page-doesnt-retract-repeated-attacks-on-rep-scalise/>.

the FBI found a list of names, including those of three Republican Congressmen, in Hodgkinson's pocket. Melanie Eversley & Kevin Johnson, *Gunman in congressional baseball shooting had list of names in his pocket*, USA TODAY (Jun. 16, 2017).<sup>30</sup>

Referencing the attack at FRC, one liberal commentator noted:

[T]his shooting should remind us all of an important truth: that while much of the political anger in America today lies on the right, there are unbalanced and potentially violent people of all political persuasions. The rest of us need to be careful about hurling accusations that can stir up the crazies.

\* \* \*

I disagree with the Family Research Council's views on gays and lesbians. But it's absurd to put the group, as the law center does, in the same category as Aryan Nations, Knights of the Ku Klux Klan, Stormfront and the Westboro Baptist Church.

\* \* \*

The National Organization for Marriage, which opposes gay marriage, is right to say that the attack "is the clearest sign we've seen that labeling pro-marriage groups as 'hateful' must end."

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<sup>30</sup> <https://web.archive.org/web/20180309230324/> <https://www.usatoday.com/story/news/2017/06/16/baseball-practice-shooter-had-list/102935484/> (updated Jun. 17, 2017).

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Nobody gave Corkins a license to kill. But at the same time, “hate,” a strong word, has been used too loosely—whether it’s Mitt Romney telling President Obama to take his “campaign of division and anger and hate back to Chicago,” or the Southern Poverty Law Center lumping a Christian policy group in with hooded bigots.

Milbank, *supra* n. 22.

So long as SPLC continues peddling hate against its political opponents, one of the best hopes those opponents have to thwart such violent attacks is to prove in a court of law that SPLC’s labels are false. The practical reality of the *Sullivan* and *Curtis* cases, however, is that this opportunity for redemption is virtually nonexistent.

#### **IV. *Sullivan* allows—in fact, motivates—defamation while blocking the path to truth.**

The SPLC’s reputational terrorism and the target it places on the backs of peaceful organizations is all bad enough. Worse yet, the law post-*Sullivan* allows SPLC—and others who might choose to do so, regardless on what side of the aisle they sit—to pander hate-mongering and sling defamation almost with impunity against any person or organization with an internet profile high enough to make them a “public figure.” Because proving “actual malice” has proven to be all but impossible, defendants like SPLC have virtually no

risk of being held accountable for their actions, and in fact, *Sullivan* actually motivates a the-more-reckless-the-better mindset.

The “actual malice” standard also creates perverse incentives. To recover, the plaintiff must prove that the defendant knew the statement was false or was subjectively certain of its falsity. This puts publishers to a hard choice: publishing without verification is the safest legal route, as an attempt to verify that turns up contrary information before publication can constitute reckless disregard for the truth and support liability. As a result, publishers are incentivized to do little or no fact-checking, confident that the more slipshod their investigation, the less likely they are to be guilty of “actual malice.” In short, under an “actual malice” regime, ignorance is bliss.

David Logan, *Rescuing Our Democracy by Rethinking New York Times Co. v. Sullivan*, 81 Ohio St. L.J. 759, 778 (2020).

Sharing Professor Logan’s concerns, the well-known legal scholar Richard A. Epstein wrote:

The greatest cost of the present system is that it makes no provision for determining truth. When a defendant wins a case on actual malice, there is no correction of past errors, and no sense of vindication for the plaintiff who can complain bitterly that he lost on a technicality that was of no concern to him. Indeed it is not surprising that the plaintiff’s level of frustration is so great in defamation cases

precisely because of the frequency with which the defendant avoids the only issue that matters to the plaintiff—falsehood, which could allow rehabilitation of the plaintiff’s reputation. The public, too, is a loser because the present system places systematic roadblocks against the correction of error. If it is important for the public to know that Jones has been a faithless public official, it is equally important for the public to know that Jones has been a diligent public official falsely accused. . . .

\* \* \*

I have no question as a matter of general principle that any plaintiff should be entitled to a determination in court that a statement made by the defendant was false with respect to him. . . . Even if not a penny is paid over, the determination of falsehood, unclouded by any examination of the defendant’s motive, is like the restitution of a thing taken by the defendant.

Richard A. Epstein, *Was New York Times v. Sullivan Wrong?*, 53 *University of Chicago Law Review* 782, 813-814 (1986).

Regardless of a person’s or organization’s ideology, the reputational damage done by reckless and inflammatory labeling and defamation can be devastating. With no realistic chance of redemption in a court of law, there is also the very real concern that a gullible crusader might once again take matters into his own hands.



In the instant case, SPLC does not have to agree with conservative ideology, but those who believe in traditional notions of marriage, family, and sexuality—particularly those who have never promoted, acted, or spoken in hate—must be equally free to believe what they believe without fear of being slapped with a false “hate” or “extremist” label and made the potential target of violence.

In an internet age, where there is dramatically increased opportunity to spread false information against a dramatically increased number of public figures—things the *Sullivan* Court likely could never have fully imagined—*Sullivan* has run its course, at least so far as unelected public figures go. Now, more than ever, the “actual malice” shackle must be shed.

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## CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,  
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