

No. 26-122

IN THE
Supreme Court of the United States

ROY STEWART MOORE,

Petitioner,

v.

SENATE MAJORITY PAC,

Respondent.

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

**BRIEF OF *AMICUS CURIAE* EAGLE FORUM
EDUCATION & LEGAL DEFENSE FUND IN
SUPPORT OF PETITIONER**

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INTERESTS OF *AMICUS CURIAE*¹

Amicus Curiae Eagle Forum Education & Legal Defense Fund (“Eagle Forum ELDF”) was founded in 1981 by Phyllis Schlafly. This organization has participated for more than twenty years in cases before this Court, including issues involving the First Amendment. *See, e.g.*, Brief of Amicus Curiae Eagle Forum Education & Legal Defense Fund in Support of Petitioners, *Eldred v. Ashcroft*, 2002 U.S. S. Ct. Briefs LEXIS 265, No. 01-618.

Amicus has a strong interest in this Petition for a Writ of Certiorari because the decision below weakens an essential deterrent against falsehoods in political advertising on the eve of elections. Our Nation’s political future depends on an election system that is not flooded with false advertising that misleads voters.

SUMMARY OF ARGUMENT

The Eleventh Circuit has opened the floodgates to deceptive political advertising, by misapplying the First Amendment to protect false meaning conveyed by splicing. As artificial intelligence (AI) emerges to generate political attack ads, the decision below pours fuel on the fire of fake news. Time is too short for a

¹ *Amicus* files this brief after providing the requisite ten days’ advance written notice to counsel for all the parties. Pursuant to Rule 37.6, counsel for *amicus curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity – other than *amicus*, its members, and its counsel – contributed monetarily to the preparation or submission of this brief.

candidate to correct false ads aired on the eve of an election, and deterring false smears in political advertising is a matter of national importance

The Eleventh Circuit decision created a nearly impossible burden of proof by requiring that actual malice be proven as to the plain meaning of the spliced wording in the attack ad. This unprecedented standard enables a defendant to evade liability easily by testifying that the spliced meaning was not intended. Analogous principles of textualism stand squarely against the reasoning below.

Petitioner Roy Moore served twice as Chief Justice of the Alabama Supreme Court, and then ran for a vacant U.S. Senate seat. As was uncontroverted at trial, he never improperly solicited sex from anyone. Defendant Senate Majority PAC (“SMP”) repeatedly ran a smear ad that conjoined two statements in sequence to create a devastating – and false – impression of wrongdoing:

“Moore was actually banned from the Gadsden Mall ... for soliciting sex from young girls”

One he approached “was 14 and working as Santa’s helper.”

Pet. 8a-9a. This was broadcast 533 times during the final days of the election. Defendant’s argument below was that the statements were “separate stories” and unrelated to each other, despite being presented one right after the other. Pet. 3.

The trial judge and the jury were not fooled by this advertising deception. First the jury found in favor of Petitioner Moore, and then the trial judge found, based on his own independent review of the evidence, in favor of Moore based on his proof of actual malice. The

Eleventh Circuit then reversed by expanding the requirement of actual malice to include proof about the implied meaning. By denying the implied meaning understood by the jury and judge, a defendant can thereby always evade liability under this unjustified new requirement.

The integrity of the election process requires legal accountability for false political attacks, which today can be generated easily and cleverly by AI lacking in any actual malice. Below, the Eleventh Circuit adopted a sweeping near-immunity to protect disingenuous attack ads against political candidates. The First Amendment does not create a safe harbor for sophisticated lying about political candidates in an ad shown hundreds of times to sway an election. The Petition should be granted to strengthen the democratic process by clarifying that a strategic arrangement of words is not immune from legal liability when, taken together, they create a false impression of fake news about a political candidate.

ARGUMENT

I. The Eleventh Circuit Misapplied the First Amendment by Isolating Words on a Defamation Claim, Contrary to Precedent and Analogous Principles of Textualism.

“Meaning is the life of language.” *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991). “And, for the reasons we have given, quotations may be a devastating instrument for conveying false meaning.” *Id.*

Masson recognized that even an exact quotation may distort meaning when wrenched from its context:

“an exact quotation out of context can distort meaning, although the speaker did use each reported word.” *Id.* at 515. What matters is the meaning conveyed to a reasonable reader, rather than a disjointed analysis of words taken in isolation from each other. *See id.* at 515–18. *See also Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 512–13 (1984); *Greenbelt Coop. Publ’g Ass’n v. Bresler*, 398 U.S. 6, 13–14 (1970); *Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 284–86 (1974); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990) (reversing summary judgment for a libel defendant after finding that “the statements in the [newspaper] column imply an assertion” which, if false, would be defamatory).

Defendant SMP combined one allegation that Moore had been banned from a mall for “soliciting sex from young girls” with an entirely different allegation that “[o]ne he approached” was a 14-year-old working as a Santa’s helper. The immediate antecedent to “[o]ne” was unidentified others from whom Moore allegedly solicited sex. Grammatically and by the plain textual meaning of the ad, it thereby falsely conveyed that Moore had solicited a 14-year-old girl for sex.

There was never any allegation or source that Moore had ever solicited sex from any 14-year-old, and the trial evidence proved the falsity of that. *See Moore v. Cecil*, 174 F.4th 862, 873 (11th Cir. 2026). By placing the disparate allegations next to each other sequentially in an ad, and having the antecedent of “[o]ne” falsely refer to girls in the scandalous false allegation, Defendant SMP’s ad defamed Moore. This falsehood was then broadcast 533 times to sway the close election.

The Eleventh Circuit decision never cites or addresses the *Milkovich* holding by this Court. Instead, the appellate decision below is oddly filled with irrelevant, unproven, and maligning allegations. *See Moore v. Cecil*, 174 F.4th at 868-70. The Eleventh Circuit departed from *Milkovich* by viewing the statements in the ad in isolation from each other. *See id.* at 886. The decision below created a new burden on a plaintiff to prove actual malice concerning whether the plain meaning of the words, taken as a whole, was the same meaning of which defendant knew (or had reckless disregard about). *See id.* at 887.

By parsing the political ad's conjoined statements in isolation from each other, thereby disregarding their combined meaning, the decision below runs afoul of this Court's teaching in *Masson*. The lower court decision also created a circuit split by ignoring the context in which the statements were made, which dictates their meaning. *See, e.g., Moldea v. New York Times Co.*, 22 F.3d 310, 311, 313-16 (D.C. Cir. 1994) (*Moldea II*) (emphasizing the importance of context when evaluating a claim for defamation, rather than relying on only the individual words themselves).

As Justice Scalia has explained, the contextual approach to construing meaning is a requirement "of language itself":

Petitioner's contention overlooks, we think, ***this fundamental principle of statutory construction (and, indeed, of language itself)*** that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.

Deal v. United States, 508 U.S. 129, 132 (1993) (emphasis added). See also *Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. UAW*, 523 U.S. 653, 657 (1998) (quoting *Deal* for this “fundamental principle” that meaning “cannot be determined in isolation”). “[A] phrase ‘gathers meaning from the words around it.’” *Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 596 (2004) (quoting *Jones v. United States*, 527 U.S. 373, 389 (1999) (quoting *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961))).

In *Milkovich*, Chief Justice Rehnquist ruled in favor of a plaintiff alleging libel, by reading the statements in their context and quoting favorably from a concurrence by Justice Stewart:

The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being - a concept at the root of any decent system of ordered liberty.

...

The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored.

Rosenblatt v. Baer, 383 U.S. 75, 92-93 (1966) (Stewart, J., concurring). By ignoring the plain meaning of Defendant SMP’s political ad and the unjustified harm it caused, the Eleventh Circuit departed from the teachings of this Court in misapplying the First

Amendment. U.S. CONST., amend. I. This erroneous standard adopted below in order to allow this defamation has national importance, as explained next.

II. The National Importance of Integrity in Political Campaigns Requires Granting the Petition, Particularly as AI-Generated Ads Emerge and Dominate.

Honest elections depend on maintaining integrity in the campaign process. Allowing attack ads to lie with impunity, without the deterrence against falsehoods provided by the tort of defamation, undermines the democratic process. There is no Ministry of Truth that oversees the veracity of campaign advertisements, nor should there be. The tort of defamation is the best and only meaningful deterrent to false political messaging that egregiously impugns the reputation of a rival. *See, e.g., Howard v. Pope*, 282 Ga. App. 137, 142, 637 S.E.2d 854, 858 (2006) (“These flagrant accusations of criminal conduct go beyond the criticism, hostility and unfairness a candidate may expect to encounter while running for political office. The trial court therefore erred by granting [defendant] summary judgment on this [libel] claim.”).

Few issues are as important to the Nation’s political future as this matter of integrity in campaign ads on which elections are decided. To the extent that falsehoods are allowed to be aired without legal accountability, they will be; political prosperity will suffer as a result. The district judge below correctly found that the Defendant SMP’s shopping mall advertisement “wasn’t commenting on a story; it was

creating a story.” (Pet. 17, quoting App. B at 44a) Yet the Eleventh Circuit decision denies legal accountability to defamatory political ads, as this ad was proven false at trial, and this erroneous decision unleashes more false advertising in future campaigns.

As AI begins to dominate political campaigns like nearly everything else, attack ads easily combine quotations, images, phrase excerpts, captions, narration, sound, sequencing, and other elements in clever ways to convey a false impression about a rival candidate. *See, e.g., Joseph Ax and Helen Coster, AI deepfakes blur reality in 2026 US midterm campaigns*, Reuters (Mar. 28, 2026).² Disingenuity in the use of AI to create false and defamatory implications should not be allowed to evade legal accountability. AI lacks actual malice because it lacks knowledge, such that there is no meaningful deterrence to false political smears under the erroneous Eleventh Circuit standard adopted below.

This precedent, if left unreversed by this Court, provides a gold mine for devastating AI-generated political ads that defame by implication, for which the new Eleventh Circuit standard for actual malice would be nearly impossible to satisfy. AI can easily cut, paste, and splice isolated criticisms in a materially false smear as a whole. For example, an AI-generated ad against Sen. Marsha Blackburn (R-TN) in her campaign to become governor of Tennessee falsely implied bribery and corruption with a manufacturer of a pain-killing medication. This AI-generated ad is still

² <https://www.reuters.com/business/media-telecom/ai-deepfakes-blur-reality-2026-us-midterm-campaigns-2026-03-28/> (viewed Aug. 21, 2026).

viewable on the internet,³ although several major cable carriers have refused to air it. To protect the integrity of elections, there must be legal accountability for the defamation as found by the trial court in this litigation, and the standard adopted by the Eleventh Circuit to immunize such falsehoods should be reversed.

Both at our Nation's Founding and today, unscrupulous speakers may employ "deliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple an administration." *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964). This Court recognized that using speech "as a tool for political ends does not automatically bring it under the protective mantle of the Constitution." *Id.* The use of a known lie as a political tool is "at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected." *Id.*

While the Constitution protects ideas regardless of their perceived correctness, "there is no constitutional value in false statements of fact." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974). The reason some factual errors nevertheless receive constitutional protection is not because falsehood itself advances First Amendment values, but because some protection for error is necessary to provide breathing space for truthful speech. *See id.* at 340–41. The Constitution therefore carefully protects mistake, imprecision, vigorous criticism, rhetorical exaggeration, and

³ *Queen Pharma Mama*, <https://host2.adimpact.com/admo/viewer/8f943261-837c-45c2-997f-4031cf48461f> (viewed Aug. 21, 2026).

controversial political opinion without conferring an unconditional privilege deliberately to falsify facts. *See id.*; *New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72, 279–80 (1964).

The advent of AI-generated political ads makes review of the Eleventh Circuit’s decision especially important. AI itself can create misleading ads from authentic fragments, thereby heightening the risk of defamatory harm. The Eleventh Circuit decision to remove deterrence from defamation-by-implication is a roadmap for calculated deception: an advertiser could communicate a falsehood while insulating itself from liability merely by constructing the accusation from technically authentic components. Nothing in *Sullivan*, *Garrison*, *Gertz*, or *Masson* requires or supports that result.

Political ads are the fuel and engine of American elections today. “Of course, demonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements.” *Brown v. Hartlage*, 456 U.S. 45, 60 (1982). In *United States v. Alvarez*, 567 U.S. 709 (2012), the *Alvarez* plurality identified *Garrison*, *Gertz*, and other defamation precedents as instances in which false statements associated with a legally cognizable harm may properly be subject to liability. *Id.* at 717-19 (plurality opinion). *Alvarez* rejected a categorical governmental power to punish falsity standing alone, but did not create immunity for defamatory falsehood causing the very injury historically redressed by defamation law. *See id.* at 719.

A deliberate falsehood does not acquire greater constitutional protection because its author deploys the falsehood in a political ad to alter the outcome of

an election. Rather, this Court recognized the particular danger posed when a calculated falsehood becomes a potent means for political gain. *See Garrison*, 379 U.S. at 75. *See also Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 153 (1967) (plurality opinion) (describing *Garrison* as permitting recovery where “calculated falsehood” places a publisher “at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected”) (quoting *Garrison*, 379 U.S. at 75).

Review is particularly timely now, before the 2028 presidential election cycle heats up to a fever pitch. Legal accountability for campaign advertisements that cross the established constitutional line is of national importance, particularly as AI makes sophisticated manipulation of messages cheaper, faster, and more difficult for voters to see through. This case provides a clear-cut opportunity for clarifying the constitutional guardrails governing defamatory implications in political advertising.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

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