No. 25A1396

IN THE SUPREME COURT OF THE UNITED STATES

ROY STEWART MOORE,

Applicant,

v.

SENATE MAJORITY PAC,

Respondent.

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION TO STAY THE MANDATE PENDING PETITION FOR WRIT OF CERTIORARI

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RULE 29.6 DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Senate Majority PAC certifies that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Below, in a unanimous opinion authored by Judge Elizabeth Branch, the Eleventh Circuit held that Roy Moore failed to show clear and convincing evidence that Senate Majority PAC ("SMP") acted with actual malice when it helped air a political advertisement summarizing the widespread and credible reporting accusing Roy Moore of sexual misconduct with girls as young as 14 years old. The Eleventh Circuit reached that conclusion after conducting its own "independent examination of the whole record" to "determine whether the record establishes actual malice with convincing clarity," as required under this Court's long-standing precedent. *See* Appl. App'x A ("11th Cir. Op.") at 24 (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 508, 514 (1984)).

One month after the panel's decision, Moore asked the Eleventh Circuit to stay its mandate, a request that court summarily denied. Moore now comes to this Court in a purportedly "emergency" posture seeking a second bite at the apple. His application to stay the Eleventh Circuit's mandate pending his forthcoming petition for certiorari should be denied. A stay is a limited and rare exception to the rule that the mandate issues as a matter of course, and Moore has entirely failed to show that such extraordinary relief is warranted here. Neither of his two proposed questions raises a sufficiently important question for which there is a reasonable probability that this Court will grant certiorari and reverse the judgment below. And even if they did, Moore offers no credible argument that he will suffer irreparable injury if the mandate issues in the ordinary course while Moore petitions this Court for certiorari review. Each of these shortcomings is independently fatal to his application.

First, Moore's contention that this case presents an unsettled question as to the level of deference owed to a jury's factual findings in an actual-malice case is wrong several times over. The Eleventh Circuit *did* expressly defer to the jury's credibility determinations, as this Court's precedent requires. Moore, however, contends the Eleventh Circuit should have deferred to the jury's verdict finding actual malice itself—a position directly at odds with decades of black-letter precedent from this Court holding that whether sufficient evidence exists to support a finding of actual malice is a question of *law*, not of fact. Moore offers no reason to conclude this Court is likely to reconsider or overrule those holdings. Nor is this Court likely to grant certiorari to evaluate whether the Eleventh Circuit correctly determined that Moore failed to present adequate evidence of actual malice. This Court does not engage in the sort of garden-variety correction of purported error that Moore seeks here, and the Eleventh Circuit's determination was correct and amply justified in any event.

Second, this Court is also unlikely to grant certiorari or reverse as to Moore's second proposed question, regarding the legal standard for defamation-by-implication cases. Below, the Eleventh Circuit joined four other circuits in holding that, in such cases, to show actual malice a plaintiff must show that the defendant intended to communicate the defamatory meaning or recklessly disregarded that risk. No circuit has held otherwise. Nor is there any tension between the opinion below and this Court's precedents in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991). Even if there

were any such conflict, Moore has not provided a shred of evidence that the defamation-by-implication standard presents a recurring issue of national importance warranting this Court's review. Finally, even leaving aside the merits of Moore's proposed questions, this Court is also unlikely to grant certiorari in this case because multiple, independent grounds exist to support the Eleventh Circuit's judgment in favor of SMP.

Third, Moore's application should also be denied for the independent reason that Moore has failed to show a likelihood of irreparable injury in the absence of a stay. Moore offers no argument that his forthcoming certiorari petition would be in any way hampered or compromised by issuance of the mandate. Instead, he contends that a stay is warranted because he "may not" be able to collect on the judgment entered against SMP in the district court if the supersedeas bond securing that judgment is released. Moore's theory turns entirely on his speculation that SMP will be financially unable to satisfy a judgment at a later point in time. That theory is expressly contradicted by SMP's cash on hand, contribution statistics, and history of continuous operation for the past fifteen years. Moore's failure to meet his burden to show irreparable harm by itself requires the denial of his application.

Meanwhile, a stay of the mandate would prejudice SMP, which was required to post the $8.2 million bond to secure the judgment pending appeal at Moore's own insistence. A stay of the mandate would almost certainly preclude SMP's ability to have the district court release the bond, which has required SMP to pay over $320,000 in yearly bond premiums since 2022 and will require another $82,000 in premiums

in the coming months if the bond is not terminated. And Moore offers no argument at all that a stay will serve the public interest, which will be better served by the issuance of the mandate in the usual course. This Court should deny the application.

BACKGROUND

In November 2017, multiple news outlets credibly reported that then-U.S. Senate candidate Roy Moore sought sexual encounters with girls as young as 14 when he was 32. *See* 11th Cir. Op. at 4–7; *see also Moore v. Cecil*, 109 F.4th 1352, 1356 (11th Cir. 2024) ("During the final few weeks leading up to the special election, multiple news media outlets reported that several women had come forward accusing Moore of improper conduct with them . . . when the women were ages 14 to 18."). Widespread reporting confirmed Moore preyed upon these girls in public settings, including at the county courthouse, where Moore pursued a 14-year-old (whom he later sexually assaulted) after he offered to watch her while her mother attended a child custody hearing, *see* 11th Cir. Op. at 4; at a local high school, where Moore asked out a teenager he met while speaking to her civics class, *see id.* at 5; and at the local mall, where Moore reportedly regularly preyed upon young girls, *see id.* at 5–7. Reports regarding Moore's conduct at the mall in particular were corroborated by Moore's former co-workers, law enforcement, and employees of the Gadsden Mall, who recalled that Moore's "predatory behavior" towards teenage girls was so extreme that he was once banned from the mall. *See id.*

Moore's defamation claim offers no dispute regarding these widely reported allegations. Indeed, the district court in this matter expressly determined that statements asserting that Moore was a "child predator" could not lead to liability for

defamation. *See* Dist. Ct. Doc. 45 at 34–40.[1] In a related matter, it held the same regarding statements that Moore was "banned from a mall because he sexually preyed on underage girls," that Moore was an "accused sexual predator," and that Moore had been "credibly accused of sexual misconduct by multiple women who were just teenagers at the time." *Moore v. Lowe*, 591 F. Supp. 3d 1087, 1111–14, 1116 (N.D. Ala. 2022), *appeal dismissed*, No. 22-13187, 2024 WL 227897 (11th Cir. Jan. 22, 2024); *see also id.* at 1116–17 (finding the statement that Moore had been "credibly accused of sexual misconduct" against teenage girls to be "substantially truthful" based on allegations of five women, including Wendy Miller).

This case involves a political advertisement SMP helped air that presented five quotations from the extensive reporting on Moore's misconduct. Dist. Ct. Doc. 45 at 41. Moore has never contested that each of the Ad's quotes—including its opening quote, "Moore was actually banned from the Gadsden Mall . . . for soliciting sex from young girls"—is an accurate excerpt from the cited article. *Id.* Moore nonetheless sued SMP over the Ad, arguing that, even though every quotation was accurate, the Ad still defamed him by implying that he had solicited sex from a specific 14-year-old girl, Wendy Miller. *See* Dist. Ct. Doc. 1. Moore pleaded this claim as "Defamation by Implication." *Id.* at 27.

The district court ultimately let Moore proceed to trial against SMP based on that single, "narrow[] theory": that two frames of the Ad, when "juxtaposed together

[1] Citations to "Dist. Ct. Doc." are to the district court's docket in this case, No. 4:19-cv-01855 (N.D. Ala.). Citations to "11th Cir. Doc." are to the Eleventh Circuit's docket in the underlying appeal, No. 23-13531 (11th Cir.).

back-to-back," created "a new message that was false and defamatory." 11th Cir. Op. at 13 n.6. Such a theory, where a defendant allegedly "juxtaposes a series of facts to imply a defamatory connection between them," is known as "defamation by implication." *Id.* at 33 (quoting 50 Am. Jur. 2d *Libel and Slander* § 161).

At trial, each of the witnesses involved in the Ad's creation testified that SMP did not intend for the Ad to create a new story or to convey the implication that Moore alleged. *See id.* at 14–18. Rather, the intent was to amplify the existing reporting about Moore's alarming conduct towards young girls. *See id.* SMP's witnesses also testified that at the time the Ad was aired, they did not have any doubts that the Ad was true. *See id.* As additional evidence, SMP submitted the vetting document that it had prepared at the time it helped create the Ad. *See id.* at 16–18. That document showed the extent to which SMP staff—before the Ad was aired—went line-by-line through the Ad to ensure that each and every portion of the Ad was factually supported by prior reporting. *See id.* at 14–18. The vetting document further confirms that SMP envisioned the Ad as five separate frames, each providing a different quote about Moore's conduct. *See id.* Moore presented no contrary evidence relevant to SMP's intent. *See id.* at 14–18. At the conclusion of trial, in August 2022, the jury nonetheless found SMP liable and awarded Moore $8.2 million in damages. *See* Dist. Ct. Doc. 207.

SMP requested that the district court stay execution of that judgment pending appeal without requiring SMP to post a bond. *See* Dist. Ct. Doc. 215. Moore opposed that request, however, and the district court set the bond at $8.2 million. *See id.*; Dist.

Ct. Doc. 218. Accordingly, SMP executed a supersedeas bond of $8.2 million in October 2022, *see* Dist. Ct. Doc. 235, and, for each of the four years since then, has paid premiums of $82,000 each year to secure the judgment.

Following the jury's verdict, SMP filed a renewed motion for judgment as a matter of law, which the district court denied. *See generally* Appl. App'x B ("Dist. Ct. Op."). SMP then appealed to the Eleventh Circuit. On April 24, 2026, the Eleventh Circuit issued its ruling. In an opinion by Judge Branch, that court unanimously concluded—as the First, Third, Sixth, and Seventh Circuits have also held—that a plaintiff in a defamation-by-implication case "must show by clear and convincing evidence not only (1) that the defendant knew of or recklessly disregarded the falsity of the implied defamatory statement, but also (2) that the defendant 'inten[ded] to communicate the defamatory meaning' or recklessly disregarded the defamatory meaning." 11th Cir. Op. at 34 (alteration in original) (citation omitted). It then went on to hold, based on an independent review of the whole record, that Moore failed to present adequate evidence that SMP intended or recklessly disregarded the Ad's supposedly defamatory implication. *See id.* at 36–44.

As the Eleventh Circuit summarized, Moore's argument that he had established SMP's intent to defame depended on (1) "the jury's disbelief of the SMP witnesses' testimony that they did not intend the implication," (2) "the ad itself," and (3) "the fact that SMP vetted the ad before publishing it," which Moore argued meant that SMP must have known what it published was not true. *See id.* at 37. The court

addressed each of those arguments in turn, concluding, as a legal matter, that they did not amount to clear and convincing evidence of actual malice.

On the jury's findings, the Eleventh Circuit recognized that the jury was "entitled to disbelieve [SMP's] testimony," and noted, citing *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 690 (1989), that "[w]e must give these credibility findings deference." *Id.* at 37–38. But it also noted, citing this Court, that "'discredited testimony is not considered a sufficient basis for drawing a contrary conclusion' and finding actual malice." *Id.* at 38 (citing *Bose*, 466 U.S. at 512). As the Eleventh Circuit summarized, "to establish actual malice by clear and convincing evidence, Moore needed more evidence than just the jury's disbelief of SMP's witnesses to establish that SMP intended the defamatory implied meaning in the ad or acted with reckless disregard to the defamatory implied meaning." *Id.* at 39.

The court of appeals also rejected Moore's contention that the "ad itself" could establish actual malice in light of the recognition that "the actual malice standard is deliberately subjective." *Id.* (citing *Sullivan*, 376 U.S. at 279–80; *Harte-Hanks*, 491 U.S. at 688). And it rejected Moore's contention that evidence of SMP's vetting could establish actual malice, instead recognizing the long-held principle that "[a] defendant's efforts to verify the accuracy of its statements militates against a finding of actual malice." *Id.* at 43 (citing *Time, Inc. v. Pape*, 401 U.S. 279, 291 (1971)). Accordingly, the Eleventh Circuit vacated the jury's verdict, reversed the denial of SMP's motion for judgment as a matter of law, and remanded with instructions to enter judgment in SMP's favor. *Id.* at 28–29, 44.

Nearly a month after the Eleventh Circuit's ruling, on May 22, 2026—the same day that the mandate was scheduled to issue—Moore filed a motion to stay the mandate in that court. The Eleventh Circuit denied that motion on June 8. Four days later, Moore filed the present "emergency" application to stay the mandate with this Court.

LEGAL STANDARD

An application to stay the mandate is "granted only in 'extraordinary cases,'" and denial of such applications "is the norm." *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (quoting *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (Brennan, J., in chambers)). An "applicant must demonstrate (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction; (2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Id.* (citation modified). This Court may also consider "the relative harms to applicant and respondent, as well as the interests of the public at large." *Id.* (quoting *Rostker*, 448 U.S. at 1308).

ARGUMENT

This case does not present the "extraordinary" circumstances required for this Court to stay a court of appeals' mandate. Moore's proposed questions for review reflect little more than his personal gripes with the well-established actual-malice standard that the Eleventh Circuit correctly applied to the letter. This Court is unlikely to grant certiorari as to either and even less likely to reverse if it did so.

Even if he had presented any questions worthy of this Court's review, Moore offers no credible showing of irreparable harm should the mandate issue. There is no reason Moore could not pursue these questions in the ordinary course of a petition for certiorari after the Eleventh Circuit proceeds in the ordinary course to issue its mandate. The only basis for his rush to this Court on an "emergency" basis is Moore's own rank speculation that SMP may not be able to make good on a judgment in the unlikely event that this Court grants certiorari and reverses. This conjecture is not only entirely unsupported, but it is also expressly contradicted by public records demonstrating SMP's current and longstanding financial viability. Moore's application should accordingly be denied.

I. The Court is not likely to grant certiorari and reverse.

Moore's application puts forward two proposed questions for review, but as SMP shows, this case does not in fact raise those questions, nor do the questions this case *does* raise merit this Court's review. And there are numerous additional reasons why this Court is highly unlikely to grant certiorari in this case, including that the Eleventh Circuit's judgment is supported by alternate grounds not raised in this application.

A. This case does not present an "unsettled" question regarding the deference owed to juries in actual malice cases.

Moore's lead argument for why this Court should grant certiorari and reverse—that there is an "unsettled" question regarding "how much deference" the jury's "findings of fact" receive in an actual malice case, Appl. at 7—is not a question that this case actually presents. In arguing otherwise, Moore fundamentally

misconstrues both the governing law on when deference to the jury is required in actual malice cases and what the Eleventh Circuit actually held in this case. Although Moore does not acknowledge it, the Eleventh Circuit *did* expressly defer to the jury's credibility findings, as this Court's precedent requires. But it did not defer to the *jury's verdict itself*—as Moore advocates—because this Court's precedent expressly forbids it. At bottom, Moore simply disagrees with the Eleventh Circuit's conclusion that he failed to present adequate evidence of actual malice, but this Court is highly unlikely either to grant certiorari or to reverse on that question, which requires an appellate court to undertake an "independent examination of the entire record" to "determine whether the record establishes actual malice with convincing clarity." *Bose*, 466 U.S. at 499, 514.

Under settled law, courts owe no deference to the jury's ultimate determination of whether a plaintiff proved actual malice in a public-figure defamation case. As *Sullivan* itself established, the Seventh Amendment does not compel deference to jury findings on that question. *See Sullivan*, 376 U.S. at 285 n.26. In *Bose*, the Court granted certiorari on the question of whether Rule 52(a)'s clearly erroneous standard of review applied to the fact-finder's "finding" of actual malice. *Bose*, 466 U.S. at 493. In holding that it did not—and that a de novo standard applied instead—the Court explained that "the rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact, whether the factfinding function be performed in the particular case *by a jury* or by a trial judge." *Id.* at 501 (emphasis added). And *Harte-Hanks* reiterated *Sullivan*'s and *Bose*'s holdings that

"[w]hether the evidence . . . in a defamation case is sufficient to support a finding of actual malice is a question of law," which requires the reviewing court to "consider the factual record in full," even in a case involving a jury verdict, which was the posture in *Harte-Hanks*. 491 U.S. at 685, 688.[2]

In *Harte-Hanks*, this Court clarified that an appellate court may defer to a jury's credibility determination "concerning the *subsidiary* facts underlying the jury's finding of actual malice," if the appellate court knows the jury "*must* have" made that determination in reaching its verdict. *Id.* at 659, 690. But *Harte-Hanks* did not hold that an appellate court is compelled to defer to the jury's ultimate actual malice verdict; instead, it reaffirmed the court's important role to ensure whether "the evidence . . . in fact support[s] a finding of actual malice." *Id.* at 689.

The Eleventh Circuit followed these instructions to the letter. Although Moore does not acknowledge it, the Eleventh Circuit expressly concluded that the jury must have rejected SMP witnesses' testimony about what they intended the Ad to communicate and held that it "must give these credibility findings deference as SMP has not shown they are clearly erroneous." 11th Cir. Op. at 37–38 (citing *Harte-Hanks*, 491 U.S. at 690). Moore blazes past that finding to argue that the jury's "verdict" *itself* was also "entitled to deference." Appl. at 7. This Court, however, held exactly the opposite in *Harte-Hanks*: "The question whether the evidence in the record in a

[2] For this reason, all of the Seventh Amendment case law cited by Moore is wholly irrelevant. *See* Appl. at 7–8. None are defamation cases. They do not suggest that the Eleventh Circuit impermissibly "reexamined" any "fact tried by a jury." U.S. Const. amend. VII. That is because, again, whether the evidence is sufficient to support a finding of actual malice is a pure question of law, *see Harte-Hanks*, 491 U.S. at 685.

defamation case is sufficient to support a finding of actual malice is a question of law." 491 U.S. at 685; *see also, e.g.*, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17 (1990) (same). In other words, whether there was sufficient evidence to support a finding of actual malice is a fundamentally legal question—*not* a factual finding to which the Eleventh Circuit could have or should have deferred. There was simply no contradiction between the Eleventh Circuit's opinion and this Court's case law. To the contrary, had the court of appeals deferred to the jury's verdict as Moore advocates, *that* would have been flagrantly inconsistent with *Harte-Hanks*.

At its core, Moore's proposed question is nothing more than a thinly disguised disagreement with the Eleventh Circuit's holding that he failed to provide adequate evidence of actual malice as a matter of law. But even if there were reason to question that court's ultimate assessment of the evidence, mere error correction "is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari." Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3), at 352 (10th ed. 2013); *see also* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). And even if one accepts the question as Moore frames it, there is no reason to think this Court is likely to grant certiorari either. Indeed, his sole support for the proposition that the issue he seeks to present to this Court is "an important and recurring question" is a single case from nearly two centuries ago—a self-defeating argument if ever there was one. *See* Appl. at 7 (citing *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446–49 (1830)).

And in the unlikely event that this Court were to grant certiorari, it would be even less likely to ultimately reverse on this question. Whether a court is required to defer to a jury's credibility determinations—as the Eleventh Circuit did[3]—is an entirely separate question from whether such determinations by themselves constitute sufficient evidence of actual malice. They do not; as this Court has made clear, a libel plaintiff "must present affirmative evidence" supporting the inference that a defendant published with knowledge or reckless disregard of the statement's falsity, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986), and mere disbelief of SMP's witnesses is not sufficient to satisfy this standard, *see Bose*, 466 U.S. at 512 ("Normally the discredited testimony [of a witness] is not considered a sufficient basis for drawing a contrary conclusion.").

Moore's only rejoinder is to insist that there is such "affirmative evidence" because SMP's employees reviewed the underlying source documents before the Ad was aired, and those documents did not specifically state that Moore had solicited sex from Wendy Miller. Appl. at 17–18. The Eleventh Circuit correctly rejected this argument, explaining that a "defendant's efforts to verify the accuracy of its

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[3] The fact that the Eleventh Circuit *did* defer to the jury's credibility findings also entirely undercuts Moore's contention that the court of appeals somehow inappropriately displaced the jury and district court. *See* Appl. at 16–17. Indeed, the case Moore cites for this proposition only reinforces the conclusion that the Eleventh Circuit acted appropriately here, deferring to the jury on credibility issues, but not on questions on law. *See Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1330, 1335 (11th Cir. 1999). Nor is there any merit to Moore's related contention that the district court was in a better position to evaluate the Ad because it watched the video. *See* Appl. at 16. The Eleventh Circuit was just as able to watch the Ad as the district court and indeed linked to exactly the same YouTube video of the Ad in its opinion as did the district court. *Compare* 11th Cir. Op. at 8 n.4, *with* Dist. Ct. Op. at 16 n.1.

statements militate[] *against*"—not in favor of—"a finding of actual malice." 11th Cir. Op. at 43 (emphasis added) (citing *Levan v. Cap. Cities/ABC, Inc.*, 190 F.3d 1230, 1242 (11th Cir. 1999)); *see also Time*, 401 U.S. at 291 ("The publisher who maintains a standard of care such as to avoid knowing falsehood or reckless disregard of the truth is thereby given assurance that those errors that nonetheless occur will not lay him open to an indeterminable financial liability."). It would create perverse incentives for those engaged in political speech of the kind at issue here if their attempts to fact-check and verify advertisements against underlying sources were used against them to *support* a finding of actual malice. And although Moore faults SMP for not having fact-checked the implication created by the two combined slides, *see* Appl. at 17, as the Eleventh Circuit recognized, "'[s]imply because a statement reasonably can be read to contain a defamatory inference does not mean' that 'the publisher of the statement either intended the statement to contain such a defamatory implication or even knew the readers could reasonably interpret the statements to contain the defamatory implication,'" 11th Cir. Op. at 40 (quoting *Saenz v. Playboy Enters., Inc.*, 841 F.2d 1309, 1318 (7th Cir. 1988)). In short, the Eleventh Circuit correctly held that "SMP's thorough vetting process is inconsistent with and belies any allegations of intentional or reckless publication of the defamatory implication, and so it cannot provide sufficient evidence of SMP's intent." *Id.* at 43. Moore offers no reason to think this Court would conclude otherwise.

B. This Court is unlikely to review and reverse the Eleventh Circuit's application of universally accepted standards for defamation-by-implication claims.

Moore's second proposed question, regarding the legal requirements in defamation-by-implication cases, fares no better. *See* Appl. at 10–15. The five courts of appeals that have addressed the legal standards in such cases are united as to what a plaintiff must show to prevail—and the standards they have set out are fully consistent with this Court's holdings in both *Sullivan* and *Masson*.

At the outset, Moore incorrectly attempts to belatedly assert that this is not in fact a defamation-by-implication case. *See* Appl. at 12. As Moore acknowledges, *see id.*, he himself pleaded the claim that way. *See* Dist. Ct. Doc. 1 at 27 (labeling the claim as "Defamation by Implication" in original complaint); *see also* Dist. Ct. Doc. 47 at 38–39 (labeling the claim as "Defamation by Implication" in operative amended complaint, alleging that the Ad "convey[ed]" a "false implication" by "deceptively juxtaposing" quotations); 11th Cir. Op. at 32 n.16 (noting that Moore's pleadings, the jury instructions, and Moore's own "juxtaposition" framing make clear that "Moore's claim is in fact an implication claim"). Nor is there any merit to Moore's insistence that this cannot be a defamation-by-implication case because the combined statement from the two slides is supposedly susceptible to only one meaning. *See* Appl. at 13. Moore cites the district court as holding as much, but that is *not* what the district court held—it merely stated that a reasonable juror "*could*" read the Ad in the way Moore suggests. *See* Dist. Ct. Op. at 19 (emphasis added). The district court, like Moore, expressly understood Moore's claims as "relat[ing] to the juxtaposition of the two quotes." Dist. Ct. Doc. 149 at 3; *see also id.* at 7 (holding Moore could proceed to

trial "based on his argument that the Defendants juxtaposed quotes to create [a] false and defamatory message"). As the Eleventh Circuit explained, that is precisely the essence of defamation by implication, which "occurs when a defendant juxtaposes a series of facts to imply a defamatory connection between them." 11th Cir. Op. at 33 (quoting 50 Am. Jur. 2d *Libel and Slander* § 161). No matter how Moore describes it now, Moore's claim was pled as a defamation-by-implication claim, tried as a defamation-by-implication claim, and *is* a defamation-by-implication claim in its content.

Here, the Eleventh Circuit joined four sister circuits in holding that, to prove defamation by implication, a plaintiff must show "not only (1) that the defendant knew of or recklessly disregarded the falsity of the implied defamatory statement, but also (2) that the defendant 'inten[ded] to communicate the defamatory meaning' or recklessly disregarded the defamatory meaning." 11th Cir. Op. at 34 (alteration in original) (quoting *Kendall v. Daily News Publ'n Co.*, 716 F.3d 82, 90 (3d Cir. 2013)). This same requirement has previously been adopted by the First, Third, Sixth, and Seventh Circuits. *See* 11th Cir. Op. at 33–35 (first citing *Kendall*, 716 F.3d at 90–91; then citing *Compuware Corp. v. Moody's Invs. Servs.*, 499 F.3d 520, 526, 528–29 (6th Cir. 2007); then citing *Howard v. Antilla*, 294 F.3d 244, 252 (1st Cir. 2002); and then citing *Saenz*, 841 F.2d at 1317–18). Moore identifies no contrary authority from any circuit. *See generally* Appl. This case, therefore, does not present any circuit split warranting review from this Court, *see* Sup. Ct. R. 10(a), but rather the exact opposite: circuit consensus.

Moore objects to these circuits' purported "expansion" of *Sullivan*, Appl. at 11, but this legal test is not at all inconsistent with *Sullivan*, and Moore does not even try to show that it is. *Sullivan* held that a public official may not recover for defamation "unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279–80. *Sullivan*, of course, was not a defamation-by-implication case, and so did not set the standard for such claims. The Eleventh Circuit—like all other circuits to have addressed the issue—simply held that a plaintiff in a defamation-by-implication case does not meet his burden to satisfy the *Sullivan* standard without a showing of the defendant's intent to communicate the defamatory meaning. Such a requirement makes ample sense and is consistent with basic principles of defamation law. As the Eleventh Circuit noted, "[u]nlike in express defamation cases, 'in defamation-by-implication cases, showing known falsity [of the implication] alone is inadequate to establish an intent to defame' because the challenged statement 'has defamatory and nondefamatory meanings.'" 11th Cir. Op. at 33 (alteration in original) (quoting *Kendall*, 716 F.3d at 90). As a result, courts "may no longer presume with certainty that the defendants knew they were making a defamatory statement," and plaintiffs in defamation-by-implication cases "must show something that establishes defendants' intent to communicate the defamatory meaning." *Kendall*, 716 F.3d at 90. This holding is fully consistent with *Sullivan*, which warned that "erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they

'need . . . to survive.'" 376 U.S. at 271–72 (quoting *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963)).[4]

Nor does the Eleventh Circuit's opinion conflict with *Masson*, the factual circumstances of which varied wildly from the present case. *First*, in *Masson*, the reporter fabricated entire, lengthy quotations supposedly made by the subject of her story, despite having recorded many hours of taped interviews with her subject, where none of those quotations was ever uttered. *See* 501 U.S. at 502–08. Here, as the Eleventh Circuit confirmed, SMP did not alter any quotes and accurately cited the original source articles in each instance. 11th Cir. Op. at 41. *Second*, SMP included citations to the original source materials on each slide of its Ad, meaning that viewers were able to compare SMP's Ad to the articles in question and judge for themselves whether they believed SMP was accurately describing the source material. *See id.* That was of course impossible in *Masson*, where the reporter presented the

[4] To the extent Moore also suggests this Court should revisit *Sullivan*'s actual-malice standard itself, *see* Appl. at 13–15, this Court has repeatedly denied those requests. *See, e.g.*, Pet. for Writ of Certiorari, *Wynn v. Associated Press*, No. 24-829, 2025 WL 404611, at *i (Jan. 31, 2025) (presenting question "[w]hether this Court should overturn *Sullivan*'s actual-malice standard"); *Wynn v. Associated Press*, 145 S. Ct. 1434 (2025) (denying that petition); Pet. for Writ of Certiorari, *Grayson v. No Labels, Inc.*, No. 22-906, 2023 WL 2586242, at *i (Mar. 14, 2023) (presenting question whether "the 'actual malice' standard for state-law defamation claims by 'public figures' imposed by [*Sullivan*]" should "be revisited by this Court"); *Grayson v. No Labels, Inc.*, 143 S. Ct. 2514 (2023) (denying that petition); Pet. for Writ of Certiorari, *Centerline Logistics Corp. v. Inlandboatmen's Union of the Pacific*, No. 24-1320, 2025 WL 1799145, at *i (June 24, 2025) (presenting question "[w]hether this Court should overturn *Sullivan*'s actual malice standard"); *Centerline Logistics Corp. v. Inlandboatmen's Union of the Pacific*, 146 S. Ct. 118 (2025) (denying that petition). There is no reason to conclude this Court is likely to reverse course here, particularly given the facts and circumstances of this case. *See supra* Background.

quoted material as fact based on her *own* interviews with the subject, thus "eliminating any method of distinguishing between the statements of the subject and the interpretation of the author." 501 U.S. at 520. *Third*, in *Masson*, this Court—evaluating the case in a summary-judgment posture—concluded that, when viewed in the light most favorable to the plaintiff, there was evidence supporting a determination that the reporter had deliberately altered the quotations at issue. *See id.* at 509, 517. In contrast, no such evidence was ever presented here. To the contrary, SMP's witnesses repeatedly testified that their intent was not to create a new story—it was to share stories that were already in the public domain with the general public. *See* 11th Cir. Op. at 14–15.

The Eleventh Circuit thus correctly held that *Masson* did "not compel the conclusion" that Moore satisfied his burden as to actual malice. *Id.* at 41. Moore, however, barely grapples with any of these critical distinctions between *Masson* and the present case. *See* Appl. at 10–12. Nor has he demonstrated that there is any conflict between *Masson* and the legal requirements for defamation-by-implication claims that the courts of appeals have consistently imposed.

Even assuming there *were* some conflict between the approach taken by the Eleventh Circuit and either *Sullivan* or *Masson*—and there is not—Moore has still not shown that this issue merits this Court's review. Moore insists the standards for defamation-by-implication claims "are important and unresolved questions of national constitutional law." Appl. at 11. But that sentence is notably citation-free, and he provides no support for it anywhere in his application. *See generally id.* Moore

has not cited a shred of evidence to show that this is a recurring question of any broader significance, let alone one that requires this Court's intervention. He has thus failed to show that this case presents any "important federal question" warranting this Court's review. Sup. Ct. R. 10(c).

C. This Court is likely to deny certiorari for additional, independent reasons.

Even if Moore *was* able to identify a question meriting this Court's review and on which a majority of this Court would be likely to reverse—which this case does not present—this Court would still be unlikely to grant certiorari here because multiple, independent grounds exist to support the Eleventh Circuit's judgment.

First, even a reversal of the Eleventh Circuit's holding as to SMP's intent would not resolve the issue of whether Moore satisfied his burden to show clear and convincing evidence of actual malice. Both of Moore's proposed questions for this Court's review concern the issue of whether Moore had to prove, or did prove, that SMP had the *intent* to communicate an alleged defamatory meaning. But as the Eleventh Circuit recognized, even if Moore prevailed on the issue of SMP's intent, Moore still cannot prevail in this case unless he can also prove, "by clear and convincing evidence," that "SMP knew the implied statement in the ad was false or SMP recklessly disregarded its falsity (the falsity component of actual malice)." 11th Cir. Op. at 35. Although the Eleventh Circuit did not reach that issue because Moore's failure to establish clear and convincing evidence of SMP's intent to communicate a defamatory message was sufficient to resolve the case in SMP's favor, *see id.* at 44 n.20, the court's summary of the evidence presented at trial all but forecloses any

relief for Moore on this ground. In particular, the Eleventh Circuit cited the unanimous testimony of those involved in the Ad's preparation that they believed the Ad communicated truthful information, *see id.* at 14–18, as well as SMP's efforts to fact-check and verify the Ad's truthfulness before publication, *see id.* at 16–18; *see also id.* at 43 ("SMP's thorough vetting process is inconsistent with and belies any allegations of intentional or reckless publication of the defamatory implication."). Nothing in the Eleventh Circuit's "independent review" of the evidence indicated that SMP believed the Ad to be false.

Further, even if Moore could prevail on *that* issue, the record cannot sustain a finding of actual malice because the Ad was not materially false. *See* 11th Cir. Doc. 22 at 47–50; *Masson*, 501 U.S. at 517 ("Minor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'"). Although the panel again did not reach this issue because Moore's failure to prove SMP's intent by clear and convincing evidence resolved the case, *see* 11th Cir. Op. at 29 n.15, SMP showed that the gist of the Ad was true, *see* 11th Cir. Doc. 30 at 21–22. As one Eleventh Circuit judge correctly noted at oral argument, "the gist" of the Ad was that Moore was "a sexual predator on young girls." Oral Arg. Recording at 27:07–13, *Moore v. Senate Majority PAC*, No. 23-13531 (11th Cir. Mar. 26, 2025).[5] To the extent Moore believes it is material whether he solicited sex from a 14-year-old girl he picked up at the courthouse, instead of a 14-year-old girl he approached at the

[5] Available at https://www.ca11.uscourts.gov/sites/default/files/oral_argument_recordings/23-13531_03262025.mp3.

mall, Moore cannot show that is a material difference that would have mattered in the mind of the average viewer. *See Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 250 (2014) ("[A] materially false statement is one that would have a different effect on the mind of the reader or listener from that which the truth would have produced." (citation modified)).

In sum, because Moore's forthcoming petition presents no question meriting this Court's review, and because multiple, independent grounds exist to affirm the panel's judgment, the Court is not likely to grant certiorari in this case.

II. Moore failed to show a likelihood of irreparable injury absent a stay.

Even leaving aside the merits of Moore's forthcoming petition for certiorari, his application to stay the mandate still must be denied because he has not shown a likelihood he will suffer irreparable harm in the absence of a stay. *See Conkright*, 556 U.S. at 1402. Moore's failure to make such a showing is independent reason to deny the application. *See, e.g.*, *Teva Pharms. USA, Inc. v. Sandoz*, 572 U.S. 1301, 1301 (2014) (Roberts, C.J., in chambers) (denying stay of mandate where, despite satisfying all of the other required criteria, applicant failed to "show[] likelihood of irreparable harm from denial of a stay").

Moore's inability to identify any irreparable harm arising from the issuance of the Eleventh Circuit's mandate is first apparent from Moore's rapidly evolving theories of irreparable harm. Moore's motion to stay the mandate at the Eleventh Circuit identified two supposed irreparable harms that Moore would face absent a stay: (1) the "reputational harm of replacing a jury verdict" in his favor, and (2) the burden of paying approximately $3,000 to satisfy SMP's bill of costs at the Eleventh

Circuit. *See* 11th Cir. Doc. 53 at 8. Before this Court, however, Moore appears to have abandoned those theories, now pointing to only the prospect that Moore "*may* be unable to collect" the judgment if the mandate issues, the district court releases the bond, this Court accepts review and ultimately reverses, and then SMP does not have the financial means to satisfy the judgment. Appl. at 18 (emphasis added).

Moore does not come close to satisfying the requirement that he demonstrate a *likelihood* that he will suffer irreparable harm, *see Conkright*, 556 U.S. at 1402, instead relying on a mere possibility of such harm based on a series of speculative if-then suppositions. Moore's theory that he "may" be unable to collect on the judgment rests solely on the observation that SMP's financial position "fluctuates with the election cycle" and that SMP reported debts at the close of the 2022 and 2024 election cycles. Appl. at 18. Moore's observation that a political action committee's financial position would fluctuate along with the election cycle has no bearing on SMP's ability to satisfy a judgment. SMP has operated continuously for more than fifteen years.[6] It was founded in the immediate aftermath of this Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), and is the primary Super PAC committed to the election of Democratic candidates for the U.S. Senate.[7] As of the

[6] *See About This Committee*, Fed. Election Comm'n, https://www.fec.gov/data/committee/C00484642/?tab=about-committee&cycle=2026 (last visited June 24, 2026); *Our Mission*, Senate Majority PAC, https://senatemajority.com/about-us/ (last visited June 24, 2026).
[7] *See Our Mission*, *supra* note 6.

latest reported statistics, it presently has more than $74 million in cash on hand.[8] And it has raised more than $300 million in contributions in each of the previous three election cycles.[9] Moore's theory of irreparable harm functionally rests upon the prospect that SMP will either cease to exist or cease to continue collecting contributions, neither of which Moore has shown is remotely likely. To the contrary, his theory is squarely contradicted by the *actual* facts regarding SMP's long-standing operations and its publicly reported financial position. Rank speculation cannot justify the imposition of a stay of the mandate.

As this Court has held, even the mere "*possibility* that adequate compensatory or other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (emphasis added). Here, Moore attempts to invert that proposition, asking this Court to find irreparable harm based on the possibility that he will not be able to collect on the judgment. As justices of this Court have held in denying stays of the mandate, however, even a showing that applicant may face difficulty in recouping funds is not

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[8] *See Financial Summary (2025–2026)*, Fed. Election Comm'n, https://www.fec.gov/data/committee/C00484642/?tab=summary&cycle=2026 (last visited June 24, 2026).

[9] *See Financial Summary (2023–2024)*, Fed. Election Comm'n, https://www.fec.gov/data/committee/C00484642/?tab=summary&cycle=2024 (last visited June 24, 2026); *Financial Summary (2021–2022)*, Fed. Election Comm'n, https://www.fec.gov/data/committee/C00484642/?tab=summary&cycle=2022 (last visited June 24, 2026); *Financial Summary (2019–2020)*, Fed. Election Comm'n, https://www.fec.gov/data/committee/C00484642/?tab=summary&cycle=2020 (last visited June 24, 2026).

irreparable harm, so long as the applicant has not "establish[ed] that recoupment will be *impossible*." *Conkright*, 556 U.S. at 1403 (emphasis added).

Moore has provided no basis for this Court to conclude that it is likely that he will be unable to collect the judgment if the mandate issues, let alone that it will be impossible, and consequently has entirely failed to meet his burden of showing that he faces any likelihood of irreparable harm that will result absent a stay. That alone requires the denial of his application. *See Teva Pharms. USA*, 572 U.S. at 1301.

III. A stay of the mandate will prejudice SMP and is not in the public interest.

As Moore recognizes, before granting a stay, the Court should also consider whether a stay of the mandate would harm SMP. *See* Appl. at 6, 19. It would. Specifically, although SMP requested that the district court stay execution of the initial judgment pending appeal without requiring SMP to post a bond, Moore opposed that request, and the district court ultimately ordered SMP to post an $8.2 million bond. *See* Dist. Ct. Docs. 209, 215, 218. In the years since, SMP has had to pay an $82,000 premium on the bond each year, with its premiums now totaling over $320,000 since the bond was first put into place. Staying the mandate—which would likely prevent the district court from releasing the bond—will almost certainly require SMP to pay another $82,000 for 2026 (which it has not yet incurred for this year but likely *would incur* in the time that it would take for Moore to petition this Court and for the Court to deny that petition). Although such premiums should be recoverable to SMP in light of Moore's forthcoming obligation to pay SMP's bond

premiums, *see* Fed. R. App. P. 39(f)(3), SMP does not need to show irreparable harm as the non-movant to demonstrate prejudice that counsels against granting a stay.

Finally, Moore also fails to show that a stay of the mandate is in the public interest. SMP disputes that the Eleventh Circuit's decision presents important constitutional questions meriting this Court's review, but even if Moore were correct on that score, Moore fails to identify why *staying the mandate* in this case furthers the public interest. Whether or not this Court should address "the constitutional limits on defamation liability," Appl. at 19, for example, is not a question that this Court would preclude by denying Moore's motion to stay the mandate. Moore can present a petition for certiorari to the Court regardless of whether the Court denies this motion. A stay is a limited and rare exception to the rule that the mandate issues as a matter of course; Moore identifies no reason the public (rather than Moore himself) would be served by a stay in this case. Rather, the public interest will be better served by the issuance of the mandate in its usual course.

CONCLUSION

For the reasons stated above, the application should be denied.

Respectfully submitted,

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