

Defamation Dispatch

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Recent Engagements

Reputation has never moved faster. Information can now be generated by algorithms, consumed in fragments and amplified globally within minutes. As the pace of communication accelerates, courts and lawmakers are confronting a fundamental question: how should traditional defamation and free speech principles operate in a rapidly changing digital landscape?

Across the articles in this edition, we see courts, legislatures and litigants confronting modern challenges through the lens of longstanding defamation and First Amendment doctrines. Whether the issue is AI-generated falsehoods, misleading headlines, expanding anti-SLAPP protections or evolving free-speech jurisprudence, a common theme emerges: reputational disputes are no longer just about what was said—they are also about how information travels and how quickly it reaches an audience.

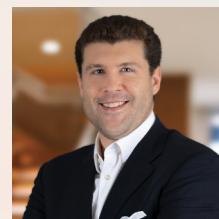
Several of our featured articles examine the growing gap between modern communication and traditional legal frameworks. As generative AI tools become more widely used, courts are grappling with how to apply established defamation principles when a false statement is made by a chatbot rather than a human speaker. At the same time, readers increasingly engage with content through online headlines and social media, prompting important questions about whether legal doctrines developed in a different media landscape still reflect how reputational harm occurs today.

This issue also underscores the increasing importance of procedure. South Dakota's adoption of its first anti-SLAPP statute reflects a broader effort to protect certain speech-related activity, while recent defamation decisions continue to emphasize rigorous pleading standards and the importance of careful case development. For plaintiffs and defendants alike, strategy and preparation often matter as much as the underlying facts.

Perhaps most notably, the courts appear committed to adapting existing principles rather than reinventing them. Recent Supreme Court decisions and major defamation rulings suggest that while the legal landscape is evolving, foundational free speech protections and defamation standards remain firmly in place. The challenge is applying those rules to technologies and communication channels that would have been unimaginable when many of these doctrines first emerged.



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▶ South Dakota's Inaugural Anti-SLAPP Statute

South Dakota's Uniform Public Expression Protection Act ("UPEPA"), effective July 1, 2026, is designed to combat Strategic Lawsuits Against Public Participation, commonly known as "SLAPP" suits. Until now, South Dakota was one of the few remaining states without an anti-SLAPP statute. The new law grants defendants facing SLAPP suits a special procedure for expedited dismissal prior to incurring significant discovery costs.

UPEPA Increases Protections for First Amendment Activities

South Dakota's law defines a "protected public expression" to include causes of action based on a person's communication in legislative, executive, judicial, administrative or other governmental proceedings. The statute also protects the exercise of the right of freedom of speech or of the press, the right to assemble or petition the government, and the right of association on matters of public concern. South Dakota's UPEPA largely mirrors the language of the Uniform Law Commission's Uniform model anti-SLAPP statute, which has been adopted in whole or in part by several other states. Courts interpreting similar language have generally construed these protections broadly, casting a wide net over the types of speech and participation covered.

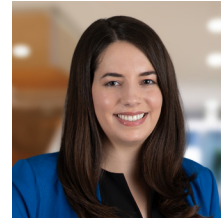
Special Motions Fast-Track Dismissal

Under the new law, defendants may file a special motion for expedited relief to dismiss the action within 60 days of

being served. Once the special motion is filed, all other proceedings, including discovery, are automatically stayed until the court rules on the motion. The court must hear the motion within 60 days of filing and then rule on it within 60 days of the hearing. Critically, the statute includes a fee-shifting provision: if the moving party prevails, the court shall award court costs, reasonable attorney fees and reasonable litigation expenses. If the court denies the special motion, plaintiffs can only recover fees if the court finds the motion to be frivolous or brought solely for the purposes of delay.

Challenges Will Determine UPEPA's Impact in Federal Court

Notably, when ruling on a special motion under section 3 of the UPEPA, courts may consider evidence beyond the pleadings, including affidavits, depositions, admissions and documentary evidence that could be considered in ruling on a motion for summary judgment. This extends well beyond what courts typically consider in a standard motion to dismiss. Allowing additional evidence may raise unique issues in Federal Court in light of the Supreme Court's recent decision, *Berk v. Choy*, 607 U.S. 187 (2026). In *Berk*, the Court held that a Delaware statute requiring plaintiffs present evidence supporting certain claims at the motion-to-dismiss stage was unenforceable in federal court. The Court observed that under Federal Rules 8 and 12, "evidence of the claim is not required," so a state law requiring such evidence conflicted with the federal rules. With the UPEPA allowing consideration



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of evidence beyond the pleadings, plaintiffs will likely challenge the law's enforceability in federal cases.

What This Means for South Dakota Litigants

The UPEPA represents a seismic shift in South Dakota state court procedure, particularly for those bringing claims based on another's speech. Plaintiffs must now be prepared to support their claims with evidence shortly after filing a complaint and to conduct robust pre-suit diligence and investigation in anticipation of responding to a UPEPA special motion. Defeating a UPEPA special motion is critical for plaintiffs: failure will not merely result in dismissal—an unsuccessful plaintiff will be required to pay the opposing party's fees.

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► When ChatGPT Lies: What the First Wave of AI Defamation Cases Means for Plaintiffs

Artificial intelligence platforms are generating false—and sometimes seriously damaging—statements about real people. Recent lawsuits against Google, Meta and OpenAI confirm that AI “hallucinations” are no longer hypothetical; they are landing in court. But early litigation is struggling to gain traction. Traditional defamation doctrine does not map neatly onto AI-generated speech, and courts remain reluctant to expand liability. For plaintiffs’ lawyers, understanding where these claims stand today is essential to shaping the cases of tomorrow.

What Are Courts Grappling With?

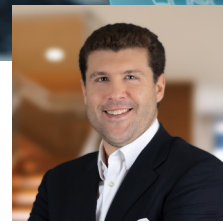
Across recent cases, the core fact pattern is remarkably consistent: a chatbot generates false statements about a real person—accusations of criminal conduct, professional misconduct or extremist affiliations—and presents them in an authoritative format such as a biography, summary

or direct answer to a user query. The output either lacks any traceable source or cites fabricated ones.

Plaintiffs argue this is not merely “wrong information” but classic defamation: a false statement of fact communicated to a third party that would damage the subject’s reputation if believed. In *Walters v. OpenAI*, radio host Mark Walters sued after ChatGPT told a user that Walters had embezzled funds from a Second Amendment advocacy organization. *Walters v. OpenAI, LLC*, No. 23-A-04860-2 (Ga. Super. Ct., May 19, 2025); see also *Starbuck v. Google, LLC*, No. N25C-10-211 (Del. Super. Ct., Oct. 22, 2025) (plaintiff sued Google after its chatbot generated false accusations of sexual assault and criminal records).

Early Judicial Signal: Courts Are Skeptical—For Now

The most developed decision to date, *Walters v. OpenAI, LLC*, signals that courts may resist holding companies



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liable for chatbot hallucinations on familiar grounds: (1) the content lacked “defamatory meaning,” and (2) the defendant lacked the requisite state of mind.

On the first point, the *Walters* court held that ChatGPT’s output did not carry defamatory meaning as a matter of law because users are explicitly warned that outputs may be inaccurate. In the court’s view, OpenAI’s disclaimer effectively refuted any claim that a reasonable reader would interpret the chatbot’s statements as assertions of fact.

On the second point, the court found that OpenAI did not act with even ordinary negligence—the baseline standard of whether a reasonable publisher would have acted differently. OpenAI’s expert testified that the company “leads the AI industry in attempting to reduce and avoid mistaken output like the challenged output here.” *Walters v. OpenAI, LLC*, 2025 WL

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When ChatGPT Lies: What the First Wave of AI Defamation Cases Means for Plaintiffs

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2979163, at *5 (Ga. Super. Ct., May 19, 2025). The court was unwilling to penalize a company for the very problem it was actively trying to solve.

The practical takeaway: even when the defendant is an AI company, courts are still applying traditional defamation elements—falsity and scienter—as threshold gatekeepers. At this stage of the technology, imposing liability for hallucinations could amount to strict liability, and courts appear unwilling to go there. Unlike a human professional who should know better, a chatbot specifically disclaims the accuracy of its output. Until the technology matures, courts will likely continue to find that users knew or should have known the results could be wrong, and therefore should not have taken the output at face value.

Publication and Republication

Significant questions remain unanswered, particularly around publication. Defamation, of course, hinges on the communication of a false statement to a third party. Both original publishers and republishers (those who know a statement is false but spread it further) face liability. AI complicates that framework. If a chatbot generates defamatory content only in response to a specific user prompt, who “published” it: the platform, the user who typed the query or no one?

A related question is whether a plaintiff’s claim weakens when the person who received the false output does not pass it along to anyone else. In *Walters*, journalist Frederick Riehl was researching a lawsuit when he prompted ChatGPT to summarize the case, triggering the allegedly defamatory output about plaintiff Mark Walters. *Walters*, 2025 WL 2979163, at *2. Riehl never republished the information, and Walters himself testified he suffered no actual damage from the false statement. *Id.* Those facts mattered. Had Riehl

republished ChatGPT’s output without confirming it, could he have faced liability as a republisher?

The upshot: evidence of third-party exposure, reliance and actual damage will be critical for plaintiffs looking to prove dissemination and reputational harm. With precedent still thin and the landscape shifting, plaintiff-side practitioners should consider several concrete strategies:

1. Build the “Real-World Impact” Record Early

Courts are sensitive to whether false statements were:

- Seen
- Believed
- Acted upon

The goal is to document reputational harm beyond the chatbot output itself: lost business, withdrawn invitations, damaged relationships.

2. Focus on Repeat Conduct and Notice

A single, isolated hallucination is a hard case. Stronger claims will involve:

- Repeated false outputs
- Prior notice to the platform
- Failure to correct or remediate

3. Control the Narrative Around Reasonableness

Defendants will argue that “no reasonable person would rely on AI.” Plaintiffs should be prepared to counter with evidence showing:

- How consumers actually use these tools
- The increasing reliance on AI as an information source
- The authoritative presentation of outputs

4. Consider Claims Beyond Traditional Defamation

Where traditional defamation elements are difficult to establish, plaintiffs may explore alternative theories:

- False light
- Negligence-based theories
- Product liability or consumer protection frameworks (fact-dependent)

The Bottom Line

AI defamation claims are no longer theoretical—but liability has not yet caught up with the harm. Early decisions suggest that courts are:

- Hesitant to treat AI output as conventional “publication”
- Skeptical of reliance where disclaimers exist
- Reluctant to impose broad liability on developers absent clear fault

But litigation is accelerating. The underlying facts—false, reputationally damaging statements generated by widely used platforms—are compelling, and courts will not be able to avoid these questions indefinitely. For plaintiffs, the path forward is not foreclosed, but it demands a deliberate, evidence-driven approach built on real-world impact.

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A Defining Year for Defamation: **Key Decisions and Emerging Trends**

The past year has brought a wave of significant defamation decisions that are reshaping the legal landscape for media organizations, public figures and their counsel. From the Supreme Court's refusal to revisit a historic billion-dollar verdict to federal courts addressing the standards for pleading actual malice, these cases offer critical guidance for practitioners advising clients on reputational risk, litigation strategy and First Amendment protections. This article surveys the most consequential defamation cases and rulings between June 2025 and the present, highlighting the facts, procedural history and practical insights from each case.



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Supreme Court Declined to Hear Alex Jones's Appeal of \$1.4 Billion Defamation Verdict

In a case watched closely by defamation practitioners nationwide, the U.S. Supreme Court declined to hear Alex Jones's appeal of the \$1.4 billion defamation verdict against him in connection with his false claims about the Sandy Hook Elementary School shooting. Jones had challenged the verdict on multiple grounds, but the Supreme Court's decision to deny certiorari leaves intact one of the largest defamation judgments in American history. The denial signals that the Court sees no pressing need to revisit the underlying legal framework applied in the case, including the procedures used to determine damages.

KEY INSIGHTS: The Supreme Court's refusal to intervene underscores the durability of defamation verdicts

where defendants have engaged in sustained, knowing falsehoods that cause demonstrable harm to identifiable victims. For practitioners, this outcome reinforces that repeated, deliberate dissemination of false statements, particularly those targeting private individuals in the aftermath of tragedy, can result in catastrophic financial exposure. The case also serves as a reminder that appellate courts are unlikely to disturb jury findings on damages where the trial record supports the scope of harm inflicted.

Mike Lindell's Challenge to Defamation Verdict Rejected

Eric Coomer, a former executive at Dominion Voting Systems, brought defamation claims against Mike Lindell, the CEO of MyPillow, over Lindell's repeated public assertions that Coomer had manipulated voting machines during the 2020 presidential election. At

trial, the jury found in favor of Coomer, concluding that Lindell had defamed him, and awarded \$2.3 million in damages. In March 2026, U.S. District Court Judge Nina Wang rejected Lindell's post-trial motion challenging the verdict, finding that the evidence at trial amply supported the jury's conclusions. Judge Wang also denied Coomer's cross-motion seeking an increase in damages, holding that the jury's award was within the range supported by the record.

KEY INSIGHTS: The Coomer decision illustrates the real financial consequences that flow from making unsubstantiated public accusations against individuals. The court's refusal to disturb the jury's verdict on either side—declining both to overturn the finding of defamation and to increase the award—demonstrates the deference courts afford to jury determinations in defamation cases.

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A Defining Year for Defamation: Key Decisions and Emerging Trends*continued from page 5***The Landscape for Anti-SLAPP Motions in California Has Changed**

In *Gopher Media LLC v. Melone*, the Ninth Circuit Court of Appeals expressly overruled its prior decision in *Batzel v. Smith*, which had permitted immediate interlocutory appeals of anti-SLAPP motions under California's anti-SLAPP statute. The court held that anti-SLAPP motions are not suitable for immediate appellate review under the collateral order doctrine, reasoning that such motions do not resolve rights that would be irretrievably lost absent an immediate appeal. The court reached its decision based on its conclusions that the California anti-SLAPP analysis requires fact-intensive inquiries tied to the merits of the case, and anti-SLAPP denials can be effectively reviewed after final judgment. The court also noted that parties may still pursue discretionary interlocutory appeals certified by the district court. As a result of this ruling, parties may no longer obtain a stay of proceedings in the trial court while pursuing an interlocutory appeal of an anti-SLAPP denial in the Ninth Circuit.

KEY INSIGHTS: This decision fundamentally alters litigation strategy for parties invoking anti-SLAPP protections in federal cases within the Ninth Circuit. Previously, defendants could file an anti-SLAPP motion, and if denied, immediately appeal while the case remained stayed, effectively delaying discovery and trial for months or even years. Now, defendants who lose an anti-SLAPP motion must continue to litigate at the trial level while any appeal proceeds. The court's holding thus reduces the impact of anti-SLAPP motions as a tool for defendants.

The President's \$10 Billion Defamation Lawsuit Dismissed

The President filed a \$10 billion defamation lawsuit against Dow Jones & Company, the publisher of The Wall Street Journal, over a report describing a lewd birthday greeting the President allegedly sent to Jeffrey Epstein. U.S. District Court Judge Gayles dismissed the case, finding no plausibly alleged actual malice—that is, that the Wall Street Journal published the report with knowledge of its falsity or reckless disregard for the truth. The court dismissed the case without prejudice, and on May 27, 2026, the President refiled the lawsuit.

KEY INSIGHTS: This case serves as another illustration of the burden public figures must meet to sustain a defamation claim under the actual malice standard established in *New York Times Co. v. Sullivan*. Merely alleging that a report is false is insufficient; the plaintiff must plausibly plead that the publisher knew the statement was false or acted with reckless disregard for its truth. For plaintiffs' attorneys, the decision is a lesson about the importance of identifying specific, concrete facts supporting actual malice at the pleading stage rather than relying on general assertions of falsity.

Cross-Claim for Defamation Asserted Against Blake Lively Dismissed

Actress Blake Lively filed a complaint against Wayfarer Studios and its executives, including actor and director Justin Baldoni, as well as public relations specialists for Wayfarer Studios, alleging various claims in connection with the production and subsequent promotional campaign for the film "It Ends With Us."

Lively had also filed a complaint with the California Civil Rights Department alleging that Baldoni and Wayfarer embarked on a retaliatory press and digital campaign against her for speaking up about misconduct on set, which became the subject of a New York Times article. Wayfarer Studios filed a cross-complaint against Lively, her husband Ryan Reynolds, her publicist and the New York Times, alleging defamation and other claims.

The court granted Lively's motion to dismiss the cross-complaint, finding that statements attributed to Lively's California Civil Rights Department complaint were protected by both the litigation privilege and the fair report privilege. The court further held that additional statements allegedly made by Lively's husband and publicist could not support a defamation claim because Wayfarer failed to plead that those statements were made with actual knowledge of falsity, thereby failing to establish actual malice. As to the New York Times, the court found that statements drawn from Lively's civil rights complaint were shielded by the fair report privilege, and that other statements about Baldoni's alleged "smear campaign," while arguably the product of the Times's independent reporting, did not meet the actual malice standard because text messages between the parties "strongly suggest[ed] the Wayfarer Parties did spread negative stories about Lively."

On Monday, June 1, the court heard arguments on Lively's requests for damages and legal fees under California Civil Code Section 47.1. This is a relatively new law in California which creates a qualified privilege that protects individuals who speak out about sexual

assault, harassment and discrimination from defamation claims. The law was created in response to numerous lawsuits that were filed by perpetrators of sexual misconduct against those who reported the misconduct. Lively is arguing that because the defamation cross-claims were dismissed, she is the prevailing party under Section 47.1, which entitles her to legal fees and costs, compensatory damages, and punitive damages.

KEY INSIGHTS: This case is likely the highest-profile defamation lawsuit of the year, drawing intense media coverage with parallels to the Depp v. Heard litigation. For practitioners, the ruling provides another illustration of how the litigation privilege and fair report privilege can operate in tandem to protect statements made in the course of legal proceedings and media coverage of those proceedings. It also reinforces the actual malice standard, particularly where underlying documentary evidence, such as text messages, corroborates the substance of the allegedly defamatory statements. The case will continue to develop as Lively's affirmative claims proceed to discovery and potentially to trial, and practitioners should monitor it for further guidance on the intersection of entertainment industry disputes and defamation law. Additionally, the court's decision on whether to award fees under Section 47.1 will shape how the statute is interpreted and used moving forward.

The President Attempted and Failed to Invoke the Westfall Act

The Westfall Act, formally known as the Federal Employees Liability Reform and Tort Compensation Act of 1988, protects federal employees from personal liability

for common law torts committed within the scope of their employment by allowing the United States to be substituted as the defendant. The Act has played a central and contentious role in the long-running defamation litigation between E. Jean Carroll and the President. In 2019, Carroll sued the President for defamation based on his public statements denying her allegations that he sexually assaulted her in a department store dressing room in 1996. In September 2020, the Department of Justice under then-Attorney General Barr certified that the President had been acting within the scope of his employment when he made the allegedly defamatory statements, removed the case to federal court, and moved to substitute the United States as the sole defendant under the Westfall Act. The district court denied the motion, and years of litigation over the Westfall Act issue followed. The Second Circuit reversed the district court's holding that the President is not an employee under the Westfall Act, but certified the scope-of-employment question to the D.C. Court of Appeals, which held that the question was one for the factfinder and could not be resolved as a matter of law on the record before it. In July 2023, the Department of Justice under Attorney General Garland declined to issue a new Westfall Act certification, and neither the President nor the government sought substitution before the case proceeded to trial.

The case went to trial in January 2024, and the jury awarded Carroll \$83.3 million in compensatory and punitive damages. In September 2025, a unanimous three-judge panel of the Second Circuit affirmed the judgment. After the appeal was fully briefed, and

after beginning his second term as President, he and the government jointly moved in the Second Circuit to substitute the United States as a party under the Westfall Act. The Second Circuit denied the motion, holding that it was statutorily barred because it was not made before trial, that both the President and the government had waived any right to seek substitution by failing to timely petition the district court, and that equitable considerations also warranted denial of the belated motion. On April 29, 2026, the full Second Circuit denied the President's petitions for en banc rehearing in a split decision. Judge Chin, writing for the majority, emphasized that "no other defendant would be permitted to move to substitute the United States in his place, 15 months after trial and the entry of judgment against him." Judge Menashi dissented, arguing that the panel's decisions were erroneous and that the rejection of the Westfall Act substitution creates a circuit split. The President has since petitioned the Supreme Court for review of the case.

KEY INSIGHTS: The Carroll litigation offers the most detailed judicial examination of the Westfall Act's application to a sitting or former president in American legal history. For practitioners, the Second Circuit's rulings establish several important principles. First, the court confirmed that the President is a covered employee under the Westfall Act, but that the scope-of-employment inquiry for presidential statements remains a fact-intensive question under applicable state law, not a blanket shield for any statement made while in office. Second, the decision underscores that timeliness and waiver doctrines apply with full force in

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A Defining Year for Defamation: Key Decisions and Emerging Trends

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the Westfall Act context: failing to pursue substitution before trial can permanently foreclose the defense, regardless of the defendant's stature. Third, with petitions for certiorari now pending before the Supreme Court, this case has the potential to produce landmark precedent on the intersection of presidential immunity, the Westfall Act and personal tort liability, making it one of the most consequential defamation cases to watch in the coming term.

Conclusion

The defamation cases decided over the past year reflect a legal environment in which courts continue to enforce high standards for public-figure plaintiffs while still holding defendants accountable for knowing falsehoods. Practitioners and clients alike should study these rulings carefully to assess risk and shape litigation strategy.

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► Supreme Court 2025: Key Free Speech Rulings

The Supreme Court's 2025 decisions delivered a clear message: the government has latitude to regulate online platforms, even when doing so effectively limits speech. Both free speech cases in 2025 applied intermediate scrutiny to content-neutral regulations that incidentally burden speech—and both laws survived. Taken together, these decisions suggest the Court views the internet less as a boundless public square and more as a regulable commercial environment.

Meanwhile, the evergreen question persists: will the Court revisit *New York Times v. Sullivan*? A new certiorari petition from Alan Dershowitz gives the Justices yet another opportunity—but, as we discuss below, the Court remains unlikely to take the bait.

Age Verification and Online Content

Free Speech Coalition, Inc. v. Paxton, 606 U.S. 461 (2025). In *Paxton*, the Court took up a challenge to Texas House Bill 1181, which requires commercial websites publishing sexually explicit material to verify a user's age before granting access. The central question was straightforward but consequential: what level of scrutiny applies to government-mandated age gates on lawful online content?

The answer, the Court held, is intermediate scrutiny. Drawing

on *Turner Broadcasting Systems, Inc. v. FCC*, the Court reasoned that age verification is not a direct regulation of speech but rather an incidental burden on adult users' access. Had the Court characterized HB 1181 as a content-based restriction—regulating access *because of* the sexual nature of the speech—strict scrutiny would have applied, and the law may have fallen. Instead, the Court distinguished between the speech itself (which remains lawful for adults) and the mechanism of access (which the state may condition on proof of age). The majority leaned heavily on the analogy to in-person age verification for alcohol, firearms and physical adult stores—a comparison petitioners themselves conceded was “traditional” and “almost surely” constitutional. The Court ultimately ruled that “no person—adult or child—has a First Amendment right to access speech that is obscene to minors without first submitting proof of age.”

Justice Kagan's dissent (joined by Sotomayor and Jackson) is sharper than the holding might suggest. Kagan argues the majority's logic is “maddeningly circular”: if no one has a First Amendment right to access obscene-to-minors content without age verification, then there is no constitutional burden at all—making even intermediate scrutiny superfluous.

She acknowledges that strict scrutiny “need not be a death sentence”—the law might well survive it given the compelling interest in child protection and the difficulty of less restrictive alternatives online. Her real concern is that the “partially protected” framework could migrate to other contexts in future cases.

Paxton effectively green-lights age-verification mandates nationwide, and similar legislation is already pending in more than a dozen states. The majority also held that under intermediate scrutiny, “the First Amendment imposes no freestanding underinclusiveness limitation,” meaning Texas “need not address all aspects of a problem in one fell swoop.” Social media platforms (where less than one-third of content is sexually explicit) are currently exempt—but legislatures can expand coverage incrementally. Content publishers, social media platforms and digital advertisers should take note: challenges premised on strict scrutiny are unlikely to succeed where age-gating mechanisms are content-neutral in design.

The TikTok Ban that Wasn’t (Quite) a Ban

***TikTok Inc. v. Garland*, 604 U.S. 56 (2025).** Before TikTok ultimately struck a deal with the Trump administration to continue operating domestically, the Supreme Court had already upheld the law that nearly killed the platform. In *TikTok*, the Court reviewed the Protecting Americans from Foreign Controlled Applications Act, which gave TikTok’s Chinese parent company, ByteDance, a stark choice: divest TikTok or lose access to the American market—and its 170 million U.S. users. The First Amendment question addressed by the Court was whether

a law that effectively targets a single platform can be considered content-neutral. The Court said yes. Although the Act names TikTok, it does not regulate any particular category of speech. And the law’s justification—“preventing China from collecting vast amounts of sensitive data from 170 million U.S. TikTok users” is neutral as to the actual speech featured on TikTok. Because the data security rationale is “unrelated to the content of expression,” the Court applied intermediate scrutiny. The Court ultimately determined that the law satisfies intermediate scrutiny by furthering an important government interest, and by not burdening more speech than necessary to further that interest. Reasoning that the compelling data collection interest was served in a “direct and effective way,” the Court determined that forced divestiture was a “conditional ban” rather than an “outright” ban on TikTok.

The opinion was issued *per curiam* (unsigned) which is notable for a case of this magnitude. The Court expressly flagged that it had only “a fortnight” from briefing to decision, and cautioned that its “analysis must be understood to be narrowly focused in light of these circumstances.” Justice Gorsuch called his own observations “admittedly tentative.” This procedural posture matters: the opinion is narrower and more fact-bound than its holding might suggest, and future courts may have room to distinguish it.

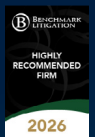
Will *Sullivan* Survive? Odds are Good.

The seminal 1964 decision *New York Times v. Sullivan* requires public-figure defamation plaintiffs to plead and prove “actual malice”—that the defendant published a false statement

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Litigation Outlook Report:

- **Litigation Leader:**
Commercial Litigation
(top 7% of all firms)



- **Litigation Distinguished:**
Complex Commercial Litigation
(top 12% of all firms)



Supreme Court 2025: Key Free Speech Rulings*continued from page 9*

with knowledge of its falsity or reckless disregard for the truth. For six decades, *Sullivan* has been the fortress protecting media defendants from defamation liability.

The latest challenge comes from First Amendment frequent flyer Alan Dershowitz, who sued CNN for defamation over its coverage of his representation of President Donald Trump during the President's first impeachment trial. Dershowitz argued on the Senate floor that a quid pro quo in foreign policy is not impeachable unless the "quo" is itself illegal. CNN subsequently broadcast and published statements that Dershowitz's position "would make presidents immune from every criminal act." The Eleventh Circuit affirmed summary judgment in CNN's

favor in August 2025, finding CNN's reporters had a "sincere—if mistaken or even overwrought—belief in the truth of their accusations." In a concurring opinion, Judge Barbara Lagoa asserted that "the only thing standing between Dershowitz and justice is *Sullivan*."

Dershowitz's petition for certiorari (No. 25-770, filed December 29, 2025) raises three questions: (1) whether deliberate omission of qualifying language from a recorded statement constitutes proof of actual malice sufficient to survive summary judgment; (2) whether *Sullivan*'s actual malice standard should be reconsidered, at least as applied to private citizens who become public figures; and, (3) whether *Sullivan*'s clear-and-convincing evidentiary standard should be modified.

Most actual malice cases turn on whether a defendant subjectively doubted the truth of a statement. Dershowitz's theory—that selectively editing a quotation to change its meaning is itself evidence of actual malice—could, if accepted, create a meaningful new avenue for defamation plaintiffs in an era of viral clips and out-of-context soundbites.

As for overruling *Sullivan* entirely, the votes are not yet there. Justice Thomas has called *Sullivan* a "policy-driven decision masquerading as constitutional law" with no basis in the original understanding of the First Amendment. Justice Gorsuch echoed this in his *Berisha v. Lawson* (2021) dissent from denial of certiorari. But the remaining Justices have shown no appetite for revisiting *Sullivan*. The Court has repeatedly denied certiorari on petitions asking it to reconsider the decision, and nothing in the current Court's composition suggests a fourth vote has materialized, let alone a fifth. Until at least two more Justices signal a willingness to revisit the actual malice standard, the Court is unlikely to grant certiorari on that question—though the deceptive-editing argument could independently warrant review if the Court agrees a genuine circuit split exists.

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▶ Only the Strong Survive: Easy Pitfalls to Avoid as a Defamation Plaintiff

Filing a defamation lawsuit is one thing. Surviving the inevitable motion to dismiss is another. A recent case out of the Eastern District of North Carolina, *McKnight v. FOXY/WFXC/K 107.1/104.3 Radio Station, et al.*, Civil Action No. 5:26-cv-102, provides a useful case study in the kinds of missteps that can doom a defamation complaint before it ever reaches discovery.

The *McKnight* case arose from two broadcasts about celebrity Brian McKnight. In January 2025, on-air host Karen Clark interviewed Brian McKnight's ex-wife, Julie McKnight, on the FOXY 107.1 radio station in Raleigh, North Carolina, during which Ms. McKnight made a series of allegations accusing plaintiff of emotional abuse, parental neglect and dishonesty. Plaintiff alleged that Ms. Clark encouraged and amplified those allegations through her commentary and questioning. In December 2025, a second Urban One radio program—the nationally syndicated Rickey Smiley Morning Show—aired an edited clip from a separate interview with the plaintiff's son, which plaintiff Brian McKnight alleged was presented without context and framed to further a defamatory narrative.

Both Urban One and Ms. Clark moved to dismiss. Defendants' motions to dismiss raise a host of arguments, many of which could have been avoided or neutralized with careful drafting at the complaint stage.

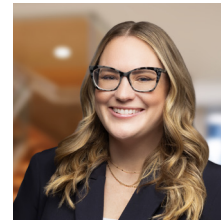
First, Defendant Clark in the *McKnight* case has a good argument that plaintiff has failed to name all known defendants

in the original complaint in a timely manner. Plaintiff filed his initial complaint on January 22, 2026—just one day before the one-year statute of limitations expired—naming only Urban One, Inc. and its radio station. Despite the complaint's detailed allegations about on-air host Karen Clark's role in the allegedly defamatory broadcast, Ms. Clark was not added as a defendant until five days later, on January 27, 2026, when the plaintiff filed an amended complaint. By that point, the statute of limitations had already run.

Ms. Clark moved to dismiss on statute-of-limitations grounds, arguing that the amendment adding her did not relate back to the original filing date. She cited the Supreme Court's decision in *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010), for the proposition that a plaintiff's fully informed decision not to name a defendant is not a "mistake" that permits relation back under Federal Rule of Civil Procedure 15(c)(1)(C). Because the original complaint clearly demonstrated the plaintiff's knowledge of Ms. Clark's involvement, the defense argued this was a deliberate strategic choice, not an oversight.

It would have been much easier, however, if plaintiff had just named them all from the very start. The lesson is straightforward: if you know who your defendants are, name them all from the beginning, especially when the limitations clock is about to expire.

Second, the *McKnight* case is a cautionary tale about calendar management. North Carolina imposes



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a one-year statute of limitations on defamation claims under N.C. Gen. Stat. § 1-54(3). The allegedly defamatory broadcast aired on January 23, 2025, and the original complaint was filed on January 22, 2026—cutting it extremely close. When the plaintiff attempted to add a new defendant after the limitations period had already lapsed, the defense had a good argument for dismissal.

Prudent practice dictates filing well in advance of any limitations deadline. This buffer allows time for amendments, discovery of additional defendants and compliance with any pre-suit notice requirements. As the *McKnight* case shows, waiting until the last possible moment eliminates all margin for error and can result in the loss of claims against critical parties.

Third, plaintiff's complaint contained language the defense used to argue that the alleged defamatory statements were mere opinions. The plaintiff described the statements at issue as "unverified, disputed, or solely Ms. McKnight's opinion." The defense seized on this admission, arguing it was fatal to the actual malice analysis: if the plaintiff himself concedes the statements are opinions, they are not actionable as defamation, and the plaintiff cannot show the defendants knew the statements were false.

This is a critical drafting lesson: every statement the plaintiff identifies as defamatory should be characterized as a false statement of fact, not as opinion,

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speculation or unverified rumor. The complaint should affirmatively allege that each statement was presented as, and reasonably understood by listeners to be, a factual assertion. Defense counsel will comb the complaint for any concession that cuts against the elements of the claim. Do not hand them ammunition.

Finally, North Carolina—like many states—requires that before initiating a defamation lawsuit, the plaintiff serve written notice of the alleged defamatory statement on the defendant at least five days prior to filing suit. Some states have longer requirement periods and others are shorter. Failure to comply with this notice requirement can be fatal to a claim for punitive damages. In *McKnight*, the defense argued that the

plaintiff failed to allege (or provide) any such pre-suit notice, which should bar any recovery of punitive damages. This is the kind of procedural requirement that is easy to overlook but can meaningfully limit a plaintiff's recovery.

In summation, the two motions to dismiss in *McKnight* are a roadmap of the pitfalls that can undermine an otherwise meritorious defamation complaint. Most of the arguments did not challenge whether defamation actually occurred in some general sense—they targeted specific pleading deficiencies. By naming all known defendants at the outset, respecting the statute of limitations, characterizing statements as false facts rather than opinions, and complying with

pre-suit notice requirements, plaintiffs can file complaints that are far more resilient to early dismissal. In defamation litigation, a well-drafted complaint is not just good practice—it is the difference between getting to discovery and getting dismissed.

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The Headline Problem in Defamation Law: A Proposal for Fixing Illinois' and Ohio's Outdated Innocent Construction Rule

I. Introduction

Defamation lawsuits are on the rise in the United States, and have been for several years.¹ Because defamation litigation is so increasingly relied upon as a means to address reputational injury, it is appropriate to examine whether the doctrines that govern defamation are fit to address the realities of modern information transmission. One such reality is the tendency of modern audiences to receive their information from headlines alone.²

All United States courts apply roughly the same basic defamation requirements: (1) the defendant made a false statement about the plaintiff, (2) the statement was unprivileged³ and published to a third-party, and (3) the statement caused damage. Even if those basic elements are satisfied, however, the plaintiff still must clear the hurdle of demonstrating that the statement is defamatory when viewed in context and through the eyes of the reasonable recipient or reader. This inquiry is particularly challenging because it is inherently fact-intensive and varies meaningfully across jurisdictions (and judges).

Indeed, every jurisdiction in the United States has some iteration of the requirement that the allegedly defamatory statement be considered in context.⁴ The majority of jurisdictions apply the "reasonable construction rule" in which the court construes the entire publication in context through the lens of a reasonable person.⁵ Illinois and Ohio, however, apply the "innocent construction rule." Under the innocent construction rule, a statement will be treated as non-actionable if it is capable of an innocent understanding.⁶

This article examines Illinois' and Ohio's innocent construction rules and considers whether they suit modern media. This article ultimately recommends that courts adopt a framework under which headlines that are not "substantially accurate" summaries of the underlying article may be severed and analyzed independently for defamatory meaning, rather than being immunized by the ameliorating body of the story.

II. The Innocent Construction Rule in Illinois and Ohio

Illinois' innocent construction rule has a long and muddled evolution. In 1962, the Illinois Supreme Court decided *John v. Tribune Co.*, 24 Ill.2d 437 (1962), in which the court endorsed the innocent construction rule and held that the allegedly defamatory statements at issue were innocent.⁷ In 1982, the Illinois Supreme Court in *Chapski v. Copley Press* acknowledged that "[t]he principal criticism of the [innocent construction] rule seems to be that . . . courts generally strain to find unnatural but possibly innocent meanings of words where such a construction is clearly unreasonable and a defamatory meaning is far more probable."⁸ The Court attempted to correct course, clarifying that "a written or oral statement is to be considered in context, with the words and the implications therefrom given their natural and obvious meaning; if, as so construed, the statement may reasonably be innocently interpreted or reasonably be interpreted as referring to someone other than the plaintiff it cannot be actionable per se."⁹

Following *Chapski*, Illinois courts still struggled to apply the innocent construction rule consistently. The same strained interpretations remained. Roughly a decade later,

the Illinois Supreme Court again felt compelled to clarify the rule. In *Bryson v. News America Publications, Inc.*, the court took pains to emphasize the proper application of the doctrine. The court's central clarification was that "[o]nly *reasonable* innocent constructions will remove an allegedly defamatory statement from the *per se* category."¹⁰ The court stressed that it would not "strain to find an unnatural but possibly innocent meaning for words where the defamatory meaning is far more reasonable," nor would it "espouse a naïveté unwarranted under the circumstances."¹¹ Rather, courts must interpret the words "as they appeared to have been used and according to the idea they were intended to convey to the reasonable reader."¹²

Unsurprisingly, given this history, a decade after *Bryson* the Illinois Supreme Court was forced to explicate the rule again. In *Solaia Technology*, the court attempted to dispel any lingering confusion: "When the defendant clearly intended and unmistakably conveyed a defamatory meaning, a court should not strain to see an inoffensive gloss on the statement."¹³ This continues to be Illinois' standard for the innocent construction rule.

Ohio adopted the innocent construction rule in 1965 under the Sixth Circuit's decision, *England v. Automatic Canteen Co.*¹⁴ The Sixth Circuit applied the innocent construction rule to a diversity case arising out of Ohio, citing the Seventh Circuit and Illinois precedent.¹⁵ In the following years, several Ohio district courts relied on that precedent and applied the doctrine to their diversity cases. Then, in 1983, the Ohio Supreme Court quietly adopted the rule in *Yaeger v. Local Union 20, Teamsters*.¹⁶ The Court upheld a lower court's decision that followed the innocent construction

rule without responding to Appellant's argument that the lower court erred in doing so.¹⁷ The Court barely explained its reasoning for the adoption, writing simply that, "the language used is capable of different meanings; is mere hyperbole or rhetoric, and is an expression of opinion, not fact[.]" and upheld summary judgment for the defendants.¹⁸

From there, Ohio courts readily applied the rule, often to plaintiffs' detriment. A particularly illustrative example is *Mann v. Cincinnati Enquirer*, in which an Ohio court of appeals declared a statement non-actionable because it did not "explicitly state" the defamatory suggestion.¹⁹ The defendant-newspaper had misquoted the plaintiff as saying that he was told during an employment interview that the job included an expectation of illegal conduct.²⁰ In reality, the plaintiff had stated that if he had been told of this expectation, he would not have accepted the job.²¹ Applying the innocent construction rule, the Court rejected plaintiff's contention that this misquote plainly communicated that he had agreed to engage in illegal acts, explaining that in the context of the article, "the statement merely relays what an interviewer allegedly told Plaintiff during his interview and does not explicitly state that Plaintiff accepted the position based on the alleged requirement[.]"²²

The fact that Illinois and Ohio are the only states to apply the innocent construction rule results primarily from historical circumstances and judicial continuity, rather than intentional policy differentiation. Illinois adopted the rule in 1962 during a period of broad judicial solicitude toward media defendants, and once the Illinois Supreme Court adopted it, *stare decisis* entrenched it—even as the courts struggled repeatedly to apply it consistently. Ohio's adoption

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was largely incidental. The Sixth Circuit imported the rule from Illinois and Seventh Circuit precedent in a federal diversity case, and Ohio state courts quietly absorbed it from there. But the majority of jurisdictions never saw a need for the rule because the reasonable construction standard was already sufficient to protect defendants from liability based on strained or implausible interpretations of ambiguous language. This origin story reveals that the innocent construction rule rests on a thin policy foundation—one that is increasingly difficult to justify in the modern media landscape.

III. The Headline Problem

Headlines play a monumental role in contemporary news media. This is due,

in part, to the “headline problem”—the phenomenon by which individuals read only the headline of an article. This is common practice, at least among American audiences: a 2014 study reported that only four in ten Americans read beyond a headline in a week²³ and research suggests that around 75% of links shared on Facebook were made without posters even clicking the link first.²⁴ The issue is compounded by the prevalence of paywalls: according to a 2025 Pew study, 83% of Americans have not paid for news in the past year, 74% of Americans encounter paywalls when trying to access articles online, and roughly one-third simply give up on accessing the information altogether.²⁵

One can readily appreciate the challenge this presents to defamation law. The

headline of a story, the caption above a photograph, the opening “tease” of a broadcast story (the equivalent of a printed headline), or the pre-story publicity (“hype”) and advertising that may appear prior to the story’s actual publication—all these may turn what would otherwise have been a non-actionable article or broadcast into a defamatory communication.

A. The Majority Approach to the Headline Problem

The majority approach is not to construe the headline alone, but to construe it in conjunction with the rest of the publication to determine whether it is capable of a defamatory meaning.²⁶ This is often referred to as the reasonable construction rule.²⁷ The reasonable construction rule is more consistent with the general common-law principle that the alleged defamatory speech is to be construed in context. This approach “necessitates that the whole publication be considered . . . The place and position of the item are to be considered . . . as are the headlines of the articles.”²⁸ In so examining the issue, “both the headline and the body of the article [are] to be considered as one document.”²⁹ This approach is widespread and consistent among many courts across the country.³⁰

B. Innocent Construction Rule’s Approach to the Headline Problem

As previewed above, however, Illinois and Ohio courts applying the innocent construction rule are asked to strip these publications of their nuance. For example, in *Harrison v. Chicago Sun-Times, Inc.*,³¹ an Illinois Appellate Court held that front-page statements claiming a woman kidnapped a girl were non-actionable because the full article explained that the woman was the girl’s mother who was allegedly

fleeing an abusive husband.³² The Court explained that headlines and newspaper articles are generally read together under the innocent construction rule.³³ Because the text as a whole was capable of an innocent construction, the blatantly misleading and damaging front-page statement was considered nonactionable.³⁴

Ohio has upheld similar principles.³⁵ In *Crall v. Gannett Satellite Information Network Inc.*,³⁶ for example, an Ohio District Court held that a headline imputing that the plaintiff was held in jail was not actionable, in part because the body of the article made clear that the Plaintiff was actually only ordered to appear in court and that the maximum penalty that the plaintiff could receive was a fine of \$81.³⁷ The Court emphasized that, in deciding whether statements are defamatory, they must “consider the statements in the context of the entire article.”³⁸

IV. Updating the Innocent Construction Rule for the Modern Era

Any proposed reform must balance two competing interests. On the one hand, a media defendant must be allowed some leeway in reducing a complicated story into an intelligible headline. On the other hand, a media defendant should not be able to exploit the headline, caption, or broadcast tease to misleadingly sensationalize the story and create an overall impact more damaging to the plaintiff than the actual facts of the story warrant. While it may be the case that the ultimate article or broadcast ameliorates whatever false understanding the headline caused, that means little in modern media where, as demonstrated in this article, many readers ingest the headline as fact without ever reading the remainder of the publication.

A. The Proposed Framework

We propose that the best way for the innocent construction doctrine to adapt to this modern media landscape is to, in appropriate circumstances, sever the article and the headline as two independent and potentially actionable statements. Under this approach, courts would consider the headline and the article next to each other and treat them differently depending on how they measure up.

The threshold inquiry is whether the headline is “substantially accurate”—that is, whether it reasonably represents the facts recited in the body of the article. This standard is borrowed from New York’s “fair and true” standard, which provides an affirmative defense to defamation claims targeted at judicial and legislative proceedings.³⁹ The standard acknowledges that reporting “is, by its very nature, a condensed report of events which must, of necessity, reflect to some degree the subjective viewpoint of its author.”⁴⁰ This premise lends itself naturally to the headline context, where headlines are fundamentally condensed summaries designed to attract readers and convey the thrust of a story.

If the headline is substantially accurate—meaning it does not lead the reader to a conclusion totally unsupported by the body of the story—the headline and the story should be considered together under the traditional innocent construction analysis. However, headlines that reasonably lead the average reader to an entirely different conclusion than the facts recited in the body of the story should not receive the benefit of innocent construction. Under this analysis, the rights of media defendants to engage in good-faith journalism are protected, without leaving victims of headline defamation without recourse.

To illustrate how this framework would operate in practice, consider the cases discussed above. In *Harrison*, the front-page headline declared that a woman had kidnapped a girl, while the article explained that the woman was the girl’s own mother fleeing an abusive husband. Under the proposed framework, a court would ask whether the headline “woman kidnaps girl” is a substantially accurate summary of a custody dispute arising from alleged domestic abuse. Because the headline’s characterization of “kidnapping” would reasonably lead the average reader to an entirely different conclusion than the facts recited in the article, the headline would be severed and analyzed independently. Similarly, in *Crall*, a headline imputing that the plaintiff was jailed, when the article revealed only that he was ordered to appear in court and faced a maximum fine, would likely fail the substantial-accuracy threshold. In both cases, the ameliorating body text would not save a headline that fundamentally misrepresents the underlying facts.

B. Existing Precedent for Bifurcation

This approach is not entirely novel. In *Sprouse v. Clay Communications, Inc.*,⁴¹ the West Virginia Supreme Court conducted a similar analysis to resolve an issue of actual malice. The Court applied the rule that “where oversized headlines are published which reasonably lead the average reader to an entirely different conclusion than the facts recited in the body of the story, and where the plaintiff can demonstrate that it was the intent of the publisher to use such misleading headlines to create a false impression on the normal reader, the headlines may be considered separately with regard to whether a known falsehood was published.”⁴²

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C. First Amendment Considerations

As with any restriction on speech, this proposal must contend with the First Amendment. One might argue that the framework could chill dramatic headlines by leading journalists to shy away from evocative language or stylistic flair. This concern, while logical, does not withstand scrutiny. As a threshold matter, the First Amendment does not protect defamatory speech. More importantly, the proposed framework does not penalize dramatic or attention-grabbing headlines—it targets headlines that are not substantially accurate representations of the underlying article. A headline may be vivid, provocative, or even inflammatory, so long as it does not lead the reader to a materially different understanding of the facts than the article itself supports.

It is worth noting that the Supreme Court's decision in *New York Times v. Sullivan* and its progeny established constitutional limits on defamation liability precisely to prevent the chilling of protected speech. But the purpose

of that framework was not to immunize headlines that bear little resemblance to the articles they purport to summarize. Requiring that headlines be substantially accurate summaries of the remainder of the publication imposes a modest and proportionate burden that is well within the bounds of existing First Amendment jurisprudence. This does not mean that accurate yet dramatic headlines should not be published. Rather, it means that if a headline is going to be published it better be true.

A practical objection to this framework is that courts will have a challenging time determining whether a headline is substantially accurate, potentially complicating motion to dismiss practice. But this concern is overstated. Courts already engage in context-dependent analysis of allegedly defamatory publications at the pleading stage. Comparing a headline to the underlying publication is no more complex than the contextual analysis courts already perform under either the reasonable construction rule or the innocent construction rule. Moreover,

the proposed framework provides a workable benchmark: courts need only ask whether the headline would give a reasonable reader a materially different understanding of the relevant facts than the article itself. If the answer is no, dismissal remains available. If the answer is yes, the headline should be assessed on its own terms.

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¹ Mark Curriden, *The Defame Game Libel Cases Are on the Rise and Increasingly Politicized*, ABA J., October/November 2023, at 34, 35.

² AMERICAN PRESS INSTITUTE, *How Americans Get Their News* (Mar. 17, 2014), available at <https://americanpressinstitute.org/how-americans-get-news/> (reporting that only "4 in 10 Americans report that they delved deeper into a particular news subject beyond the headlines in the last week.").

³ "Privileged" here refers to common law privileges that insulate the statement from being deemed defamatory.

⁴ See § 4:21. Rules of construction—Reasonable construction rule, 1 Law of Defamation § 4:21 (2d ed.) ("Every jurisdiction in the United States save Illinois and Ohio applies the 'reasonable construction rule' to the interpretation of allegedly defamatory language, which is really nothing more than an application of the general principle that words are to be construed in context to determine their effect on recipients.").

⁵ See, e.g., *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 434 (Tex. 2017) ("In making the initial determination of whether a publication is capable of a defamatory meaning, we examine its 'gist.' That is, we construe the publication as a whole in light of the surrounding

circumstances based upon how a person of ordinary intelligence would perceive it.") (internal citations and quotations omitted).

⁶ *Chapski v. Copley Press*, 92 Ill. 2d 344, 352 (1982).

⁷ *Id.*

⁸ *Chapski*, 92 Ill. 2d at 350–51.

⁹ *Id.* at 352.

¹⁰ *Bryson v. News Am. Publ'ns, Inc.*, 174 Ill. 2d 77, 90 (1996) (emphasis in original).

¹¹ *Id.* at 94.

¹² *Id.*

¹³ *Solaia Tech., LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 580, 852 N.E.2d 825, 839 (2006).

¹⁴ 349 F.2d 989 (6th Cir. 1965).

¹⁵ *Id.* at 991.

¹⁶ *Id.*

¹⁷ *Id.* at 370.

¹⁸ *Id.* at 372.

¹⁹ *Mann v. Cincinnati Enquirer*, 2010 WL 3328631, at *3 (Oh. Ct. App. Aug. 25, 2010).

²⁰ *Id.* at *1.

²¹ *Id.*

²² *Id.* at *3.

²³ American Press Institute, *How Americans Get Their News* (Mar. 17, 2014), available at <https://americanpressinstitute.org/how-americans-get-news/> (reporting that only “4 in 10 Americans report that they delved deeper into a particular news subject beyond the headlines in the last week.”).

²⁴ Ashley Weners Herron, *Social Media Users Probably Won’t Read Beyond this Headline, Researchers Say*, PennState, Nov. 19, 2024, <https://www.psu.edu/news/research/story/social-media-users-probably-wont-read-beyond-headline-researchers-say>.

²⁵ PEW RESEARCH CENTER, *Few Americans pay for news when they encounter paywalls* (June 24, 2025), available at <https://www.pewresearch.org/short-reads/2025/06/24/few-americans-pay-for-news-when-they-encounter-paywalls/>.

²⁶ See, e.g., *Fairbanks Pub. Co. v. Pitka*, 376 P.2d 190 (Alaska 1962); *Reardon v. News-Journal Co.*, 53 Del. 29, 164 A.2d 263 (1960); *Floyd v. Atlanta Newspaper, Inc.*, 102 Ga. App. 840, 117 S.E.2d 906 (1960); *Ledger-Enquirer Co. v. Brown*, 214 Ga. 422, 105 S.E.2d 229, conformed to 98 Ga. 462, 106 S.E.2d 61 (1958); *Fernandes v. Tenbruggencate*, 65 Haw. 226, 649 P.2d 1144 (1982).

²⁷ See § 4:21. Rules of construction—Reasonable construction rule, 1 Law of Defamation § 4:21 (2d ed.) (“Every jurisdiction in the United States save Illinois and Ohio applies the ‘reasonable construction rule’ to the interpretation of allegedly defamatory language, which is really nothing more than an application of the general principle that words are to be construed in context to determine their effect on recipients.”).

²⁸ *Fernandes*, 65 Haw. 1148, n.3.

²⁹ *Id.*

³⁰ See, e.g., *Swanton v. UTE City Tea Party, Ltd.*, No. CIV. A. 93 CV 256, 1994 WL 740035 (Colo. Dist. Ct. Aug. 5, 1994) (holding that the title of an article was not defamatory because in the context of the full article the title was true and capable of innocent construction); *Stepanov v. Dow Jones & Co.*, 120 A.D.3d 28, 987 N.Y.S.2d 37 (2014) (holding that a statement identifying the plaintiff Maxim Stepanov as a “former Russian diplomat” in conjunction with the article’s headline was non-actionable because the corruption detailed in the article involved police and tax officials, not diplomats).

³¹ 341 Ill. App. 3d 555 (2003).

³² *Id.* at 570–71.

³³ *Id.* at 570.

³⁴ *Id.* at 571.

³⁵ See, e.g., *Mendise v. Plain Dealer Pub. Co.*, 69 Ohio App. 3d 721 (1990) (holding that a headline suggesting Plaintiff was a criminal was nonactionable because the article ultimately clarified that he was acquitted, saying “[e]ven if there were some way to argue that there was a possible defamatory interpretation of the article, the trial court still properly gave the article the nondefamatory interpretation under the innocent construction rule”).

³⁶ No. C-2-92-233, 1992 U.S. Dist. LEXIS 20386 (S.D. Ohio, Nov. 6 1992).

³⁷ *Id.* at *1, *10.

³⁸ *Id.* at *7. The Court also found it significant that the Plaintiff’s name was not included in the headline, so a reader would have to read the story in order to link the claim to him. *Id.* at *9.

³⁹ See *Holy Spirit Ass’n for Unification of World Christianity v. New York Times Co.*, 399 N.E.2d 1185, 1187 (1979).

⁴⁰ *Id.*

⁴¹ 158 W. Va. 427, 430 (1975).

⁴² *Id.* at 443.

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