

No.

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In The  
Supreme Court of the United States

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**PATRICK REED**

*Petitioner*

v.

**SHANE RYAN, et al**

*Respondents*

—————  
On Petition for Writ of Certiorari  
To The United States Court of Appeals  
For the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI  
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## QUESTIONS PRESENTED

1. Whether the U.S. Court of Appeals for the Eleventh Circuit (“the Eleventh Circuit”) misapplied *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) by refusing to consider entire categories of well-pled, direct and circumstantial facts – such as direct notice, motive, hostility, refusal to retract, and purposeful avoidance, among other “badges of malice”– that other circuits treat as creating an inference of actual malice, thereby deepening the disparate and conflicting treatment of claims for defamation requiring proof of actual malice among the circuits?

2. Whether the Eleventh Circuit properly applied *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) when it categorically excluded entire classes of circumstantial factual allegations from the determination of whether Petitioner had plausibly alleged actual malice, notwithstanding that other circuits expressly treat such facts as establishing actual malice, thereby deepening an existing split among the circuits regarding what is required to plead actual malice?

3. Whether this Court should reconsider the constitutional foundations and pleading requirements of *Sullivan* for public figure defamation claims, as urged by Justice Thomas in *McKee v. Cosby*, 586 U.S. 1172 (2019) and Justice Gorsuch in *Berisha v. Lawson*, 141 S. Ct. 2424 (2021) in light of the deepening circuit conflict over what allegations may establish actual malice at the pleading stage?

4. Whether the First Amendment allows a circuit to categorically exclude entire classes of circumstantial evidence – such as motive, animus, and purposeful

avoidance and other “badges of malice<sup>1</sup>” from the actual malice analysis at trial, contrary to this Court’s holdings in *St. Amant v. Thompson*, 390 U.S. 727 (1968),

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<sup>1</sup> As one prominent commentator has published in the Florida Bar Journal:

There are 24 badges of malice.

- failure to conduct a thorough investigation before publishing serious and damaging allegations that are not “hot news”;
- failure to give the plaintiff a fair opportunity to reply to defamatory allegations;
- failure to report exculpatory facts;
- omitting pertinent information to create a false impression;
- destruction, loss, or unavailability of a reporter’s notes or research;
- the reporter’s knowledge of a quoted source’s animosity toward the plaintiff;
- the alteration of quotes to maximize a story’s impact;
- a reporter’s knowledge of facts conflicting with the report;
- emphasizing unimportant events to support a defamatory statement;
- continued reliance on a source that had proven unreliable in other respects;
- a preconceived determination to disparage a plaintiff or a preconceived slant or view;
- repetitive media attacks on the plaintiff;
- failure to contact key witnesses;
- a reporter’s ill will toward the plaintiff;
- competitive pressure for “hot news” story;
- discrepancies, inconsistencies, and equivocation in the testimony of media witnesses;
- a reporter’s departure from professional standards;
- failure to supervise the reporter’s preparation of the story;
- refusal to publish a retraction upon learning of errors in a story;
- prior and subsequent defamatory statements;
- that an investigative agency with the same information as a reporter declined to prosecute or take any action against the plaintiff; and
- making threats in connection with a story.
- the use of deception to obtain a defamatory story;
- a reporter’s lack of credibility;

“These badges of malice are a guide and nothing more. The possible scope of evidence that may support an inference of malice is unlimited. The badges are useful because they summarize actual events that tend to repeat themselves in media defamation cases. Evidence of the badges in discovery will support a strong and well-precedented argument for constitutional malice.”

and *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)?

## PARTIES TO THE PROCEEDING

Patrick Nathaniel Reed (“Petitioner”) was the Plaintiff-Appellant in both consolidated matters below. From No. 24-10070, which this instant Petition involves, (“Reed II”), Respondents include Shane Ryan, Hachette Book Group, Inc., Doug Ferguson, The Associated Press, and Fox Sports, Inc., *et al.*<sup>2</sup>

## STATEMENT OF RELATED PROCEEDINGS

1. *Patrick Nathaniel Reed v. Brandel Eugene Chamblee, TGC, LLC d/b/a Golf Channel, Damon Hack, Benjamin Shane Bacon, Eamon Lynch, et al., and Golfweek*,  
United States Court of Appeals for the Eleventh Circuit, No. 24-10058.  
Judgment entered July 8, 2025.

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Manuel Socias, Showing Constitutional Malice in Media Defamation, Fla. B.J., 38-40 (2018) (footnote omitted).

Petitioner has pled the badges of malice in his Amended Complaints, including but not limited to (1) refusal to retract, Supp. App. 45, (2) failure to report exculpatory facts, Supp. App. 41, (3) omitting pertinent information to create a false impression, Supp App. 42, (4) repetitive media attacks on Petitioner, Supp. App. 15, (5) discrepancies, inconsistencies, and equivocation in the testimony of media witnesses, Supp. App. 31, and (6) a preconceived determination to disparage a plaintiff or a preconceived slant or view. Supp. App. 15.

<sup>2</sup> From No. 24-10058 (“Reed 1”), Respondents include Brandel Eugene Chamblee, TGC, LLC, d.b.a. the Golf Channel, Damon Hack, Benjamin Shane Bacon, and Eamon Lynch, *et al.*, Golfweek. The Petition concerning this appeal has already been deemed timely by this Court.

2. *Patrick Nathaniel Reed v. Shane Ryan, Hachette Book Group, Inc., Doug Ferguson, The Associated Press, Fox Sports, Inc., et al.*,

United States Court of Appeals for the Eleventh Circuit, No. 24-10070.

Judgment entered July 8, 2025.

3. *Patrick Nathaniel Reed v. Brandel Eugene Chamblee, et al.*,

United States District Court for the Middle District of Florida, No. 3:22-cv-01181-TJC-PDB.

Final judgment entered prior to appeal.

4. *Patrick Nathaniel Reed v. Shane Ryan, et al.*,

United States District Court for the Middle District of Florida, No. 3:22-cv-01059-TJC-PDB.

Final judgment entered prior to appeal.

There are no other related pleadings in federal or state court.

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## DECISIONS BELOW

The Eleventh Circuit issued per curiam identical and highly abbreviated decisions in *Reed v. Chamblee*, No. 24-10058, and *Reed v. Ryan*, No. 24-10070 (11th Cir. July 8, 2025). The court affirmed dismissal of both complaints, with no factual analysis and extremely little legal analysis, holding that Petitioner “failed to plead any Defendant acted with actual malice,” App. 4a, that allegations of “hostility and animosity”, App. 6a, were legally irrelevant because “ill-will, improper motive or personal animosity plays no role,” App. 6a, and that Petitioner “never alleged” Respondents “had serious concerns about the accuracy of the published statements.” App. 6a. The Eleventh Circuit concluded that Petitioner’s detailed circumstantial allegations – including direct notice, refusal to retract, disregard of contradictory evidence, and contextual hostility, among many other well-pled “badges of malice” – were insufficient as a matter of law under its interpretation of *Sullivan*.

The United States District Court for the Middle District of Florida (“District Court”) had earlier dismissed the actions with prejudice at the Federal Rule of Civil Procedure (“FRCP”) 12(b)(6) stage.

## STATEMENT OF JURISDICTION

The Eleventh Circuit entered judgment on July 8, 2025. Petitioner timely files this petition under U.S. Supreme Court Rule 13. This Court has jurisdiction under 28 U.S.C. § 1254(1), which grants certiorari review over final judgments of the U.S. Courts of Appeals.

## STATUTORY AND RULE PROVISIONS

This case arises under the statutory and procedural framework governing federal appellate review and the pleading standards applicable to constitutional claims sounding in defamation.

First, 28 U.S.C. § 1254(1) provides the jurisdictional basis for this Court's review.

Second, the sufficiency of Petitioner's allegations is governed by the Federal Rules of Civil Procedure 8 and 12, which supply the operative standards at issue in the first two Questions Presented. Under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a complaint survives if its well-pled factual allegations raise only a reasonable expectation that discovery will reveal evidence supporting the claim and, taken as true, state a claim to relief that is plausible on its face.

Finally, this case arises in the shadow of the constitutional actual malice standard articulated in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), which governs public figure defamation actions nationwide. The Eleventh Circuit's rulings below – categorically excluding motive, hostility, refusal to retract, and purposeful avoidance from the actual malice inquiry – present a direct conflict with other circuits' interpretation of *Sullivan* and with this Court's own decisions in *St. Amant v. Thompson*, 390 U.S. 727 (1968), *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), and *Hutchinson v. Proxmire*, 443 U.S. 111 (1979). They also implicate broader questions about the constitutional foundation of *Sullivan* itself, which Members of this Court have urged the Court to revisit.

These provisions collectively frame the issues at the heart of the petition: the proper application of *Twombly* and *Iqbal* to actual malice allegations, the constitutional limits imposed by *Sullivan* and its progeny, and whether the text, history, and structure of the First Amendment require reconsideration of the modern actual malice doctrine. The Eleventh Circuit’s application of these principles deepens existing splits between the circuits, and warrants if not compels this Court’s review.

## INTRODUCTION

This Court has not had occasion to consider the interaction between *Twombly*, *Iqbal*, and *Sullivan* – a doctrinal intersection that now governs every public figure defamation suit in the nation. This petition asks the Court to address an overdue and increasingly urgent question: whether lower courts are properly applying *Twombly* and *Iqbal* to allegations of actual malice in support of claims for defamation, and whether *Sullivan* itself – reshaped over decades of expansive interpretation – continues to strike the constitutionally appropriate balance between vigorous public discourse and appropriate remedies for reputational harm. The time for such review has long since arrived, as some Members of this Court have urged.

Across the federal courts, profound disagreement now exists on each of these matters. The circuits are divided on how *Twombly*’s plausibility standard applies particularly to defamation claims brought by public figures. Some courts – most notably the U.S. Court of Appeals for the First Circuit (“First Circuit”), U.S. Court of Appeals for the Second Circuit (“Second Circuit”) and U.S. Court of Appeals for

the Eighth Circuit (“Eighth Circuit”) – recognize that “actual malice” may be shown through inference and circumstantial evidence, and that plausibility requires only “enough fact to raise a reasonable expectation that discovery will reveal evidence” of the claim. *Twombly*, 550 U.S. at 556. Others – led by the Eleventh Circuit – interpret plausibility in a manner that effectively requires pre-discovery proof of belief in, or reckless disregard to, a statement’s falsity. Under this approach, district courts routinely arrogate to themselves the role of the jury, weighing competing inferences and resolving credibility disputes on a barren record. This approach, while it may serve to help limit a district court’s docket, thus flies in the face of the Sixth and Seventh Amendments constitutional right to trial by jury. Here, the District Court and then the Eleventh Circuit, confronted with fifty-five (55) well-pleaded factual allegations of defamation, appear to have side-stepped their responsibility to analyze all of them one by one, and took the easy way out by misapplying *Twombly*. Not just in this case, but the application of *Twombly* generally has become legion and it is time for this Court to step in.

This case exemplifies and underscores that problem. The District Court dismissed two separate actions brought by Petitioner through opinions that were materially identical – despite different defendants, different publications, and different factual contexts. Both rulings lacked meaningful engagement with the fifty-five (55)-plus well-pled factual allegations set forth in the Amended Complaints. As a result, incredibly not even one well pled factual allegation survived. Both ignored *Twombly*’s warning that plausibility “does not impose a

probability requirement,” *id.*, and *Iqbal*’s command that courts must conduct a “context-specific” analysis informed by “judicial experience and common sense.” 556 U.S. at 679.

The Eleventh Circuit affirmed on even narrower grounds. It adopted the strictest actual malice standard in the nation – one that categorically excludes motive, hostility, refusal to retract, and purposeful avoidance and the myriad of other “badges of malice,” notwithstanding that other circuits consider those very pled facts as creating an inference of actual malice under *Sullivan*. The Eleventh Circuit’s approach cannot be reconciled with this Court’s instruction that the actual malice inquiry “does not readily lend itself to summary disposition.” *Hutchinson v. Proxmire*, 443 U.S. 111, 120 n.9 (1979). Yet the Eleventh Circuit has made summary disposition the rule, not the exception.

Applying its rigid exclusions, the Eleventh Circuit refused to credit, as just a few examples of well-pled factual allegations, the detailed factual allegations Petitioner pleaded, regarding : (1) that Respondents falsely repeatedly branded him a “cheater” even though he had “never once been found to have cheated,” Supp. App. 28, had “only had one rules infraction in his entire career,” Supp. App 29, and had sworn affidavits from coaches and eyewitnesses “unaware of any evidence or accusations” of cheating over eleven years as a professional golfer, Supp. App. 31 ; (2) that Respondents published an article juxtaposing Petitioner’s image with discussions of an “investigation” involving 9/11 families allegedly conducted in case where Petitioner was not even a party – despite no connection whatsoever between

Petitioner and that matter, Supp. App. 180; and (3) that Respondents asserted that Petitioner and his family have a history of lying, a objectively verifiable representation alleged to be knowingly false and unsupported by any factual source. Supp. App. 171.

Beyond the circuit conflicts, Petitioner pleaded detailed factual allegations showing that Respondents either knew their accusations were false or deliberately ignored readily available evidence establishing their falsity, which evidence was in the public domain for years. Petitioner’s record – having never once been found to have cheated and having incurred only a single rules infraction, which is hardly unusual for a professional golfer, in more than a decade on the PGA Tour – was widely known. His longtime coaches and eyewitnesses had provided sworn statements attesting that they were “unaware of any evidence or accusations of cheating,” Supp. App. 31, and these materials were accessible to any responsible publisher. Yet Respondents declined to review them, refused to interview the individuals who authored them, and continued repeating their accusations even after receiving detailed notice underscoring their falsity. Supp. App. 42. These allegations are precisely the type of direct and circumstantial evidence that multiple circuits treat as probative of actual malice.

Petitioner’s well-pled allegations – direct notice of falsity, contextual hostility, purposeful avoidance, and post-publication misconduct, as just few examples of the “badges of malice” – represent exactly the type of circumstantial allegations that the First, Second, and Eighth Circuits have held sufficient to plead

or prove actual malice. Yet under the Eleventh Circuit’s categorical exclusions, not one of these allegations was permitted to proceed to discovery much less reach a jury. Indeed, under its framework, no public figure plaintiff could plausibly plead actual malice unless the defendant actually admitted to publishing a knowing falsehood or statement with reckless indifference to its truth or falsity in writing.

The consequences of that approach reach far beyond this case. In the modern era – where public figures, including Members of this Court, face an unprecedented volume of sustained and often malicious false and misleading media attacks – the ability of a plaintiff to reach discovery and trial now depends almost entirely on geography. That fragmentation is inimical to a national constitutional standard. And it mirrors concerns already expressed by Members of this Court. *Infra* “Reasons for Granting Writ (E)”

When this Court determines that longstanding precedent has diverged from constitutional text and original understanding, it has not hesitated to revisit the issue. *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), reaffirmed that the Court has both the authority and responsibility to correct historical missteps. The same structural imperative applies here: *Sullivan* has been extended far beyond its original contours, and the divergence among circuits – combined with the modern media landscape – has produced a doctrinal instability and arbitrary uncertainty that demands clarification.

Petitioner’s case presents the conflict in its clearest and most focused posture. The decisions below rest solely on questions of law; no factual disputes

exist; and the record presents an ideal vehicle for resolving how *Twombly*, *Iqbal*, and *Sullivan* interact. The fragmentation of federal defamation law, the misapplication of *Twombly* and *Iqbal*— which has become legion in a number of settings where district courts abusively arrogate to themselves factual issues for the jury for whatever reason, and the unresolved constitutional questions surrounding *Sullivan*, make this case not merely an appropriate vehicle, but an imperative one. Only this Court can restore coherence and applicability to a doctrine that has drifted far from first principles, and this petition squarely demands the Court’s attention now. The time has come as in *Dobbs* and other recent cases which revisit fix persistent legal constitutional problems.

Certiorari is warranted.

## STATEMENT OF THE CASE

### A. Factual Background

Petitioner is a major champion, a Masters tournament champion, and one of the most accomplished and successful professional golfers of his generation. For more than a decade on the PGA Tour, he was never once found to have cheated and incurred only a single rules infraction in his entire professional career. His longtime coaches and eyewitnesses were “unaware of any evidence or accusations of cheating,” a fact that had been publicly known for years. Supp. App. 31

In 2022, Petitioner joined LIV Golf as one of its highest-profile early signings, entering the center of an unprecedented and highly publicized conflict between the PGA Tour, the traditional and monopolistic golf-media ecosystem and the new LIV Golf league. Petitioner alleged that Respondents seized upon this new entry to

cynically use the high profile Petitioner Reed as a vehicle to harm the nascent LIV Golf League, to repeatedly engage in anti-competitive conduct to restrain trade and retain the PGA Tour's monopoly, despite the complete absence of any factual basis for that accusation. The complaints alleged that these published accusations were not isolated errors or lapses in judgment, but part of a sustained media campaign that Respondents either knew was false, or were recklessly indifferent to its truth or falsity. According to the pleadings, Respondents cynically created a narrative which they understood would inflict severe reputational harm, professional injury, and commercial consequences on Reed, one of LIV Golf's premier players, and thus LIV. Petitioner further alleged that Respondents deliberately disregarded readily available exculpatory information which contradicted their narrative. Despite having access to eyewitness accounts, coach statements and sworn affidavits, and years of public reporting confirming that Petitioner had never been found to have cheated, Respondents allegedly refused to interview key witnesses, declined to review corroborating materials, and continued publishing accusations after receiving detailed cease-and-desist communications identifying the falsities. The complaints alleged that Respondents acted not merely with negligence, but with hostility, motive, and purposeful avoidance of the truth – precisely the types of circumstantial evidence that multiple courts of appeals recognize as being sufficient to state a claim for actual malice. Yet the Eleventh Circuit, in factually devoid opinions, held that these allegations were legally irrelevant as a matter of law,

dismissing them wholesale and refusing to consider the various sorts of allegations which other circuits treat as central to the actual malice inquiry.

**B. Procedural History**

**1. The District Court Initially Dismissed Petitioner’s Complaint Sua Sponte.**

Petitioner filed his initial defamation complaint in the U.S. District Court for the Middle District of Florida. Before any Defendant answered or filed a motion to dismiss – and without identifying any deficiency relating to actual malice – the District Court sua sponte and strangely incorrectly dismissed the complaint as a purported “shotgun pleading.” *Chamblee* Complaint ECF No. 27; *Ryan* Complaint ECF No. 25. The order did not fault the complaint’s factual allegations, did not identify any insufficiency in Petitioner’s showing of actual malice, and did not engage with the detailed narrative set forth in the pleadings. Instead, the court concluded that Petitioner was required to amend solely to reorganize the structure of the complaint under Rule 8.

**2. Petitioner Amended Only Because the Court Required It, Not to Address Actual Malice.**

In compliance with the sua sponte order, Petitioner filed one amended complaint in each case. He did not amend to modify his actual malice allegations – nor was he invited to do so – because the court’s order did not identify any deficiency in those allegations. As Petitioner explained in his Notice of Compliance, the amendment addressed only the structural concerns raised by the court; the factual allegations of falsity, knowledge, and reckless disregard remained intact, as

well as other “badges of malice.” *Supra* fn1. The District Court provided no notice to Petitioner that it considered his allegations of actual malice to be deficient, and afforded Petitioner no notice and opportunity to amend on that issue. *Chamblee* Complaint ECF NO. 29; *Ryan* Complaint ECF No. 28

**3. The District Court Then Dismissed with Prejudice After a Hearing, Using Nearly Identical Boilerplate Orders in Two Distinct Cases.**

Following a July 31, 2023 hearing – at which the court gave no indication that it viewed Petitioner’s actual malice allegations as insufficient – the District Court dismissed the amended complaint with prejudice. In a second, separate case involving different defendants, different publications, and different factual contexts, the District Court issued a materially identical order. Both rulings offered minimal if not prejudged analysis, relied on high-level generalities instead of acknowledging the factual allegations pleaded, and treated dismissal as a foregone conclusion. The court avoided almost no meaningful engagement of the detailed well-pled factual allegations of knowledge of falsity, purposeful avoidance, context, motive, or post-publication conduct expressly alleged in Petitioner’s Amended Complaints. Petitioner was furthermore denied discovery and denied any opportunity to cure alleged deficiencies, however incorrect, the court had never identified.

The use of verbatim, boilerplate opinions in two independent actions underscores the structural problem: rather than applying a context-specific plausibility analysis as *Twombly* and *Iqbal* require, the District Court resolved both

cases through cursory if not outcome determinative reasoning which failed to account for the well-pled factual allegations.

**4. The Eleventh Circuit Affirmed, Adopting the Strictest Actual Malice Rule in the Nation.**

The Eleventh Circuit affirmed dismissal on grounds narrower than any adopted by its sister circuits. It held that Petitioner “failed to plead any Defendant acted with actual malice”; that allegations of “hostility and animosity” were not relevant because “ill-will, improper motive, or personal animosity plays no role”; and that Petitioner “never alleged” Respondents “had serious concerns” about the accuracy of their statements. App. 6a. Under this framework, entire categories of direct and circumstantial evidence – including direct notice, refusal to retract, purposeful avoidance, disregard of contradictory evidence, and contextual hostility, among many other well pled “badges of malice”– were deemed legally irrelevant as a matter of law. *See supra* fn. 1.

The panel further stated that Petitioner “failed” to allege actual malice despite being provided “two chances” to amend. App. 84a. Petitioner corrected this misstatement, however, explaining that he had amended only once, and only because the court required him to do so. He was never granted a meaningful opportunity to amend, and actual malice was never identified as a defect in the original complaint. This was ignored by the panel.

**5. Rehearing Was Denied Despite an Acknowledged Conflict.**

Petitioner sought rehearing en banc, explaining that the panel’s decision deepened multiple circuit splits and conflicted with this Court’s precedents

governing both plausibility and actual malice. The petition emphasized the District Court's cursory reasoning, the Eleventh Circuit's categorical exclusion of probative circumstantial evidence, and the incompatibility of the panel's approach with the First, Second, and Eighth Circuits' precedents. Rehearing was denied without explanation.

**C. This Case Cleanly Presents the Conflicts and Is an Ideal – And Urgently Necessary – Vehicle for Resolving Them.**

This case arrives at this Court in the precise procedural posture that makes it an ideal vehicle to resolve the deep fractures that have emerged in federal defamation law. All four Questions Presented turn on pure questions of law, not factual disputes. Both the District Court and the Eleventh Circuit dismissed Petitioner's complaints at the Rule 12(b)(6) stage, before any discovery and without the development of any evidentiary record. The courts did not rely on alternative holdings, credibility determinations, or fact-intensive inquiries. The judgments below rest exclusively on the Eleventh Circuit's legal conclusions about (1) how *Twombly* and *Iqbal* apply to actual malice; (2) what circumstantial evidence *Sullivan* permits courts to consider; and (3) whether the Constitution requires, permits, or even supports the doctrinal expansion of *Sullivan* reflected in the lower courts' rulings.

Because these legal questions were dispositive, this case presents a clean, uncluttered platform for the Court to resolve them. If *Twombly* is applied correctly, Petitioner's well-pled factual allegations – which easily “raise a reasonable

expectation that discovery will reveal evidence” and more than “state a claim to relief that is plausible on its face,” *Twombly*, 550 U.S. at 556, 570 – were sufficient to proceed. If *Sullivan* is interpreted consistently with *St. Amant*, *Harte-Hanks*, and *Proxmire*, Petitioner’s allegations of purposeful avoidance, direct notice, refusal to retract, contextual hostility, and disregard of contradictory evidence were plainly relevant. And if, as Justice Thomas and Justice Gorsuch have argued, *Sullivan*’s foundations warrant reconsideration, this case illustrates why: the Eleventh Circuit has transformed the doctrine into an insurmountable pleading hurdle, even where the complaint, in this case, contains more than fifty- five (55) detailed, well pled factual allegations supporting knowledge of falsity or reckless disregard. *See* Supplemental Appendix.

The vehicle is clean and the question is urgent. The District Court issued materially identical, boilerplate rulings in two separate actions with different defendants and distinct factual records – offering almost no analysis of the pleadings and disregarding the specific allegations demonstrating Respondents’ knowledge of falsity. The Eleventh Circuit affirmed in a similarly truncated opinion, declaring entire categories of circumstantial allegations concerning malice legally irrelevant, contrary to the approaches taken by the First, Second, and Eighth Circuits. The result is a stark disuniformity: a complaint that readily survives in Boston, New York, or St. Louis is dismissed without hesitation in Atlanta.

This is exactly the sort of entrenched, outcome-determinative conflict, that has become endemic, that demands national resolution. And it arrives at a moment

when Members of this Court have explicitly questioned the legitimacy and continued viability of *Sullivan* in its modern form. Justice Thomas’s call in *McKee* to revisit *Sullivan* and Justice Gorsuch’s problem with its “ironclad subsidy for the publication of falsehoods . . .”, in *Berisha*, 141 S. Ct. at 2428, underscores the doctrinal instability already permeating the lower courts. Meanwhile, the rise of viral media, online defamation, and “fake news” has intensified the consequences of inconsistent standards across jurisdictions. The stakes for public figures – many of whom, including Justices of this Court, have faced false and repeated attacks, some of which have likely been responsible for assassination attempts as with Justice Kavanaugh – are substantial and growing.

In short, this case does not merely present an opportunity to clarify the law; it presents a an urgent necessity in the interest of justice. The split over *Twombly* and *Iqbal*, the split over *Sullivan*, and the broader constitutional questions surrounding actual malice converge here with unusual clarity. There are no factual barriers, no procedural complications, no alternative grounds for affirmance. Few cases come to this Court with legal issues so sharply defined and so consequential for the national landscape of public figure defamation.

For these reasons, the petitions arising from Reed I and Reed II present an ideal – and urgently needed – vehicle for the Court to impose uniformity, correct doctrinal drift, and address lingering foundational constitutional questions in defamation cases left unresolved following the Court’s decisions in *Twombly* and *Iqbal*.

## REASONS FOR GRANTING THE PETITION

### A. **The Eleventh Circuit Has Deepened a Direct, Acknowledged, and Outcome-Determinative Circuit Split on What Allegations Can Plausibly Establish Actual Malice, Which Only This Court Can Restore Uniformity.**

Actual malice is a national constitutional standard; its meaning cannot depend on the happenstance of geography or the circuit, much less the whim of District Court judges, in which a plaintiff files suit. The questions presented here are neither abstract nor theoretical, nor do they reflect a marginal doctrinal disagreement. Under the Eleventh Circuit’s rule, it is now exceedingly difficult – bordering on impossible – for a public figure plaintiff to survive a motion to dismiss a defamation claim, even when pleading the same categories of circumstantial allegations that the First, Second, Eighth, and D.C. Circuits expressly deem probative.

The divergence is no longer nascent or emerging; it is mature and consequential. The decision below underscores the magnitude of that split. The Eleventh Circuit concluded that Petitioner “failed to plead any Defendant acted with actual malice,” dismissed allegations of “hostility and animosity” on the ground that “ill-will, improper motive, or personal animosity plays no role,” and held that Petitioner “never alleged” Respondents “had serious concerns” about the accuracy of their defamatory accusations. App. 6a. Under its framework, entire categories of allegations of circumstantial facts – motive, hostility, refusal to retract, disregard of contradictory evidence, and purposeful avoidance among the other well-pled “badges of malice” – are deemed legally irrelevant at the threshold. *Supra* fn1.

This Court has never tolerated such fragmentation in a constitutional doctrine governing speech about public figures. The split is now entrenched, openly acknowledged, and dispositive. And Petitioner’s case presents the conflict in its most distilled form: the very allegations Reed pled are the same types of allegations other circuits hold sufficient to establish plausibility. Yet the Eleventh Circuit deemed them categorically inadequate as a matter of law. That approach cannot be reconciled with the standards adopted by multiple circuits and warrants this Court’s long overdue intervention.

**1. Several Circuits Apply an Exceptionally Restrictive Rule that Excludes Entire Categories of Circumstantial Evidence.**

The Fourth, Seventh, and Eleventh Circuits hold that allegations of motive, bias, hostility, failure to investigate, or refusal to retract are insufficient as a matter of law. These courts require plaintiffs to plead something approaching direct evidence of knowledge of falsity or reckless disregard for the truth – before any discovery – despite this Court’s recognition and edict that actual malice “does not readily lend itself to summary disposition.” *Proxmire*, 443 U.S. at 120 n.9.

The Eleventh Circuit is the apex of this restrictive approach. In *Michel v. NYP Holdings, Inc.*, 816 F.3d 686 (11th Cir. 2016), it pronounced that “every circuit that has considered the matter has applied the *Iqbal/Twombly* standard” to permit dismissal for insufficient actual malice allegations, and that a “failure to investigate, standing on its own, does not indicate the presence of actual malice.” *Id.* at 702-03. In Petitioner’s case, the court expanded the doctrine further, holding categorically that “ill-will, improper motive or personal animosity plays no role,” as

well as ignored the other “badges of malice” pled in the Amended Complaints. App. 6a.

That sweeping conclusion places the Eleventh Circuit at the far end of a doctrinal spectrum – and directly in conflict with other circuits that treat these same allegations as highly probative. It is not simply a more demanding standard; it is qualitatively different. It eliminates wholesale categories of circumstantial allegations which other circuits deem more than sufficient to plausibly allege actual malice. And because most plaintiffs rarely can plead direct evidence of a defendant’s state of mind at the outset – particularly without discovery – the Eleventh Circuit’s rule creates a draconian de facto presumption of dismissal for public figure defamation claims.

**2. Other Circuits Apply the Opposite Rule: Circumstantial Allegations of Motive, Hostility, and Purposeful Avoidance Can Establish Plausibility.**

If the Eleventh Circuit stands at one pole of the doctrinal spectrum, the First, Second and Eighth Circuits stand at the other. Their decisions directly contradict the Eleventh Circuit’s categorical exclusions and make clear that circumstantial evidence of motive, hostility, and purposeful avoidance as well as other “badges of malice” are not only relevant, but frequently dispositive.

The Second Circuit, in *Palin v. New York Times Co.*, 940 F.3d 804 (2d Cir. 2019), rejected the Eleventh Circuit’s method of weighing competing inferences and stripping out contextual allegations. It held: “[t]he test is whether the complaint is plausible, not whether it is less plausible than an alternative explanation.” *Palin*,

940 F.3d at 815. That single sentence cannot be reconciled with the Eleventh Circuit’s approach. And the Second Circuit went even further, holding that motive, context, and deviations from journalistic standards can “give rise to the plausible inference”, *id.* at 814, of actual malice – precisely the type of necessary inference the Eleventh Circuit refused to draw from Petitioner’s well pleaded allegations.

The Second Circuit expressly recognizes that actual malice may be inferred from the objective context in which allegedly defamatory statements are made. As the court has explained, “[a]lthough actual malice is subjective, a court typically will infer actual malice from objective facts,’ understanding that a defendant in a defamation action will rarely admit that he published the relevant statements with actual malice.” *Biro v. Conde Nast*, 807 F.3d 541, 545 (2d Cir. 2015).

Consistent with this approach, the Second Circuit has held that district courts “have inferred actual malice at the pleading stage from allegations that referred to the nature and circumstances of the alleged defamation or previous dealings with the defendant.” *Biro*, 807 F.3d at 545-46 (citing multiple district court decisions applying this principle). This doctrinal structure aligns with *Palin*. Taken together, these decisions reflect a stable and longstanding rule in the Second Circuit: because direct evidence of subjective belief is rare, actual malice may – and often *must* – be inferred from circumstantial indicators such as hostility, motive, refusal to retract, knowledge of contradictory information, and purposeful avoidance of the truth. *See id.*, at 545-546 (2d Cir. 2015) (observing that the court infers “actual malice at the pleading stage from allegations that referred to the nature and

circumstances of the alleged defamation or previous dealings with the defendant”) (citing *Tiversa Holding Corp. v. LabMD, Inc.*, Civ. A. No. 13–1296, 2014 WL 1584211, at \*7 (W.D.Pa. Apr. 21, 2014); *Lynch v. Ackley*, Civ. No. 3:12CV537 (JBA), 2012 WL 6553649, at \*9 (D.Conn. Dec. 14, 2012); *Ciemniecki v. Parker McCay P.A.*, Civ. No. 09–6450 (RBK/KMW), 2010 WL 2326209, at \*14 (D.N.J. June 7, 2010)).

Under this framework, the allegations Petitioner pleaded here would not be excluded at the threshold; they would have been held to be a question reserved for determination by the jury at trial.

The First Circuit likewise rejects the Eleventh Circuit’s categorical exclusion of circumstantial evidence and expressly recognizes that actual malice may be established through inference drawn from objective facts. As that court has explained, because direct evidence of a speaker’s subjective belief is rare, actual malice “may be shown through inference and circumstantial evidence.” *Conformis, Inc. v. Aetna, Inc.*, 58 F.4th 517, 536 (1st Cir. 2023) (holding that the plaintiff plausibly alleged facts from which a jury “reasonably could infer that the defendant entertained serious doubts as to the truth of the publication”) (citing *Sindi v. El-Moslimany*, 896 F.3d 1, 16 (1st Cir. 2018)). The First Circuit has repeatedly reaffirmed that principle across multiple contexts, observing that, because “direct evidence of subjective belief rarely exists,” a court may and typically must infer actual malice “from objective facts.” *Lemelson v. Bloomberg, L.P.*, 903 F.3d 19, 24 (1st Cir. 2018). This approach – rooted in decades of consistent First Circuit precedent – stands in stark contrast to the Eleventh Circuit’s view that motive,

hostility, and purposeful avoidance “play[] no role” in the analysis. App. 6a. Under the First Circuit’s framework, the very allegations that Petitioner pleaded here would not only be considered, but would be recognized as the natural evidentiary building blocks from which actual malice is inferred.

The Eighth Circuit likewise takes an approach fundamentally at odds with the Eleventh Circuit’s categorical exclusion of circumstantial evidence. That court has made clear that, at the pleading stage, the question is only whether the plaintiff’s complaint “states enough factual matter, accepted as true, to raise a ‘reasonable expectation that discovery will reveal evidence’ of actual malice.” *Nunes v. Lizza*, 12 F.4th 890, 901 (8th Cir. 2021). In *Nunes*, the court reversed dismissal in part, holding that the pleaded facts were “suggestive enough to render it plausible that [the defendant] engaged in the purposeful avoidance of the truth.” *Id.* at 901. The Eighth Circuit has repeatedly reaffirmed that “the rules of procedure do not impose ‘a probability requirement’ at the pleading stage,” *id.*, and that a plaintiff need only allege “sufficient facts to have stated a claim to relief that is plausible on its face.” *Tholen v. Assist Am., Inc.*, 970 F.3d 979, 983 (8th Cir. 2020)

Because the Eighth Circuit applies the standard applicable at Rule 12(b)(6), it reiterates that, “because we are at the motion to dismiss stage, we must ‘accept as true all factual allegations in the complaint.’” *Tholen*, 970 F.3d at 985. In evaluating actual malice specifically, the Eighth Circuit emphasizes that a defendant “need not have ‘acted with ill will or spite,’ and ‘reckless disregard’ simply ‘requires that a defendant make a statement while subjectively believing that the statement is

probably false’.” *Id.* at 984. And because Rule 9(b) governs state-of-mind allegations, the court holds that “actual malice may be alleged generally.” *Nelson Auto Ctr., Inc. v. Multimedia Holdings Corp.*, 951 F.3d 952, 958 (8th Cir. 2020). Under this framework, the detailed allegations Petitioner pleaded – contextual hostility, knowledge of contradictory information, refusal to retract, and purposeful avoidance – would not be discounted but would be understood as the very type of circumstantial evidence from which actual malice is plausibly inferred.

And the D.C. Circuit has already recognized the split outright. Judge Lawrence Silberman explained that the Eleventh Circuit’s approach is incompatible with the Second Circuit’s: “[m]ost troublesome is the conflict it creates with the Second Circuit (*not to mention the Supreme Court*) concerning the role of the court when applying Rule 12(b)(6) in a libel context.” *Tah v. Glob. Witness Publ’g, Inc.*, 991 F.3d 231, 251 (D.C. Cir. 2021). It reiterated the Second Circuit’s core principle: “[t]he test is whether the complaint is plausible . . .” not whether a court, as the Eleventh Circuit did here, believes a defendant’s competing explanation is “more plausible.” *Id.* In short, the Eleventh Circuit’s exclusionary rule cannot be squared with the doctrinal frameworks employed by other circuits. What the Second, Eighth, and D.C. Circuits view as probative, circumstantial evidence, the Eleventh Circuit treats as irrelevant.

### **3. The Eleventh Circuit’s Application of *Twombly* and *Iqbal* Conflicts with Their Core Principles.**

The Eleventh Circuit’s approach cannot be reconciled with this Court’s established precedents regarding pleading standards under Rule 8. *Twombly* held

that a plaintiff must provide more than “labels and conclusions” or “a formulaic recitation of the elements of a cause of action,” and that “factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 544, 555. At the same time, *Twombly* rejected any “probability requirement at the pleading stage,” explaining that the plausibility standard “simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence” supporting the claim. *Id.* at 556. It reaffirmed that a plaintiff need only plead “enough facts to state a claim to relief that is plausible on its face,” and that a complaint fails only when it has not “nudged [the] claims across the line from conceivable to plausible.” *Id.* at 570.

*Iqbal* likewise emphasized that a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678. A claim is plausible when the facts alleged “allow[] the court to draw the reasonable inference that the defendant is liable,” while the standard “is not akin to a probability requirement.” *Id.* And although courts need not accept “labels and conclusions,” “naked assertions,” or “threadbare recitals,” courts must still apply a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678–679.

The Eleventh Circuit’s categorical exclusion of circumstantial allegations – motive, hostility, refusal to retract, and purposeful avoidance – cannot be reconciled with *Twombly*’s and *Iqbal*’s holdings that factual allegations are sufficient when they raise a “reasonable expectation that discovery will reveal evidence,” *Twombly*,

550 at 546; that the allegations need not establish probability, and that they must be evaluated using judicial “experience and common sense,” *Iqbal*, 556 U.S. at 678-79, not by disregarding entire classes of facts as legally irrelevant at the outset.

**4. The Split is Not Speculative – It is Now Concrete, Entrenched, and Produces Opposite Outcomes on the Same Facts.**

The division among the circuits is no longer tentative or developing; it is doctrinally crystalized and set in stone. Each circuit has now articulated a stable and internally coherent framework for analyzing actual malice at the pleading stage, and those frameworks point in differing directions. Petitioner’s case demonstrates this divergence in its starkest form: the very allegations that the First, Second and Eighth Circuits deem probative of actual malice are the same allegations the Eleventh Circuit dismisses as categorically irrelevant.

Petitioner set forth well pleaded allegations that Respondents accused him of “cheating” despite the fact that he had “never once been found to have cheated,” that they ignored witnesses and coaches “unaware of any evidence or accusations of cheating,” that they declined to retract their accusations after receiving detailed notice, and that their reporting occurred in a context of and anti-competitive hostility towards LIV Golf and a motive to portray its prominent franchise players like Petitioner negatively. Respondents published an article juxtaposing Petitioner’s image with discussions of an abhorrent “investigation” of 9/11 families in a case that did not even involve Petitioner – despite no connection whatsoever between Petitioner and that matter. App. X. These well pleaded allegations correspond to the types of circumstantial evidence that the First Circuit in *Conformis*, the Second

Circuit in *Palin*, and the Eighth Circuit in *Nunes* identify as capable of supporting a plausible inference of subjective doubt or purposeful indifference to the truth.

Yet the Eleventh Circuit rejected these same allegations as legally meaningless. Under that framework, Petitioner’s allegations could never have sufficed – not because of their alleged defamatory content – but because the Eleventh Circuit excludes entire categories of allegations of actual malice from consideration. This disparity yields diametrically opposite results on the same factual showing. A plaintiff who pleads motive, hostility, refusal to retract, purposeful avoidance and other “badges of malice,” and knowledge of contradictory evidence states a plausible claim in some circuits but fails at the threshold in others. The result is a patchwork of constitutional protections under which the viability of a defamation action involving a public figure depends principally on geography. Such inconsistency in the application of *Sullivan* imposes costs not only on plaintiffs and defendants, but places the administration of the First Amendment doctrine itself at the whim of various courts.

Certiorari is warranted to restore the uniformity to a constitutional standard whose application cannot depend on circuit boundaries.

**B. The Eleventh Circuit’s Rule Conflicts with this Court’s Precedents by Impermissibly Stripping Circumstantial Evidence Out of the Actual Malice Inquiry.**

As set forth below, the Eleventh Circuit’s categorical exclusions cannot be reconciled with this Court’s actual malice jurisprudence.

1. **This Court Has Never Confined Actual Malice to Direct Proof of Subjective Doubt, and Has Consistently Recognized that Circumstantial Evidence is Critical to the Inquiry.**

The Eleventh Circuit’s approach assumes that only allegations showing explicit subjective doubt – often impossible to plead without discovery – can support a plausible inference of actual malice. That view cannot be squared with *St. Amant*, in which this Court held that actual malice may be inferred whenever “there must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” 390 U.S. at 731. This Court expressly acknowledged that such evidence will often be circumstantial, observing that reckless disregard may arise when there are “obvious reasons to doubt” the veracity of a defendant’s sources. *Id.* at 732.

The Eleventh Circuit’s categorical refusal to consider allegations of motive, hostility, or purposeful avoidance among the other well-pled “badges of malice” in the Amended Complaints, ignores these teachings from this Court. This Court did not suggest that a publisher’s motives or departures from professional standards were irrelevant; instead, it indicated that such facts may bear directly on whether “serious doubts” existed. *Id.*

2. ***Harte-Hanks* Confirms that Motive, Hostility, and Departure from Standards Are Probative of Actual Malice.**

If any case forecloses the Eleventh Circuit’s rule, it is *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657 (1989). There, this Court held that evidence of motive and journalistic irregularities “were merely supportive” of the conclusion that the publisher acted with a reckless disregard – but importantly,

they were supportive because they were relevant. *Id.* at 668. *Harte-Hanks* did not artificially wall off categories of evidence. It explicitly recognized that motive, ill-will, refusal to interview, refusal to listen, and purposeful avoidance all fit within the evidentiary mosaic from which actual malice may be inferred.

The Eleventh Circuit’s approach – declaring that “ill-will, improper motive or personal animosity plays no role” and that disregard for contradictory evidence is not probative – cannot be reconciled with *Harte-Hanks*, which treats such evidence as legitimate and often important components of the actual malice analysis. By excluding these areas of allegations at the threshold, the Eleventh Circuit inverts *Harte-Hanks*, this Court’s precedent, eliminating valid forms of allegations supporting an inference of actual malice.

**3. *Proxmire* Rejects the Eleventh Circuit’s Assumption that Actual Malice Should Routinely be Resolved at the Threshold.**

This Court warned in *Proxmire* that actual malice “does not readily lend itself to summary disposition.” 443 U.S. 111, 120 n.9 (1979). Yet the Eleventh Circuit’s rule presumes precisely the opposite. By refusing to consider motive, context, refusal to retract, and purposeful avoidance – and by insisting on a heightened form of pre-discovery specificity – the Eleventh Circuit effectively converts Rule 12(b)(6) into the principal case dispositive vehicle of summarily disposing without even any discovery of defamation suits by public figures. This flies in the face of due process much less the notice pleading requirements of Federal Rule of Civil Procedure Rule 8.

That approach places this Court’s cautionary language on its head. It presumes that claims of actual malice should ordinarily be resolved without discovery – when this Court has repeatedly explained that actual malice often requires a nuanced, fact-intensive inquiry that cannot be conducted on a barren record.

**4. The Eleventh Circuit’s Framework Imposes a Standard More Demanding Than Anything This Court Has Ever Sanctioned.**

In practice, the Eleventh Circuit requires a plaintiff to plead something close to direct evidence of subjective doubt prior to being granted any access to discovery and before a defendant has produced a single internal communication. In so doing, the Eleventh Circuit erects a near-insurmountable barrier at the pleading stage that effectively insulates public figure defamation defendants from judicial scrutiny. No precedent from this Court supports such a rigorous regime. This Court has never held that hostility, motive, refusal to retract, or purposeful avoidance are irrelevant. On the contrary, it has held that actual malice may be proved through allegations involving cumulative, circumstantial evidence – none of which the Eleventh Circuit is willing to consider on a motion to dismiss.

This conflict, therefore, is not simply conceptual; it represents a profound divergence in methodology.

**C. The Fragmentation of the Actual Malice Standard Undermines National Uniformity in First Amendment Doctrine.**

The current tension among the circuits is intolerable in a constitutional regime that depends on national uniformity. The actual malice standard announced

in *Sullivan* is not a local rule of evidence; it is a federal constitutional protection governing speech about public officials and public figures across the United States. Yet today, the viability of a defamation claim turns largely on the happenstance of geography and the whim of the district judge. A complaint that survives easily in the First, Second, and Eighth Circuits is dismissed at the threshold in the Eleventh – not because of any difference in substantive law, but because the courts disagree about whether circumstantial allegations such as motive, hostility, refusal to retract, and purposeful avoidance may be considered at all.

Th disparities cannot be reconciled with the purpose of *Sullivan*, which was to establish a uniform national standard governing public figure defamation. A constitutional doctrine that depends for its enforcement on circuit boundaries invites forum shopping, perverts litigation by public figures, and results in radically different outcomes for identical factual showings. This divergence is especially destabilizing in the context of modern public discourse, where speech reaches audiences nationwide and the consequences of defamatory accusations are not confined to any single jurisdiction. Only this Court can restore and articulate a single, coherent standard for assessing actual malice at the pleading stage.

**D. Lower Courts Are Conflating *Twombly* and *Iqbal* with *Sullivan*, Creating an Unworkable Hybrid Standard that Only This Court Can Clarify.**

In the decade and a half since *Twombly* and *Iqbal* were decided, lower courts have struggled to reconcile the plausibility standard with the constitutional requirements of *Sullivan* and its progeny. The decisions below exemplify a growing

doctrinal confusion: the Eleventh Circuit effectively merged the plausibility framework with a heightened substantive requirement for alleging actual malice, treating the absence of direct evidence of knowing falsity or reckless disregard as fatal at the pleading stage. That approach conflicts with *Twombly*'s instruction that plausibility “does not impose a probability requirement,” and requires only “enough fact to raise a reasonable expectation that discovery will reveal evidence,” 550 U.S. at 556, and with *Iqbal*'s directive that plausibility is a “context-specific task” requiring the use of “judicial experience and common sense,” 556 U.S. at 679.

By demanding a level of specificity which no plaintiff could reasonably provide without discovery, the Eleventh Circuit has transformed *Sullivan*'s substantive standard into a heightened pleading requirement – which this Court has never authorized. Other circuits, by contrast, recognize that *Sullivan* permits actual malice to be shown through inference and allegations concerning circumstantial evidence, and that *Twombly* and *Iqbal* do not displace this principle. The resulting hybrid standards have left lower courts without clear guidance about how the constitutional actual malice requirement interacts with the plausibility pleading standards set forth in *Twombly* and *Iqbal*. This Court's intervention is necessary to clarify how *Twombly*, *Iqbal*, and *Sullivan* coexist and to prevent the erosion of the First Amendment framework through inconsistent pleading-stage jurisprudence.

**E. Justice Thomas and Justice Gorsuch Have Expressly Called for Reconsideration of *Sullivan*, Underscoring the National Importance of this Case.**

The need for this Court’s review is further underscored by the fact that Members of the Court have correctly questioned the constitutional foundations and continued viability of the *Sullivan* framework. In *McKee*, Justice Thomas explained that the modern actual malice doctrine rests on “policy-driven decisions masquerading as constitutional law,” and emphasized that *Sullivan* “did not begin” with the text of the First Amendment. *See McKee*, , 586 U.S. at 1173. As he noted, the rule announced in *Sullivan* was not derived from constitutional text or founding-era practice, but instead from the Court’s perceived need to afford publishers “breathing space” for erroneous statements in public debate. *Sullivan*, 376 U.S. at 279-80; *see McKee*, 139 S. Ct. at 676–77.

Justice Thomas further explained that the Court, beginning with *Sullivan*, “made no attempt to base that rule on the original understanding [of the First Amendment],” instead constructing a federal common-law regime that displaced state defamation principles. *See McKee*, 586 U.S. at 1182. In doing so, the Court constitutionalized an area of law long reserved to the States without grounding its reasoning in historical understanding or constitutional text. He emphasized that “the States are perfectly capable of striking an acceptable balance between encouraging robust public discourse and providing a meaningful remedy for reputational harm,” *id.*, and that nothing in the Constitution precludes States from employing traditional common-law rules to protect individuals – public figures included – from defamatory falsehoods.

For these reasons, Justice Thomas expressly renewed his call for the Court to reconsider *Sullivan* and its progeny, urging the Court to reexamine doctrines that were constitutionalized without any compelling justification. *See McKee*, 586 U.S. at 1180. His critique highlights not only the doctrinal instability of the actual malice standard, but also the degree to which the modern framework has drifted from the constitutional premises on which it purported to rest.

Justice Gorsuch has likewise warned that the modern actual malice regime no longer resembles the doctrine of *Sullivan* originally announced, and has instead become a structural incentive for falsehood. He observed that *Sullivan* “has evolved . . . into an effective immunity from liability,” such that “publishing *without* investigation, fact-checking, or editing has become the optimal legal strategy.” *Berisha*, 141 S. Ct. at 2428 (emphasis in original). He emphasized that the doctrine now functions as “a subsidy for published falsehoods on a scale no one could have foreseen,” leaving “far more people without redress than anyone could have predicted.” *Id.* at 2429-30. And as he concluded, “[w]hat started in 1964 with a decision to tolerate the occasional falsehood . . . has evolved into an ironclad subsidy for the publication of falsehoods by means and on a scale previously unimaginable.” *Id.* at 2428.

This case illustrates the urgency of that concern. The Eleventh Circuit has erected the actual malice doctrine as a virtual absolute barrier which excludes entire areas of allegations of circumstantial evidence which *Sullivan*, *St. Amant*, and *Harte-Hanks* expressly permit courts and juries to consider. The resulting

opposition – combined with the inconsistencies among the circuits regarding how actual malice must be pleaded under *Twombly* and *Iqbal* – demonstrates that the foundations of the doctrine are unsettled and in need of clarification. The Justices’ call to revisit the constitutional underpinnings of *Sullivan* underscores that the questions raised in this petition are not only nationally significant but also ripe and long overdue for review. At a minimum, his concurrence confirms that the time has come for the Court to address the doctrinal fracture that now permeates both the substantive and procedural dimensions of the actual malice inquiry.

**F. This Case is an Ideal Vehicle to Resolve the Split and Reaffirm the Constitutional Standard.**

This case presents clean and focused questions of law. The decisions below rest entirely on the Eleventh Circuit’s legal interpretation of what allegations, as a matter of pleading, may be considered in assessing actual malice. The courts did not make any factual findings, did not rely on any evidentiary disputes, and did not reach any issues that might complicate review. The petition therefore arrives at this Court with an uncluttered record and a single dispositive issue that can be resolved without further factual development.

The split is also presented with exceptional clarity. Petitioner pleaded the same types of circumstantial allegations – hostility, motive, refusal to retract, purposeful avoidance of contradictory evidence as well as a myriad of other “badges of malice” – that the First, Second and Eighth Circuits view as relevant indicators of reckless disregard. The Eleventh Circuit held that these allegations are legally irrelevant and cannot support a plausible inference of actual malice. Because the

viability of Petitioner’s claim turns exclusively on how the legal standard is framed, the conflict between circuits is squarely implicated and outcome-determinative in this very case.

The procedural posture further reinforces the suitability and timeliness of this petition. Both the District Court and the Court of Appeals disposed of the case at the Rule 12(b)(6) stage, and Petitioner was never permitted discovery directed at the defendants’ state of mind. As a result, there is no factual record to parse, no credibility disputes, and no alternative grounds on which the judgment could be affirmed. The only issue before this Court is whether the Eleventh Circuit applied the correct constitutional standard.

Moreover, this case arises in a domain – public discourse concerning prominent individuals – where clarity and uniformity are essential. A doctrinal rule that varies markedly by jurisdiction invites forum-dependent outcomes, encourages strategic filing decisions, and undermines the nationwide coherence that *Sullivan* sought to achieve. Because Petitioner’s case presents the precise constellation of allegations on which the circuits are divided, it provides an ideal opportunity for the Court to articulate a consistent national standard governing how actual malice must be assessed at the pleading stage after *Twombly* and *Iqbal*.

Finally, the stakes are significant. The standard applied below effectively forecloses judicial review of public figure defamation claims in the Eleventh Circuit by eliminating categories of circumstantial allegations that this Court has treated as relevant for nearly six decades. Review now is necessary to ensure that litigants

throughout the country operate under a uniform understanding of the constitutional requirements that govern public figure speech.

For all these reasons, this case presents an optimal and focused vehicle for resolving the conflict and reaffirming the proper contours of actual malice doctrine.

## CONCLUSION

The questions presented in this petition strike at the center of four constitutional problems that have now reached a point of instability and conflict that the lower courts cannot resolve on their own: the widening split over how *Twombly* and *Iqbal* apply to actual malice allegations; the equally entrenched conflict over what circumstantial evidence may establish actual malice under *Sullivan*; the increasingly divergent approaches among the circuits that determine – on identical facts – whether a public figure may reach a jury; and the growing recognition, including by Justices Thomas and Gorsuch, that *Sullivan*'s doctrinal foundations themselves warrant reexamination.

The Eleventh Circuit's decision embodies each of these problems. It applied *Twombly* and *Iqbal* in a manner that no other circuit recognizes, converted “plausibility” into a near-categorical draconian bar for public figure plaintiffs, and excluded entire categories of circumstantial evidence that other circuits accept as probative of actual malice. Under that regime, Petitioner's detailed allegations – direct notice, contradictory evidence, contextual hostility, purposeful avoidance, refusal to retract and the myriad of other well-pled “badges of malice” – could never

survive the pleading stage, even though those same allegations easily proceed in the First, Second, and Eighth Circuits.

This is not a developing or subtle disagreement. It is a fully crystallized fracture in the administration of a national constitutional standard – one that produces opposite results on the same facts and undermines uniformity in First Amendment doctrine. Actual malice “does not readily lend itself to summary disposition,” *Proxmire*, 443 U.S. at 120 n.9, yet in the Eleventh Circuit it has become dispositive at the threshold, before any discovery into state of mind is possible. That inversion of this Court’s guidance alone warrants review.

Justice Thomas and Justice Gorsuch have already identified the doctrinal instability surrounding *Sullivan* and urged the Court to reconsider its foundations. The conflict over how *Sullivan*, *Twombly*, and *Iqbal* interact – and over what evidence may be considered at the pleading stage – makes clear that lower courts cannot repair this fragmentation. Only this Court can provide the clarity that the constitutional framework requires.

This case presents the ideal and long overdue vehicle to do so. It arises on a clean Rule 12(b)(6) posture, free from factual disputes, interlocutory complications, or alternative grounds for affirmance. The judgments below were based solely on legal questions of national importance. If the Court is to restore doctrinal coherence to the pleading standard for public figure defamation – or to reconsider *Sullivan*’s reach in light of modern realities – this is the case in which to do it.

And from a personal perspective, Petitioner, a world class premier player on the newly formed LIV Golf League, Patrick Nathaniel Reed and his family have suffered a manifest injustice with his due process rights being violated if not extinguished in the face of having been repeatedly defamed and severely harmed to further anti-competitive conduct by rival professional golf league and its captive sycophants in the pro-PGA Tour golf media.

For these reasons, and because the constitutional questions presented are exceptionally important, recurrent, and the time is ripe and long overdue for resolution, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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