No. 25-770

In the Supreme Court of the United States

ALAN M. DERSHOWITZ, PETITIONER,

v.

CABLE NEWS NETWORK, INC., RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT OF RESPONDENT

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, "Amicus"),[1] while decrying slander, libel, and falsehoods in general, strongly questions Petitioner Alan M. Dershowitz's arguments, so Amicus supports Respondent CNN here.

Amicus is no expert (he suspects) on the First Amendment, but it takes no expert to see that overturning, or gutting, the landmark free-speech-against-powerful-parties case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), might be a very bad idea, especially at the present time of immense economic inequality and societal discord.

And Amicus has a recent record of pointing out to the Court some egregious errors made by President Donald Trump's lawyers in their filings to this Court, *see infra* Part VII. Thus, Amicus may have some credibility as a person who appreciates that falsehoods are bad, and not to be ignored.

And this makes him more secure in questioning, publicly, the injustice of needlessly destroying *Sullivan*, *supra*, i.e., the injustice of throwing out the "baby" of freely criticizing the mighty, with the excuse of throwing out the "bathwater" of letting some journalists'/critics' errors go unpunished.

SUMMARY OF ARGUMENT

Commentators make mistakes, including Dershowitz's misspelling his petition's cover page, and failing to mention Ukraine re Trump's

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[1] No party or its counsel wrote or helped write this brief or gave money for its writing or submission, *see* S. Ct. R. 37.

impeachment. So, maybe *Sullivan* just accounts for human frailty.

Dershowitz's impeachment-trial statement was ambiguous and confusing, though it did stress total immunity from impeachment for election-related actions.

Amicus poses a scenario illustrating how some crimes might be committed by a President who is still immune from impeachment, by Dershowitz's criteria. This confusing possibility, plus a President's likely immunity from criminal indictment/trial while in office, may make CNN personnel's claims that Dershowitz says Presidents are immune from all crimes, at least partially true, at times.

CNN pundits could have mentioned impeachment-immunity, and also Dershowitz's saying personal pecuniary benefit is corrupt; but omitting their mention isn't necessarily knowing or reckless falsehood.

And since CNN commentators, perhaps disgusted with Trump's alleged abuse of Ukraine, made their comments very soon after Dershowitz's statement, and CNN allowed him to respond, twice, CNN's "actual malice" actually seems unlikely. (Also, would overturning *Sullivan* be meaningful here, if Florida law also has an actual-malice standard?)

As for whether Petitioner's case is a worthy vehicle: even if there were somehow a noteworthy circuit-split here, that doesn't mean that Questions Presented 2 and 3 are necessary. Additionally, the First Amendment, as per James Madison, comports with *Sullivan*. And, the Internet may not be enough of an innovation to render *Sullivan* obsolete.

Pre-Justice Elena Kagan, in *A Libel Story:* Sullivan *Then and Now*, 18 L. & Soc. Inquiry 197 (1993) ("*Libel Story*"), criticizes *Sullivan* for allowing falsehoods to spread, but also praises *Sullivan* as a symbol of First Amendment freedom.

Justice Kagan even upheld *Sullivan* in *Counterman v. Colorado*, 600 U.S. 66 (2023); some complained she extended *Sullivan* too much.

In our new "Gilded Age" with its uber-influential multi-billionaires, destroying/weakening *Sullivan* would be particularly untimely—although Dershowitz, wrongly, recommends restricting *Sullivan*'s actual-malice sweep to public officials, sparing public figures.

Chief Justice Warren's concurrence in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), gives ample reason, *see id.* at 163-64, for treating public figures similarly to public officials, since both are powerful, and public figures lack political restraints. Amicus sees little reason to challenge this six-decade-old insight.

Similarly, Justice Brennan in *Sullivan* explains the needed reciprocity, the obligation, to let libel defendants have immunity for comments on public matters, since public officials largely have immunity for their own deeds, *see id.* at 282-83 (footnote, citations omitted).

Petitioner also complains about making defamation plaintiffs prove actual malice, instead of defendants' proving truth; and also decries *Sullivan*'s clear-and-convincing evidence standard. However, *Sullivan* lists a long American common-law and scholarly tradition supporting plaintiffs'

burden to show actual malice, as opposed to British law, which often oppressed free speech against the Establishment—and Dershowitz lionizes the British tradition.

Re "clear-and-convincing", Dershowitz says *Sullivan* hardly justifies it. But by using "clear-and-convincing", *Sullivan* may just be emphasizing the First Amendment's importance.

And Kagan's *Libel Story* shows how Brennan initially used "clear-and-convincing" to partially-constitutionalize libel law, so it may not be surprising if Brennan further constitutionalized it with "actual malice"; though he didn't go far as Justices Black and Goldberg, who wanted to constitutionalize public-affairs-critics' libel-liability totally out of existence.

Sullivan is particularly needed now, when figures like Trump sue critics, draining their limited resources, to intimidate them. Ironically, Trump himself defames people—e.g., E. Jean Carroll who won damages from him—, and has also submitted false information to the Court, as Amicus' filings have noted, showing Amicus cares about truth.

Trump even defamed six Justices by baselessly saying they were under foreign influence. But the Justices' refusal to sue him, even if they could win under *Sullivan*, indirectly supports *Sullivan* by showing the powerful can take criticism.

Dershowitz himself has arguably defamed Laurence Tribe and Maimonides (!), and has recommended torture, called statutory rape obsolete, and been reprimanded for impertinence by a lower court. He may not be liberty's most insightful friend.

Finally, the Court must remain independent and uphold the People's rights, e.g., *Sullivan*, even if powerful figures bully the Court.

ARGUMENT

I. DERSHOWITZ'S OWN PETITION ERRORS/OMISSIONS: MISSPELLING "COURT(S)", OMITTING UKRAINE

One reason not to overturn *Sullivan* is that anyone, except God, can make mistakes (even angels have fallen): e.g., Dershowitz himself, on his petition's cover page, says, wrongly, "On Petition … to the United States Courts of Appeals for the Eleventh Circuit", *id.*, with "Courts", plural, instead of the correct "Court", singular. As the Nazarene said, "Physician, heal thyself[.]" (*Luke* 4:23) (internal quote-marks omitted)

Should the Petition be thrown out by the instant Court (not "Courts") because of that error? It's up to the Court, but Amicus thinks not. Still, an Ivy League law professor emeritus like Dershowitz surely should be able to avoid such a silly mistake.

So, perhaps Petitioner should not be too censorious towards commentators who make mistakes while attacking the powerful, since he might be "the pot calling the kettle black". (True, what he alleges of CNN, may be more important than a cover-page "typo". Still, sauce for the goose, sauce for the gander…)

A more important omission in his petition is any mention of Ukraine. It isn't until the Appendix ("App.") that we find out that his statement in response to Senator Ted Cruz's question about quid

pro quo ("Statement"), about which he alleges he was defamed, concerned "[t]he impeachment … charg[ing] abuse of power and obstruction of Congress, arising from allegations that Trump withheld military funds from Ukraine to coerce Ukraine's president to investigate Joe Biden, Trump's political rival", App. 58a-59a (citation omitted).

So, this is not some garden-variety matter about dirty local politics and back-alley kickbacks, but about Trump's allegedly putting at risk the survival of a nation, Ukraine, facing Vladmir Putin's Russian armies, to force Volodymyr Zelenskyy to investigate Biden, with the 2020 U.S. election upcoming. This is extremely serious, and for Dershowitz to omit this, while he complains about CNN's supposed omissions, *see* Pet. at, e.g., 10, is again like "the pot calling the kettle black".

We now address CNN's supposed errors:

II. CNN COMMENTATORS MAY NOT HAVE BEEN AS WRONG AS DERSHOWITZ CLAIMS: "IMPEACHMENT" VERSUS "CRIMES"; CRIMINAL IMMUNITY WHILE IN OFFICE

Amicus questions whether CNN commentators' words were so bad as Dershowitz paints them to be. First off, "The only thing that would make a quid pro quo unlawful is if the quo were in some way illegal." Dershowitz Statement, App. 13a. But there may be ample room for confusion or ambiguity here.

For example, if we take "quo" as meaning a particular good—"quid pro quo" meaning "this for that" from Latin, so "quo" being the "that" traded for the "this"—, as opposed to the *way of getting* that

good, then that could hypothetically allow for bribery or extortion being effectively legalized, or immunized, at least *vis-à-vis* impeachment, since the "quo" itself might be legal on its own, even if the "quid", and/or the *way of getting* the "quo", were itself illegal.

One "quo", maybe the only one, that Dershowitz condemns, is someone's "own pure financial interest, just putting money in the bank … corrupt[,] purely private interest." App. 13a, 15a. True, such a selfish private interest would be corrupt. But could anything else be corrupt?

What if, say, a U.S. President, Steven S. Slob, says to a foreign leader,

> Oh, Grand Poobah, this isn't for me, it's for America, and for your people: I'm running for re-election, I'm your people's best friend in Washington; it's imperative that you have your U.S.-national cousin Joe Poobah spend at least $100 million to support my election campaign so's I'll be President again! I'm not gonna make a penny from it! …And if you care so little for your own people that you can't persuade him, how can I support the U.N.'s dropping its sanctions against your country Poobahland for human rights violations?

Does this qualify as unethical/illegal under Dershowitz's criteria? The "quo", $100 million spent by U.S. national Joe Poobah to get Slob re-elected President, isn't *illegal enough for impeachment*

under the criterion of, "If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment." App. 13a-14a.

Of course, the whole "quid pro quo" and the mechanism by which it happens, bribe/extortion/etc., may be illegal in non-impeachment ways. For example, federal or State election laws may prohibit foreign nationals from even trying to influence anyone to make political contributions/donations to U.S. elections (as Slob wants the Grand Poobah to ask Joe Poobah to do). But Dershowitz doesn't mention that.

(*See, e.g.*, "Federal law prohibits contributions, donations, expenditures … *solicited*, directed, received or made directly or indirectly by or from foreign nationals in connection with any federal, state or local election." (emphasis added) Fed. Election Comm'n, *Foreign nationals*, https://tinyurl.com/5xhpahk3 (undated).)

But as least as regards impeachment, again, Dershowitz says, "If a President does something which he believes will help him get elected … that cannot … result[] in impeachment", *supra*. Nothing about federal/State election law there. No exceptions to impeachment-immunity.

Of course, what Steven S. Slob is doing re Poohbahland, trading sanctions relief for $100 million to get him re-elected, stinks to high heaven, ethically speaking, and can be considered extortion, a request for a bribe, and/or similar monstrosities. But what Dershowitz's client Trump allegedly did, withholding military supplies from vulnerable Ukraine unless they investigated Trump's political

opponent Joe Biden, may stink to high heaven as well, similarly to the Slob scenario *supra*, or worse.

And this may be part of what impelled CNN commentators to use hyperbole or incautious language, possibly, in describing the Statement. Seeing that Dershowitz was trying to save Trump from punishment for an arguably wildly-unethical move like pressuring/extorting Zelenskyy to investigate Biden, many people, not only CNN pundits, might understandably be enraged.

So, even if Slob could be charged with violations of federal/State election law, the Statement seems to immunize him from impeachment, since, once again, "a President do[ing] something [to] get elected … cannot … result[] in impeachment", App. 13a-14a. Even if Dershowitz somehow meant to say that an illegal "quo" is an exception to immunity from impeachment for election-related activities: prima facie, there is no exception in the Statement from such immunity, even if a person might face federal or State criminal charges.

Thus, CNN commentators may, say, have been confused by any ambiguity or appearance of leniency, in the Statement, towards impeachment of unethical politicians, the commentators perhaps accidentally conflating that leniency/immunity with immunity from other crimes, such as violating FEC campaign-spending guidelines. (And the CNN comments are within a day or so of the Statement, App. 16a-18a, as opposed to sober reflection after a week or so.)

Therefore, those commentators may, say, have been stupid, or neglectful at worst, instead of knowingly or recklessly false, if they said

Dershowitz's Statement allowed any crime to be committed with impunity. (If even Dershowitz's Statement, from a law professor no less, couldn't get things straight and clear, should a bunch of reporters be expected to do a perfect job, either?)

True, none of the commentators mentions impeachment, App. 16a-18a. CNN pundits should perhaps have mentioned that the Statement spoke of immunity from impeachment.

Also, for the sake of context, they could have mentioned the Statement's comments, or some of them, about corruption, e.g.,

> [Besides a] political figure[']s motives of] public interest [or] his own political interest[,] the third [motive] … would be in his own financial interest, his own pure financial interest, just putting money in the bank.
>
> …
>
> [I]t cannot be a corrupt motive if you have a mixed motive that … does not involve personal pecuniary interest. …[P]ure financial reasons [would make i]t … a much harder case.
>
> If a hypothetical President of the United States said to a hypothetical leader of a foreign country: Unless you build a hotel with my name on it and unless you give me a million-dollar kickback, I will withhold the funds. That is an easy case. That is purely corrupt and in the purely private interest.

App. 13a, 15a. CNN pundits' mentioning those Statement excerpts *supra*, or a fair summary, would have added context and been polite; they certainly would have shown that Dershowitz did see some presidential actions as corrupt.

But again, omitting mention of those things (and CNN did play the entire Statement several times, *see* App. 82a n.2) at the same time as CNN pundits offered their opinions, is arguably not knowingly or recklessly false, even it was stupidly or negligently false. Too, as the Petition fails to mention, CNN allowed Dershowitz not once, but twice, to offer his own point of view on CNN, with Wolf Blitzer and Chris Cuomo, *see* App. 5a. Hence, CNN attempted to be fair to Petitioner.

Last but not least, even if CNN commentators could have made more effort to distinguish immunity re impeachment, from immunity from all crimes, there may be some truth to the latter. That is, while a President *is in office*, he/she may be immune for crimes, at least as regards indictment and trial, although he/she may be investigated while in office.

Therefore, if a President while in office is 1. immune from impeachment, and 2. immune from indictment or trial for other crimes, it may be true, or largely true, that at least *while in office*, Presidents "can do essentially whatever they want in order to get elected because it's somehow in the public interest", Anderson Cooper, App. 16a (further citation omitted). And if there is substantial truth to what Cooper or his CNN confreres said, that may not count as knowing falsehood or reckless disregard of the truth.

Once again, then, while CNN pundits could have offered more context and quoted more of the Statement's words, they may not have even come close to actual malice, given the factors noted above. Even if CNN's pundits are not 100% innocent, the pundits are still likely far less guilty than Dershowitz paints them to be.

(And even if the lower courts seem to be somewhat less forgiving of CNN—while not finding CNN guilty of actual malice—, they may not have noted all the factors that Amicus noted. …By the way, even if the Court overturned *Sullivan*, would it make a difference in this case, if Florida law has similar actual-malice provisions, *see* App. 6a, 57a, 86a?)

But, supposing that Dershowitz were somehow correct and CNN showed actual malice, does that automatically mean certiorari should be granted?

III. DERSHOWITZ'S CASE IS A QUESTIONABLE VEHICLE FOR REVIEW, ESPECIALLY SINCE HE FLOATS OVERTURNING *SULLIVAN* PARTLY/ COMPLETELY, WITHOUT GOOD REASON

First off, CNN's apparent lack of actual malice, as analyzed *supra*, may give Dershowitz little chance of succeeding. But if one assumes there was actual malice: is the alleged circuit split, noted in the first Question Presented, Pet. at i, genuine, or contrived/ exaggerated? Amicus will leave it to Respondent to address circuit-split issues in detail.

Moreover, Petitioner goes far beyond his own CNN-related case, and circuit-split issues, when he

attacks *Sullivan* as a whole. Questions Presented 2 and 3, re discarding "the actual malice standard established in *Sullivan*, or as extended by its progeny, … altogether or at least as to private citizens who are public figures", and possibly "modify[ing] *Sullivan*'s clear-and-convincing and burden-of-proof evidentiary standards", Pet. at i, are overweening and likely unnecessary to consider in dealing with Dershowitz's particular case. It is questionable enough to grant even Question Presented 1, without also straining *stare decisis* by granting certiorari on the other two Questions.

Indeed, though Dershowitz claims that "*Sullivan* Departed from the Original Meaning of the First Amendment", Pet. at 15, this is doubtful, at least in scope. As *Sullivan* quotes from James Madison, who probably knew something about the Constitution: "'In every state, probably, in the Union, the press has exerted a freedom … which has not been confined to the strict limits of the common law. On this footing, the freedom of the press has stood[.]'" *Sullivan* at 275 (citation omitted).

Too, "[Madison said,] 'The people, not the government, possess the absolute sovereignty.' This form of government was 'altogether different' from the British form[.] 'Is it not natural and necessary, under such different circumstances,' [Madison] asked, 'that a different degree of freedom in the use of the press should be contemplated?'" *Id.* at 274-75 (citation omitted).

Dershowitz also claims that today's Internet world has left *Sullivan* in the dust, *see* Pet. at 19; but even in 1964, there was television and radio, not just print newspapers. Moreover, the Court has

already dealt with the Internet issue, e.g., in *Counterman*, *supra* at 3 (7-2 majority declining to overturn *Sullivan* in Facebook-message-related context)

We further explore *Counterman* below, while considering the *Sullivan* thoughts of a current Justice:

IV. WAS KAGAN A PAGAN ABOUT *SULLIVAN*, OR DID SHE BELIEVE IN IT? …OR: NOT COUNTERMANDING *COUNTERMAN*

The Petition, *see id.* at 17, quotes pre-Justice Kagan as criticizing *Sullivan* for "allow[ing] grievous reputational injury to occur without … effective remedy", *Libel Story*, *supra* at 3, and for somewhat "promot[ing] not only true but also false statements of fact", so that "the press stops worrying about the accuracy of defamatory statements[.]" (citations omitted) Kagan may have a point, but this doesn't automatically mean *Sullivan* should be overturned, or even tinkered with.

In fact, in *Libel Story*, Kagan herself says that while *Sullivan* "has produced a mixed bag of consequences[,] at the most general level—as a statement of enduring principle addressed to the American people—it is indeed a marvel." *Id.* at 216. And, "*Sullivan* may be counted … the Court's most successful First Amendment decision." *Id.* at 215.

Indeed, in free-speech case *Counterman*, Kagan wrote the opinion, which did not overturn *Sullivan*; in fact, Justice Thomas opined, "It is thus unfortunate that the majority chooses not only to prominently and uncritically invoke *New York Times*

[*Sullivan*], but also to extend its flawed, policy-driven First Amendment analysis [elsewhere]", *Counterman*, 143 S. Ct. 2106, 2133.

Thus, while Dershowitz's Petition, *see id.* at 17, showcases Kagan's doubts about *Sullivan* in 1993, she was willing to *extend* that case, by Thomas' telling, *supra*, 30 years later. By refusing to countermand *Counterman*, Kagan was, if partially skeptical about *Sullivan*, not fully a "pagan" about it, but enough of a "true believer" to uphold and extend it, which chimes with her calling it a "marvel" and "the Court's most successful First Amendment decision", *Libel Story* at 215, 216.

But does *Sullivan* apply to too many plaintiffs, or not? We now explore the idea of "public figures" as opposed to "public officials", re defamation law:

V. NON-GOVERNMENTAL PUBLIC FIGURES MAY BE VERY POWERFUL, AND THIS "GILDED AGE" ERA IS A BAD TIME TO EXEMPT THEM FROM *SULLIVAN*

President Theodore Roosevelt condemned "malefactors of great wealth", rightfully so, during an August 20, 1907 speech in Provincetown, Massachusetts, *see, e.g.*, Stephen Kinzer, *Teddy Roosevelt's Prescient Denunciation of Corporate Power*, The Provincetown Indep., Aug. 18, 2021, https://tinyurl.com/3demm38d. And today, which some may consider a new "Gilded Age", with billionaires like Elon Musk wielding immense power and influence, Roosevelt's quote is still relevant.

(*See, e.g.*, Josie Cox, *Income Inequality Is Surging In The U.S., New Oxfam Report Shows*,

Forbes, Nov. 3, 2025, 12:15 a.m., updated Jan. 8, 2026, 1:27 p.m., https://tinyurl.com/ys97h8rf, "The richest 1% of households in the United States have accumulated almost 1,000 times more wealth than the poorest 20% over the last three and a half decades, and economic inequality is getting worse at a rapid pace", *id.*)

But Dershowitz urges that *Sullivan*'s extension of the "actual malice" defamation hurdle to public figures who aren't government personnel, be considered for overturning, *see* Pet. at 19-22. He notes, "Public figures possess no governmental authority", *id.* at 20. But is governmental authority everything?

Clearly not, given the colossal power of non-governmental figures such as billionaires Musk, Jeff Bezos, Mark Zuckerberg, etc. In fact, we may inquire deeply whether, say, a meter maid (a.k.a. "parking enforcement officer")—call her "Rita"—, technically a government official, wields much power at all compared to one of the business mega-moguls mentioned *supra*.

By some accounts, libels of non-governmental public figures have been judged on *Sullivan*'s "actual malice" standard since 1967, *see, e.g.*, *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 755 (1985) (citing *Butts*, *supra* at 3, at 155). And Chief Justice Warren's insightful concurrence in *Butts* reasons why such extension of *Sullivan* to public figures may be wise:

> To me, differentiation between "public figures" and "public officials" and adoption of separate standards of

> proof for each have no basis in law, logic, or First Amendment policy. Since the depression of the 1930's and World War II, there has been a rapid fusion of economic and political power …
>
> …[I]t is plain that … "public figures," like "public officials," often play an influential role in ordering society. … The fact that they[, "public figures",] are not amenable to the restraints of the political process … means that public opinion may be the only instrument by which society can attempt to influence their conduct.

Butts at 163-64. Thus, *Butts* helps rebut Dershowitz's complaint that public figures lack governmental authority, Pet. at 20; public figures may also lack political restraints, *Butts* at 164, so that there is a certain sense of balance in treating public figures with the "actual malice" standard, since, even if they lack official authority, they may also be freer, politically, than public officers.

See also Sullivan, which well explains the reciprocity rationale behind "actual malice",

> [A] privilege for criticism of official conduct is appropriately analogous to the protection accorded a public official … sued for libel by a private citizen. ... The reason for the official privilege is … that the threat of damage suits would otherwise "inhibit the fearless[,] effective administration of policies of

> government[.]" ... Analogous considerations support the privilege for the citizen-critic of government. It is as much his duty to criticize as it is the official's duty to administer. … As Madison said, … "the censorial power is in the people over the Government, and not in the Government over the people." It would give public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves.
>
> We conclude that such a privilege is required by the First and Fourteenth Amendments.

Id. at 282-83 (footnote, citations omitted) (Brennan, J.). And just as there is a reciprocity/equality of sorts, *see id.*, between average citizens and public officials, there is some equality of treatment between public officials and non-government public figures, *see, e.g.*, *Butts* at 163-64 (Warren, C.J., concurring in the result) (official and non-official public figures both wield considerable power).

Given the long history, then, with *Butts* decided in 1967, of treating public figures similarly to public officials *vis-à-vis* defamation, it might require some extraordinary reason to overturn that precedent. Amicus does not see such reason in the Petition.

VI. ADDITIONAL PRECEDENT/REASONING SUPPORTING *SULLIVAN*: AMERICAN COMMON LAW VERSUS BRITISH

LAW SUPPRESSING FREE SPEECH; BRENNAN'S CONVINCING "CONSTITUTIONALIZING COMPROMISE"

Dershowitz also objects to burden-shifting, i.e., making the defamation plaintiff prove actual malice, instead of the defendant's proving truth and even "'good motives and justifiable ends'", Pet. at 23 (citation omitted); and also objects to *Sullivan*'s clear-and-convincing evidence standard, *see* Pet. at 22-25.

As for burden-shifting, *Sullivan* does not conjure it out of nowhere, but relies on a long history in American common law of shifting the burden to the plaintiff in a libel-against-government case.

For example, in *Coleman v. MacLennan,* 78 Kan. 711, 98 P. 281 (1908), the judge instructed the jury that "where an article is … for the sole purpose of giving what the defendant believes to be truthful information concerning a candidate for public office[,] the burden is on the plaintiff to show actual malice in the publication of the article." *Sullivan* at 280-81. And *Coleman* is from 56 years before *Sullivan*.

Too, *Sullivan* cites a long string of similar cases, or articles/treatises, going as far back as 1889, similar to *Coleman* and thus supporting actual malice and burden-shifting, *see Sullivan* at 280 & n.20 (citations omitted).

Thus, there is a long American common-law and scholarly tradition bolstering *Sullivan* here. By contrast, British law—despite its good points, such as allowing *jus soli* birthright citizenship—sometimes oppressed free speech against the powerful, as Madison noted, *supra* at 13. Yet,

Dershowitz champions the British tradition, e.g., Blackstone, putting the burden of proof on the defendant, even if Dershowitz does cite some American cases or treatises in support, *see* Pet. at 23-24, 28 (citations omitted). James Madison might not be impressed.

As for "clear-and-convincing", Dershowitz complains that *Sullivan* doesn't give sufficient justification for adopting that standard, *see* Pet. at 25. It is true that *Sullivan* may not offer much underpinning for endorsing "clear-and-convincing", *see id.* at 285-86; but given the importance *Sullivan* ascribes to the First Amendment, the "clear-and-convincing" standard, as opposed to mere preponderance, is not surprising, and maybe not harmful either.

One possible clue as to how *Sullivan* adopted "clear-and-convincing" is in *Libel Story*, Kagan noting that *Sullivan* adopted actual malice "even though the Court at conference had agreed to decide the case on the narrower ground that the Constitution required clear and convincing proof of every traditional element of a libel action in a case involving a public official", *Libel Story* at 202 (citation omitted).

Kagan goes on to observe, "Justice Brennan's initial rationale[,] that the Constitution requires clear and convincing proof of every traditional element of defamation in actions involving public officials[,] imports the Constitution into libel cases brought by public officials, but in some manner pegs constitutional requirements to the common law." *Id.* at 203 (citation omitted).

Thus, Brennan was quasi-constitutionalizing things, as a sort of compromise or mix with common law, *see id.* (This compromise attitude also chimes with his opinion's being less extreme than *Sullivan*'s concurrences, by Justice(s) Black and Goldberg, which, *see id.* at 293, 298, recommended full constitutionalization of defamation re public officials' official conduct, i.e., total immunity from liability for critics.)

If Brennan went further by including actual malice as well, that may not be objectionable, given the American common-law and scholarly tradition supporting it, *supra* at 19. And 62 years later, *stare decisis* might also be important.

VII. SHOULD TRUMP SUE THE PRESS TO INTIMIDATE THEM?---AND SHOULD COURT MEMBERS SUE TRUMP FOR DEFAMING THEM RE TARIFFS? RE *SULLIVAN*

Speaking of "years": this time in history, as noted *supra* at 15-16, may be particularly inappropriate for overturning/gutting *Sullivan*, given the "New Gilded Age" in which we live. And one of the goldest figures of the age is Trump. How much power should he (or anyone) have in a free society, especially power to shut down free speech? Not *too* much.

See, e.g., The Conversation, *Trump lawsuits seek to muzzle media, posing serious threat to free press*, Jan. 12, 2026, 8:14 a.m., https://tinyurl.com/zk4n5zs9, "We are concerned that the president may be using the courts as a tool not to correct the record but to muzzle potential watchdogs and deprive the public of the facts they need to hold him accountable." *Id.*

Moreover, "the rise of the internet[/]social media led to the collapse of the economic model supporting traditional news production. As audiences and advertisers have fled traditional media outlets, including newspapers and broadcasters, the money to hire lawyers to defend against expensive defamation suits … is much harder to find." *Id.* This militates against Dershowitz's claim that "the concerns that animated *Sullivan* no longer match the reality of modern media", Pet. at 19.

Has Trump himself defamed anyone, though? E. Jean Carroll won several defamation-related judgments against him (which disproves Dershowitz's contention, *see* Pet. at 5, that *Sullivan* prevents plaintiffs' wins), *see Trump v. Carroll*, 25-573 in this Court, Pet. for Cert. at 5 ($5 million, and $83.3 million, awards; citations omitted).

Amicus also mentions the Carroll case because in it, he notified the Court about some untruth in that petition, *supra*: Amicus' brief, *see id.* at, e.g., 6-9, told the Court about false claims that petition made about a television episode re Carroll's story. Similarly, in 25-365, *Trump v. Barbara*, Amicus' brief, *see id.* at 1, 26, told the Court about a nonexistent case page cited in Petitioners' merits brief, and at 36, about a false quote, with words omitted, that that merits brief presented as real.

As noted *supra* at 1, Amicus' previous notes to the Court may give him some credibility re defamation and *Sullivan*, since he has shown he dislikes falsehood. But while the Court could lose credibility if it just ignores falsehoods submitted to it, even after falsifiers have had a chance to correct the falsehoods but didn't; the Court may *not* lose

credibility just because certain public figures make ridiculous false claims about its Members…

See, e.g., Lawrence Hurley, *Trump calls Supreme Court justices 'disloyal to the Constitution' over tariffs ruling*, NBC News, Feb. 20, 2026, 11:21 a.m., https://tinyurl.com/yvfxmaw5,

> President Donald Trump on Friday launched an extraordinary attack on the Supreme Court after it ruled against him on tariffs, describing justices in the majority as a "disgrace to our nation" and "very unpatriotic and disloyal to the Constitution." While praising the three dissenting justices[,] Trump suggested the majority was "swayed by foreign interests[.]" …
>
> …
>
> …Trump suggested without evidence that foreign interests have "undue influence" on the court.
>
> "They have a lot of influence over the Supreme Court. Whether it's through fear or respect or friendships, I don't know," he added.
>
> …
>
> …Trump later addressed the votes taken by Barrett and Gorsuch.
>
> "I think their decision was terrible. I think it's an embarrassment to their families," he said.

Id. Saying Justices embarrass their families, *see id.*, is bad and rude enough, if only run-of-the-mill

Trumpian bad manners; but the "swayed by foreign interests" and "undue influence" accusations, especially when coupled with "very unpatriotic and disloyal to the Constitution", *id.*, are arguably… slanderous, maybe even enough for six Members of the Court to sue Trump for defamation (!).

What proof does he have? Is there, say, infrared-photo evidence of each of those six Justices hiding an extremely tiny Red Chinese spy under his/her robe during oral argument, so the spy can whisper to the Justice what to say? That would be interesting.

It seems that even under *Sullivan* and actual malice, the Court's Members could win a defamation suit against Trump, for his abominable "foreign influence" falsehood(s) against them. Of course, it seems unlikely that they would actually sue: there are, e.g., issues of self-interest and recusal if the case made its way to the… Supreme Court itself.

However, in an indirect way, this all helps prove *Sullivan* is right: that is, just because the Justices don't sue and get damages against Trump, it won't destroy the country, since powerful figures' being publicly insulted, even falsely, is not the end of the world. (And Trump may just look like a fool and liar for having made his absurd claims, after all.)

Falsehoods about the powerful are unfortunate, like all falsehoods. But, using coercive means, or *de facto* coercive means like making it too easy to get defamation judgments against public-affairs critics who were mistaken but didn't have actual malice, may be a cure worse than the disease, if press and speech freedom are to be upheld. So, *Sullivan* should survive.

VIII. DERSHOWITZ THE DEFAMER AND LIBERTICIDE? AND, MOCKING MAIMONIDES, OR, "ALAN SLAMS 'RAMBAM'"

Has Dershowitz ever defamed anyone, by the way? *See* Zev Brenner, *Dershowitz Responds After Orthodox Twitter Explodes Over His Rambam Comments*, YouTube, Nov. 20, 2025, https://tinyurl.com/bd5dm2vz, where Dershowitz says, "Rambam was like Larry Tribe, very smart but wrong about everything." *Id.* ("Rambam" is an acronym for Rabbenu Moshe ben Maimon, "Our Rabbi Moses, son of Maimon", i.e., the great Maimonides.) Astounding.

Later in the video, *see id.*, Dershowitz retracts his words somewhat—about Rambam, not Laurence "Larry" Tribe. So, did Dershowitz *per se* slander Tribe? (If "wrong about everything", how could Tribe be competent in his profession?) Should Tribe sue? And if Dershowitz defamed someone, how credible is he?

Dershowitz has also been a liberticide, see Hum. Rts. First, *Alan Dershowitz is Wrong about Torture, Again*, Sept. 19, 2014, https://tinyurl.com/57nnybt3 (Dershowitz endorsed torture); confused libertinism with liberty—unsurprising, he being Jeffrey Epstein's old lawyer—, *see* Alan M. Dershowitz, *Statutory Rape Is an Outdated Concept*, L.A. Times, May 7, 1997, *available at* https://tinyurl.com/mkt69vfr (says age of consent could be lowered to 14); and had some of his Complaint stricken as "immaterial" and an "impertinent salvo", App. 105a (citation omitted).

All said, Dershowitz may be a less reliable thinker about human liberty than Justice Brennan

was… or even Maimonides.

* * *

Amicus sympathizes with the Court's having to endure more recent insults than the "foreign influence" one, e.g., the April Fools' Day visit of Trump to the Court for the oral argument in 25-365—his failed attempt to intimidate the Court about birthright citizenship?—, a visit he apparently cut short by leaving before Respondents' counsel had finished speaking, instead of politely staying for the whole argument, *see* Peter Charalambous, Meghan Mistry, & Michelle Stoddart, *Trump rails against birthright citizenship, courts after attending Supreme Court arguments***,** ABC News, Apr. 1, 2026, 6:06 p.m., https://tinyurl.com/4ers7fec, Trump later ranting,

> "Now it's very unfair, and Republicans, judges and justices, they always want to show that they're independent," Trump says in [an Easter lunch] video … captured by Reuters … before it was taken down. "'I can -- I don't care if Trump appointed me. … I'm voting against him.' Because they want to show their independence. You know, stupid people."

Id. But the Court does precisely what it should by being independent and not caring who appointed them. So, who is the "stupid person" here, if anyone? Readers may be the judges.

At a time when powerful figures, or one such

figure, satanically threatens to destroy an entire Mideastern civilization—and both Trump and Dershowitz happen to be powerful or influential public figures—, to destroy, or even hamstring, *Sullivan*, a safeguard against the powerful, might be… "stupid", to put it frankly.

Of course, it might not be good to eliminate *Sullivan* at any time, lest abusive, overprivileged bullies harm democracy any further. Once again, Madison: "[T]he censorial power is in the people over the Government, and not in the Government over the people." *Sullivan* at 275, 283 (citation omitted).

CONCLUSION

Amicus respectfully asks the Court to deny review in this case, and any others, attempting to overturn or gut *Sullivan*; and humbly thanks the Court for its time and consideration.

April 13, 2026 Respectfully submitted,

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