

No. 09-2701

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2009

ERIC CARTMAN,

Petitioner,

v.

IKE BROFLOVSKI,

Respondent.

*ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES*

BRIEF FOR PETITIONER

Team 112
Counsel for Petitioner

QUESTIONS PRESENTED

- I. Does the First Amendment create a qualified reporter's privilege against the court-compelled disclosure of confidential sources in a civil defamation case? If so, is the reporter entitled to shield the identity of his anonymous source when Respondent has not exhausted other alternate sources less destructive to the First Amendment and when the identity of the source is not relevant?

- II. Does the actual malice standard apply to a defamation claim brought by a media defendant when the Plaintiff is a prominent and powerful executive at a global media empire?

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JURISDICTION STATEMENT

A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

Respondent Ike Broflovski, brother of world-famous Citrus Electronics CEO Kyle Broflovski, is the Director of Research and Development at Citrus, a publicly-traded *Fortune 500* company and leading manufacturer of electronics. (J.A. at 2.) Citrus thrived after the Citrus “ePlay” portable digital music player developed a cult following among teenagers. (J.A. at 2.) Ike Broflovski is the brainchild behind the “ePlay Touché,” the next generation ePlay product that promises to permanently alter the portable multimedia market. (J.A. at 3.)

Respondent was hired in 2006 to much fanfare. (J.A. at 3.) A press conference announcing his hiring was covered by numerous national newspapers. (J.A. at 3.) After a gushing introduction by Kyle, in which he predicted that Respondent might soon be as famous as him, Respondent declared that he planned to push “Citrus, its employees, and its products to new heights.” (J.A. at 3.) Kyle sang Respondent’s praises in multiple television and magazine interviews, and employees at Citrus megastores throughout the country created “I Like Ike” buttons that they proudly wear to demonstrate their admiration of Ike’s global technological innovations. (J.A. at 3-4.)

Petitioner Eric Cartman is a technology aficionado who manages an online newsmagazine entitled *The Sludge Report*, a popular blogging site. (J.A. at 4.) *The Sludge Report* has a sophisticated audience of over 100,000 readers who rely on Cartman as a reliable and accurate source of information on government corruption and the inside workings of multinational corporations. (J.A. at 4-5.) Cartman acquires his information through e-mail messages received from readers, to whom he promises strict confidentiality (J.A. at 4-5.) One of these sources, “Professor Chaos,” is a Citrus employee Cartman knows personally and who consistently provides reliable and accurate information to Cartman about Citrus. (J.A. at 5-6.)

In July 2008 Professor Chaos sent Cartman an e-mail claiming that Citrus, under Respondent's instruction, was subjecting its Mumbai, India laborers to systemic human rights abuses and deplorable workplace conditions. (J.A. at 5.) Chaos included a photograph that depicted Ike Broflovski walking through a Mumbai factory alongside laborers manufacturing the ePlay Touché. (J.A. at 5.) These laborers were using dangerous machines without protective gear and were being subjected to verbal abuse. (J.A. at 5.) While the presence of Ike Broflovski in the photograph was a digital alteration, Respondent acknowledges that the remaining contents of the photograph are all accurate depictions of the interior of the Mumbai factory, and discovery confirms that Ike Broflovski has made several trips to Mumbai. (J.A. at 7.)

Knowing that news of slave labor conditions at a Citrus factory would greatly affect consumers' perceptions about the morality of purchasing the ePlay Touché, Cartman immediately posted the picture to *The Sludge Report*, along with an editorial describing the deplorable conditions that laborers at the Mumbai factory suffer and implicating Ike Broflovski in the creation of such conditions. (J.A. at 6.) In his posting, Cartman stated that he believed that this information was true. (J.A. at 6.)

Respondent filed a defamation suit against Cartman. (J.A. at 7.) After deposing several employees, Respondent sent Cartman an interrogatory demanding to know the identity of Professor Chaos. (J.A. at 8.) In response, Cartman filed a summary judgment motion, asserting that Ike Broflovski is a public figure and that he failed to prove actual malice by clear and convincing evidence. (J.A. at 8.) The District Court for the Western District of Colorado granted the motion. (J.A. at 20.) On appeal, the 10th Circuit reversed, holding that there was no qualified reporter's privilege under the First Amendment, and that Ike Broflovski was not a

public figure for defamation claim purposes. (J.A. at 22-23.) Subsequently, this Court granted certiorari. (J.A. at 33.)

SUMMARY OF THE ARGUMENT

The First Amendment reporter's privilege protects Petitioner Eric Cartman because all but one of the circuit courts interprets *Branzburg v. Hayes* as creating a qualified reporter's privilege in civil proceedings. In developing the privilege, the courts place significant weight upon the policy concerns expressed in *Branzburg*, and have concluded that the policy concerns that underlie the *Branzburg* plurality's favor of disclosure in grand jury proceedings imply that civil proceedings deserve divergent treatment. Because the reporter's privilege applies, Cartman has a First Amendment right to protect his confidential sources.

Cartman is a reporter because the broad definition this Court uses to define the "press" encompasses non-traditional reporters, including bloggers. Cartman satisfies the *Von Bulow* test, that allows application of the reporter's privilege when the reporter 1) intended to use the tips he received to disseminate information to the public; and 2) that such intent existed at the inception of the newsgathering process. Here, Cartman, a blogger with over 100,000 readers, clearly intended to use the information gathered from Professor Chaos in his article because the very nature of his blog is the public dissemination of information he obtains from tipsters. Additionally, such intent existed when the information was obtained, as evidenced by the website's confidentiality statement.

A presumption exists in favor of the privilege. That presumption is only overcome by the Respondent's satisfaction of the three-pronged test set out in *Garland v. Torre*. To satisfy the test, Respondent must show: (1) that the information cannot be obtained by alternative means less destructive of First Amendment rights, (2) that the information is relevant, and (3) that there is a compelling and overriding need for the information. Respondent fails to satisfy any of these

prongs. With regard to the first prong, Respondent fails because Respondent has failed to depose many obvious sources from which Professor Chaos's identity can be obtained. With regard to the second prong, Professor Chaos's identity is not relevant because Cartman's state of mind is the dispositive factor with regard to a defamation claim. Cartman's state of mind is evidenced within the record, and the identity of Professor Chaos is not a necessary supplement.

Because Respondent cannot satisfy either of the first two prongs, Respondent cannot demonstrate a compelling and overriding need for the information. Thus, since Respondent must satisfy all three prongs of the test, and cannot satisfy even one prong, Professor Chaos's identity cannot be disclosed.

Additionally, Respondent is a limited-purpose public figure under *Gertz v. Welch*, and so he must prove that Cartman published his posting with "actual malice" in order to prevail. Respondent is a central player in a public controversy, and his name is synonymous with the global digital technology business. He is an executive officer at a *Fortune 500* company with thousands of shareholders, and his decisions impact millions of people worldwide. Respondent is therefore a public figure and he has the burden of proving that Cartman published Professor Chaos' information with "actual malice."

The Court defined actual malice in *St. Amant v. Thompson* as the defendant's belief that the information he was publishing was false, or that he entertained serious doubts as to its truthfulness. A mere failure to investigate before publishing will not constitute actual malice. Rather, actual malice can only be demonstrated by clear and convincing evidence that the defendant knew the information to be false when he published it, or that he strongly doubted the truthfulness of the information. Respondent fails to overcome this burden. The record demonstrates Cartman's wholehearted belief that the information he was publishing was truthful.

Thus, because the Respondent is a public figure who cannot prove that Cartman published the information with actual malice, his claim must be dismissed.

ARGUMENT

I. THE FIRST AMENDMENT CREATES A QUALIFIED REPORTER’S PRIVILEGE AGAINST THE COURT-COMPELLED DISCOVERY OF SOURCES.

A qualified reporter’s privilege protects Eric Cartman against the court-compelled disclosure of Professor Chaos’s identity. All but one federal circuit court has interpreted this Court’s decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972), to mean that the First Amendment affords reporters in civil cases a qualified privilege against disclosure of confidential sources. In doing so, the circuit courts have relied on the policy concerns expressed in *Branzburg* and the concurring opinion of Justice Powell, the essential fifth vote, who stated that a journalist could assert a privilege that strikes the “proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct.” *Id.* at 710 (Powell, J., concurring).

A. The Circuit Courts’ respective readings of *Branzburg* affirm that the First Amendment creates a qualified reporter’s privilege in civil cases because sound public policy favors nondisclosure.

After *Branzburg*, the federal circuit courts expressed marked disapproval over the disclosure of confidential sources in civil cases. The Ninth Circuit characterizes this near-unanimity as follows: “All but one of the federal circuits to address the issue have interpreted [*Branzburg*] as establishing a qualified privilege for journalists against compelled disclosure of information gathered in the course of their work.”¹ *Shoen v. Shoen*, 48 F.3d 412, 414 (9th Cir.

¹See *Bruno & Stillman, Inc. v. Globe Newspaper Corp.*, 633 F.2d 583 (1st Cir. 1980); *United States v. Burke*, 700 F.2d 70 (2d Cir. 1983); *United States v. Cuthbertson*, 630 F.2d 139 (3d Cir. 1980); *LaRouche v. National Broadcasting Co.*, 780 F.2d 1134 (4th Cir. 1986); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721 (5th Cir. 1980); *NLRB v. Midland Daily News*, 151 F.3d 472 (6th Cir. 1998); *Cervantes v. Time, Inc.*, 464 F.2d 986 (8th Cir. 1972);

1995). Thus, The circuit courts have concluded that the policy concerns that underlie the *Branzburg* plurality's favor of disclosure in grand jury proceedings imply that civil proceedings deserve divergent treatment.

Respondent requests disclosure in a civil defamation case, and in doing so, blatantly ignores analogous caselaw that prohibits disclosure. For example, in *Zerilli v. Smith*, 656 F.2d 705 (D.C. Cir. 1981), Plaintiffs brought suit against the government for allegedly disclosing to a newspaper the contents of electronic surveillance logs which implicated the plaintiffs in criminal conduct. *Id.* at 707-08. The newspaper published the material, and the plaintiffs sought to compel the reporter to disclose his sources. *Id.* at 707-09. Giving primacy to the "preferred position of the First Amendment and the importance of a vigorous press[,]" the court asserted that "*in the ordinary case the civil litigant's interest in disclosure should yield to the journalist's privilege.*" *Id.* at 712 (emphasis added). Ultimately, the court found that while *Branzburg* may limit the scope of the reporter's First Amendment privilege in criminal proceedings, "in civil cases, where the public interest in effective criminal law enforcement is absent, *that case is not controlling.*" *Id.* at 711 (emphasis added).

There are two primary public policy matters that explain why all but one of the circuit courts have found the automatic disclosure of confidential sources unacceptable. First, there are profound differences between a civil trial and a grand jury proceeding. Second, the automatic disclosure of confidential sources would significantly weaken the press's traditional role as a vital source of information.

Silkwood v. Kerr-McGee Corp., 563 F.2d 433 (10th Cir. 1977); *United States v. Caporale*, 806 F.2d 1487 (11th Circuit 1986); *Zerilli v. Smith*, 656 F.2d 705 (D.C. Cir. 1981).

1. *Branzburg* is not controlling because the case at bar does not involve a criminal investigation or grand jury.

Branzburg is distinguished from the case at bar in that the *Branzburg* court was considering compelling a reporter to reveal his confidential sources in a *criminal* investigation to a *grand jury*. 408 U.S. at 667-79. In this case, however, Cartman is involved in a civil investigation that does not involve a grand jury. Thus, two of the primary concerns of the *Branzburg* Court are not present here. First, in *Branzburg* this Court stated there was “no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the [reporter’s privilege].” *Id.* at 690-91. Here, however, there is no public interest in law enforcement. Second, this Court stated that “grand juries characteristically conduct secret proceedings, and law enforcement officers are themselves experienced in dealing with informers, and have their own methods for protecting them without interference with the effective administration of justice.” *Id.* at 695. The case at bar involves no such tribunal.

First, this case arises out of an alleged defamation, which is a civil action. Being a civil action, there is no public interest in law enforcement sufficient to override the reporter’s privilege. Moreover, in the case at bar, the public interest in law enforcement is in harmony with the reporter’s privilege. Professor Chaos has exposed human rights violations in a Citrus plant in Mumbai. Without a reporter’s privilege, Professor Chaos would likely not have the courage to expose this deplorable injustice against humanity. It is the reporter’s privilege that *enables* Professor Chaos, and numerous other whistleblowers, to come forward and reveal information that would otherwise remain hidden, and thus support the public interest in law enforcement.

Second, because this is a civil action, there is no grand jury involved in the proceeding. This is not a criminal action where a grand jury will conduct a secret proceeding. This is also not

a case where there will be law enforcement officers who are experienced in dealing with informers present to protect Professor Chaos. Rather, Professor Chaos will be exposed in a public forum, and no protection will be provided for him. As the Fifth Circuit has recognized, “a defamed plaintiff might relish an opportunity to retaliate against the informant.” *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 725 (5th Cir. 1980).

In *Branzburg*, there was little indication that the informants sought to avoid exposure that “may threaten job security, personal safety, or peace of mind...if they risked placing their trust in public officials as well as reporters.” 408 U.S. at 695 (emphasis added). Here, however, this threat of exposure may be *precisely* what Professor Chaos seeks to avoid. As such, the case at bar invokes a separate, paramount set of policy concerns. Professor Chaos is an employee at Citrus (J.A. at 6), and he may be avoiding exposure because he fears losing his job. Additionally, Professor Chaos’s personal safety may be threatened if his identity is made public and it is discovered he suggested that one of Citrus’s most cherished employees is engaging in human rights abuses. At the very least, Professor Chaos’s peace of mind may be affected by the thought of the passionate Citrus employees, many of whom publicly wear homemade “I like Ike” buttons (J.A. at 3-4), defending one of their adored superiors. Thus, nondisclosure is essential in civil cases because confidential sources, who are protected in criminal investigations, are not afforded the same protection in civil proceedings.

2. The absence of a qualified reporter’s privilege impedes the robust dissemination of ideas essential to a deliberative democracy.

As the Court observed in *Branzburg*, “without some protection for seeking out the news, freedom of the press could be eviscerated.” *Id.* at 681. The First Amendment guarantees a free press primarily because of the important role it can play as “a vital source of public information.” *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936). “The press was protected so that it

could bare the secrets of government and inform the people." *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring). "Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices." *Zerilli*, 656 F.2d at 711. The press's function as a vital source of information is "weakened whenever the ability of journalists to gather news is impaired." *Id.* Compelling a reporter to disclose the identity of a source would significantly interfere with "a paramount public interest in the maintenance of a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters, an interest which has always been a principal concern of the First Amendment." *United States v. Burke*, 700 F.2d 70, 77 (2d Cir. 1983). Thus, "to compel a newsman to breach a confidential relationship merely because a libel suit has been filed against him would seem inevitably to lead to an excessive restraint on the scope of legitimate newsgathering activity." *Cervantes v. Time, Inc.*, 464 F.2d 986, 993 n.10 (8th Cir. 1972). If the reporter is forced to reveal his sources, then his sources will dry up and the effort to enlighten the public will be ended. *Branzburg*, 408 U.S. at 722.

The policy that underlies the reporter's privilege thus protects both Cartman's ability to disseminate relevant news and Professor Chaos's ability to transmit said news free of reprove. Here, if Cartman must reveal the identity of Professor Chaos, it is likely that Professor Chaos will no longer supply pertinent information to Cartman. This pertinent news will be, in effect, lost. Moreover, the tips Cartman receives from a significant number of his other readers will likely dry up as well. The broader impact is more chilling: compelled disclosure of confidential sources will cause numerous sources to withhold information from the press, which in turn deprives citizens of information necessary to make informed political, social, and economic decisions. Therefore, by compelling disclosure of confidential sources, one of the "checks"

envisioned by the Founding Fathers as an essential component in a democratic system would be removed.²

B. Cartman qualifies as a reporter and is entitled to shield the identity of Professor Chaos because Respondent has failed to satisfy the *Garland* test.

- 1. Eric Cartman qualifies for the reporter’s privilege first because bloggers, as “newsgatherers,” are reporters for the purposes of the privilege, and second, because Cartman intended to disseminate the information he received through his blog solicitations at the inception of the newsgathering process.**

In an era where an increasing amount of news coverage can exclusively be found on the internet, and when even traditional newspapers are moving to publishing exclusively online, there is no basis for drawing an artificial line limiting the reporter’s privilege to print and broadcast publications while excluding bloggers like Cartman. *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Cartman may assert the reporter’s privilege because he engages in the traditional journalistic functions of gathering information on matters of public concern and disseminating them to the public. This Court has stated that “[t]he press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.” *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). In accordance with this principle, the proposition that only members of specific news media have standing to assert the reporter's privilege has been rejected. *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (held: “[t]he journalist's privilege is designed to protect investigative reporting, regardless of the medium used to report the news to the public.”) Consistent with this functional understanding of journalism, courts have applied the reporter’s privilege to nontraditional journalists engaged in newsgathering. See *Desai v. Hersh*, 954 F.2d 1408 (7th Cir. 1992) (privilege applicable to book author); *Silkwood v. Kerr-McGee*,

² Madison said: “A popular Government, without popular information, or the means to acquire it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.” *Branzburg*, 408 U.S. at 723 (citing 9 WRITINGS OF JAMES MADISON 103 (G. Hunt ed., 1910)).

563 F.2d 433 (10th Cir. 1977) (privilege applicable to a documentary filmmaker); *In re Petroleum Products Antitrust Litig.*, 680 F.2d 5 (2d Cir. 1982) (privilege applicable to trade newsletter compiling oil prices); *Cusumano v. Microsoft Corp.*, 162 F.3d 708 (1st Cir. 1998) (privilege applicable to the pre-publication manuscripts of a distinguished academic).

Most significantly, courts have recognized that the reporter's privilege specifically applies to bloggers and website operators like Cartman. See *Blumenthal v. Drudge*, 186 F.R.D. 236 (D.D.C. 1999). In *Blumenthal*, the defendant, Matt Drudge operated "The Drudge Report," a blog that the court had characterized in a prior opinion as "a gossip column focusing on gossip from Hollywood and Washington, D.C." *Blumenthal v. Drudge*, 992 F. Supp. 44, 47 (D.D.C. 1998). The plaintiff alleged that Drudge published defamatory material on "The Drudge Report." 186 F.R.D. at 239. When Drudge refused to reveal his confidential sources, the plaintiff moved to compel the source's identity. *Id.* at 244. The Court denied the motion after it applied the qualified reporter's privilege that is extended to journalists. *Id.*

The facts of *Blumenthal* bear a striking resemblance to the case at hand. Cartman, like Drudge, operates a blog reporting on a variety of topics, ranging from celebrity gossip to local and international politics. (J.A. at 4.) In both cases, a reporter posted allegedly defamatory remarks, and the reporter would not disclose a confidential source. In *Blumenthal*, the court found that the reporter's privilege applied to bloggers; here, the United States District Court for the Western District of Silverado properly held that the reporter's privilege applies because: 1) Cartman intended to use the tips he received to disseminate information to the public; and 2) that such intent existed at the inception of the newsgathering process. *Von Bulow v. Von Bulow*, 811 F.2d 136, 144 (2d Cir. 1987).

First, Cartman intended to use information gathered from anonymous sources in the dissemination of news to the public. This Court has treated the internet as a public forum. *See Reno*, 521 U.S. at 852-53. Thus, Cartman writes a blog with readership of over 100,000 “public” readers. The very purpose of his website, a publicly accessible venue, is the public dissemination of his gathered information. Cartman’s intent to disseminate the information he gathers to the public is evidenced by the fact that he notifies potential sources that their identities will be kept anonymous: Cartman expressly advises his readers that “all persons who send messages to the address with tips or other information will be treated as confidential sources.” (J.A. at 5.) This would not be necessary unless Cartman intended to disseminate the information to the public.

Second, Cartman’s intent to disseminate the information exists at the inception of the newsgathering process. Cartman provides that everyone who sends him an e-mail will be a confidential source *prior to his receipt of the tip(s)*. This indicates that Cartman intends to use these tips as sources for the stories published on his blog. This intent does not develop through the process of gathering information. Rather, the intent is present even before Cartman has seen, or even knows, that a tip will be received. Therefore, Cartman intends to disseminate the received information to the public, and such intent exists at when the information was obtained.

2. The confidential source should not be disclosed because Respondent does not satisfy the *Garland* test, which Respondent must meet to compel disclosure of a confidential source.

If the Court determines that Cartman is a reporter, a rebuttable presumption exists in favor of the reporter’s privilege. In determining whether the reporter’s privilege will protect the source in a given situation, it is necessary for the court to strike “the proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct.” *Branzburg*, 408 U.S. at 710 (Powell, J., concurring). To assist the balancing,

the Court generally employs the three-prong *Garland* test first suggested in *Garland v. Torre*, 259 F.2d 545, 550-51 (2d Cir. 1958), and restated in *Branzburg*. 408 U.S. at 743. Respondent must show: 1) that the information cannot be obtained by alternative means less destructive of First Amendment rights, 2) that the information is relevant, and 3) that there is a compelling and overriding need for the information.³ *Id.* Respondent must satisfy each prong of the test with “substantial evidence.” *Miller v. Transamerican Press, Inc.*, 628 F.2d 932, 932 (5th Cir. 1980); *In re Selcraig*, 705 F.2d 789, 792 (5th Cir. 1983). Here, the United States District Court for the Western District of Silverado properly held that Professor Chaos’s identity should not be disclosed because Respondent has not exhausted other means of obtaining Professor Chaos’s identity nor demonstrated that his identity is relevant. Thus, there is not a compelling and overriding need for the disclosure of Professor Chaos’s identity.

i. Respondent has not demonstrated that the information cannot be obtained by alternative means less destructive of First Amendment rights.

The first prong the Courts analyze when applying the *Garland* test is whether Respondent has demonstrated that the information cannot be obtained by alternative means. This Court has stated that “all reasonable attempts should be made to obtain information from non-press sources before there is any consideration of subpoenaing the press.” *Branzburg*, 408 U.S. at 707 n.41. The exhaustion obligation is “clearly very substantial,” *Zerilli*, 656 F.2d at 714, and Respondent “must fulfill his obligation to exhaust alternative sources even though he fears that the investigation may be time consuming, costly, and unproductive.” *Lenhart v. Thomas*, 944 F. Supp. 525, 530 (S.D. Tex. 1996) (citing *Zerilli*, 656 F.2d at 714). Compelling a reporter to reveal

³ See also *LaRouche v. National Broadcasting Co.*, 780 F.2d 1134, 1139 (4th Cir. 1986) (where the court considered “(1) whether the information is relevant, (2) whether the information [could] be obtained by alternate means, and (3) whether there [was] a compelling interest in the information.”); *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995); *In re Petroleum Products Antitrust Litig.*, 680 F.2d 5, 7 (2d Cir. 1982); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726, *supplemented*, 628 F.2d 932 (5th Cir. 1980); *Zerilli*, 656 F.2d at 713-15 (requesting party must show exhaustion of all reasonable alternative sources and that the information sought is “crucial to his case.”).

information "is to be the last resort of the litigants." *Miller v. Mecklenburg County*, 602 F. Supp. 675, 679 (W.D.N.C. 1985). A party that "has not even worked up a sweat, much less exhausted itself [cannot defeat the privilege]." *In re Pan Am Corp.*, 161 B.R. 577, 585 (S.D.N.Y. 1993).

A party seeking disclosure from a journalist has not exhausted every reasonable alternative source when obvious alternative witnesses exist and they have not been deposed or at least interviewed. *In re Application of Behar*, 779 F. Supp. 273, 275 (S.D.N.Y. 1991); *see also LaRouche*, 780 F.2d at 1137 (the Fourth Circuit noted there were still "obvious sources" plaintiff had not deposed). This rule applies when dozens or even hundreds of alternative witnesses exist. *See Petroleum Products*, 680 F.2d at 8-9. Indeed, this Court found the requirement was not satisfied when the subpoenaing party failed to depose sixty-five people in an effort to obtain the information. *See In re Roche*, 448 U.S. 1312 (1980).

In the case at bar, the identity of Professor Chaos cannot be compelled because alternate sources for the information remain that are less destructive to First Amendment rights than compelling Cartman to disclose his confidential source. Respondent has not completed a thorough investigation of his own internal staff. He has only deposed the manager of the Mumbai facility and several of the top engineers. Further, Respondent has not deposed or sent interrogatories to Citrus employees. Rather, he sent an e-mail to all Citrus employees requesting information regarding Professor Chaos's identity, a communication that lacks legal backbone.

Thus, Respondent's efforts are simply the beginning of an investigation, not the end. Compelling Cartman to reveal Professor Chaos's identity is *not* the last resort, as there remain many obvious alternate sources that have not been deposed. For example, Respondent has not deposed Blogeroo, the blogging site that hosts Cartman's blog. Professor Chaos may have

disclosed his identity to Blogeroo through e-mail or by other means, just as he has disclosed his identity to Cartman.

Additionally, Respondent has only deposed several of the employees at the Mumbai facility. While Respondent has sent an e-mail to other workers, this is simply not enough. These employees may have information regarding Professor Chaos's identity; in fact, some of the employee's are certain to know Professor Chaos, as he is an employee at Citrus. The Court has found that the exhaustion factor was satisfied when plaintiff issued six document requests, one set of interrogatories, four sets of requests for admissions, and a total of 20 depositions. *Lee v. Dept. of Justice*, 287 F.Supp.2d 15, 20-23 (D.D.C. 2003). Respondent, by sending out an e-mail and deposing four individuals, does not even approach the intense level of probing found to be adequate in *Lee*.

Finally, Respondent has failed to try to identify the source of the leak by electronic means, such as sweeping the e-mails electronic servers to discover the identity of the source. As the global leader in electronics products, Citrus, and hence Respondent, certainly possesses the technology necessary to perform such procedures. Therefore, there are obvious sources of Professor Chaos's identity that remain virtually unexplored, and without exhausting these possible sources, Respondent cannot compel Cartman to reveal Professor Chaos's identity.

ii. The identity of Professor Chaos is not relevant to the investigation.

The second prong the Courts analyze when applying the *Garland* test is whether the identity of the confidential source is relevant to the investigation. *Branzburg*, 408 U.S. at 743. The standard for relevance under the *Garland* test is "higher than the standard under Rule 26." *Hatfill v. New York Times Co.*, 242 F.R.D. 353, 356 (E.D. Va. 2006). Under Rule 26, information is relevant to discovery requests if it is "reasonably calculated to lead to discovery of admissible

evidence." *See* Fed. R. Civ. P. 26(b)(1). Under *Garland*, however, "the information must be *actually* relevant[,]" *Hatfill*, 242 F.D.R. at 356, such that it is not sufficient that the sources identity be relevant to some issue in the case. Rather, the sources identity must go to "the heart of the plaintiff's claim." *Carey v. Hume*, 492 F.2d 631, 634 (D.C. Cir. 1974).

Here, Professor Chaos's identity is not relevant because it does not go to the heart of Respondent's claim. Respondent's claim is against Cartman, and it is Cartman's state of mind that is relevant. Cartman's state of mind can be determined from the information he has already provided to Respondent. First, Cartman has stated that Professor Chaos is an employee of Citrus. (J.A. at 6.) Second, the numerous tips that Cartman has received from Professor Chaos have all proven to be reliable, and these tips have been integrated into a number of articles posted on Cartman's blog. (J.A. at 5.) These two pieces of information are sufficient to demonstrate Cartman's state of mind when writing his blog. Professor Chaos frequently provided Cartman with accurate information regarding Citrus. Thus, Cartman had no reason to doubt new information provided to him by Professor Chaos concerning Citrus because Professor Chaos had repeatedly proven himself to be a reliable source.

Moreover, Cartman's state of mind is demonstrated by the article he wrote that accompanied the photo. Cartman stated: "If the image I am showing you depicts what I *think* it does, then I am telling you the truth...." (J.A. at 6 (emphasis added).) This statement demonstrates that Cartman believed the photo to be not only a true representation of the Mumbai factory, but also accurately depicted Respondent's presence in the factory. Thus, since Cartman repeatedly received accurate information from Professor Chaos and also declared his state of mind in his article, Professor Chaos's identity is, at best, an ancillary issue.

Because Respondent cannot satisfy either of the first two prongs of the *Garland* test, Respondent cannot demonstrate a compelling and overriding need for the information and cannot meet the third prong of the *Garland* test. Thus, since Respondent must satisfy all three prongs of the test, and cannot satisfy even one prong, Professor Chaos's identity cannot be disclosed.

II. RESPONDENT IS A LIMITED-PURPOSE PUBLIC FIGURE, THUS THE DISTRICT COURT WAS CORRECT IN GRANTING ERIC CARTMAN SUMMARY JUDGMENT IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE THAT HE INTENTIONALLY OR RECKLESSLY MADE FALSE AND DEFAMATORY STATEMENTS AGAINST RESPONDENT.

Federal Rule of Civil Procedure 56(c) explains that motions for summary judgment should be granted if “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Because Respondent is a public figure who has failed to prove, by clear and convincing evidence, that petitioner Cartman published information with “actual malice,” there are no genuine issues of material facts and Cartman is entitled to summary judgment as a matter of law.

As a member of the press, any action for defamation against Eric Cartman must abide by the constitutional standards expounded by the Supreme Court with regard to the First Amendment protections for the press. The 15th Circuit erred in their interpretation of said applicable constitutional standards in finding that Respondent is a private, not public, figure. As such, the erroneous standard by which it judged Cartman's actions was in simple negligence, rather than in the “actual malice” standard required for plaintiff public figures to prove in libel actions brought against media defendants. *Gertz v. Welch*, 418 U.S. 323, 349 (1974).

Respondent is a public figure for the purposes of the case at bar because he is intimately involved in a matter of public concern, and that concern is the subject of the alleged defamation.

As such, he is required, but fails, to prove by clear and convincing evidence that the statements published about him by Cartman were made with “actual malice.” Because Respondent fails to meet this significant burden, the District Court’s order granting summary judgment in favor of Cartman should be affirmed.

A. Respondent is a limited-purpose public figure, and as such, the correct standard to apply is the “actual malice” standard adopted for public figure plaintiffs in *Gertz v. Welch*.

Broadly, the press has a privilege against civil defamation claims brought against them by public figures. That privilege is conditioned on the public figure’s demonstration that the statement was made with actual malice. This “Public Official/Public Figure” doctrine has its roots in the seminal case of *New York Times Co. v. Sullivan*, wherein the Court found that that the First Amendment guarantee of freedom of the press necessitated that public official plaintiffs in defamation actions be required to prove “actual malice” if they are to recover from press defendants in such actions. 376 U.S. 254, 279-80 (1964). *Curtis Publishing Co. v. Butts* extended the test crafted in *New York Times* to apply to plaintiffs who were not public officials, but merely “public figures” who are “involved in issues in which the public has a justified and important interest.” 388 U.S. 130, 134 (1967). The Court reasoned that some figures, although not public officials, are “nevertheless intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large.” *Id.* at 164.

The Court delineated this holding further in *Gertz v. Welch*, 418 U.S. 323 (1974), explaining that there are two types of public figures: general purpose public figures and limited-purpose public figures. *Id.* at 351. A general purpose public figure is a person that “achieve[s] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all

contexts.” *Id.* A limited-purpose public figure, however, is a person that “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.” *Id.* Regardless, of what type of public figure such plaintiffs are, they “assume special prominence in the resolution of public questions.” *Id.*

The Supreme Court reasoned that public figures are similar to public officials in that they “enjoy significantly greater access to channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy.” *Id.* at 344. The Court explained that “it is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual’s participation in the particular controversy giving rise to the defamation.” *Id.* at 352.

Lower courts have also promulgated rules to define who constitutes a “public figure.” The most succinct test devised to make such a determination was in the D.C. Circuit case of *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287 (D.C. Cir. 1980), which devised a three-part test to determine whether a given plaintiff, based on all the facts, was a limited-purpose public figure. Under *Waldbaum*, for a person to be considered a limited-purpose public figure, (1) the controversy must be a matter of public concern; (2) the plaintiff must have played more than a trivial role in the controversy; and (3) the allegedly defamatory remarks must be relevant to the said controversy. *Id.* at 1296-99. This has been the test adopted by the plurality of circuit courts. *See Silvester v. American Broadcasting Companies*, 839 F.2d 1491 (11th Cir. 1988) (finding that plaintiff gambling operators were limited-purpose public figures in controversies relating to arson, insurance fraud, and conspiracy); and *Trotter v. Jack Anderson Enterprises, Inc.*, 818 F.2d 431 (5th Cir. 1987) (finding that the president of a Guatemalan

bottling company was a limited-purpose public figure in a controversy related to military repression of labor disputes).

1. Slave labor at a Citrus factory is a matter of public concern because it will affect persons who are not direct participants in the controversy.

When a controversy of such nature as slave labor in a Citrus plant arises, it is indisputably an issue of public concern. Citrus is a massive multinational corporation whose impact on the U.S. and global economies is considerable. (J.A. at 1.) Indeed, the discovery of slave labor at a Citrus manufacturing plant poses repercussions for not only for Citrus employees and supervisors, but also for labor-conscious consumers, investors, and marketers.

The fact that Citrus' public shares slid after news of the alleged slave labor broke attests to the reach that Respondent's decisions regarding Citrus' operations have worldwide. (J.A. at 6-7.) It is for this reason that the press should be emboldened, not stifled, in its zealous reporting on such global matters. Thus, the issue of slave labor is an issue of paramount public concern, and so it is a "public controversy" under the *Waldbaum* test.

2. Respondent played a central role in the public controversy by virtue of his position and duties at Citrus.

Respondent plays far more than a tangential role in such a human rights and economic controversy. Indeed, analogous cases support the assertion that an executive in Respondent's position of prominence and power is a limited-purpose public figure. In *Tavoulaareas v. Washington Post Company*, 817 F.2d 762 (D.C. Cir. 1987), the D.C. Circuit concluded that an oil company executive was a limited-purpose public figure because he held a position as "chief operating officer of one of the world's largest multinational corporations, with a quarter-million stockholders," and because he "enjoyed continuing access to the media...and received public attention on the management and operations of the Nation's oil companies." *Id.* at 773-74. In

finding that the oil executive was a limited-purpose public figure, that court noted that “public policy toward the oil industry was clearly a controversial subject that “was being debated publicly and . . . had foreseeable and substantial ramifications for non-participants.”” *Id.* at 774 (quoting *Waldbaum*, 627 F.2d at 1297).

Citrus, like the oil company in *Tavoulaareas*, is a multinational corporation with thousands of shareholders. (J.A. at 6.) Like the company in *Tavoulaareas*, Citrus’ products, innovations, and executives are the subject of media attention and it is a company that commands considerable portions of the global economy. (J.A. at 3, 6-7.) Respondent is the director of research and development at this *Fortune* 500 corporation. (J.A. at 1-2.) Indeed, Kyle Broflovski has placed Respondent in charge of the development of the much anticipated e-Play Touché, a device that is likely to revolutionize the portable digital media market and change millions of people’s interaction with information and each other. (J.A. at 3.) As such, his decisions influence the lives of millions of people around the world.

Respondent is in a unique position of power at an enterprise that commands thousands of shareholders, and his position affords him ready and convenient access to the news media. (J.A. at 3.) Furthermore, the fact that Respondent has actually visited the sites of the alleged servitude only reinforces the knowledge he has of the conditions at these locations and the sway he holds over the local management and supervisors. (J.A. at 7.) Thus, Respondent is the hub of the multi-spoked wheel that is Citrus’ global empire. Therefore, Respondent is of central concern to the public controversy at issue, and so his position satisfies the second prong of the *Waldbaum* test.

3. The allegedly defamatory remarks deal directly with the public controversy.

Cartman's statements are directly relevant to the slave labor controversy. Cartman drew the logical connection between Respondent's power and influence within Citrus and the conditions of employment at Citrus' worldwide manufacturing facilities. Indeed, Cartman's statements are only the most recent in a journalistic career that has been dedicated to exposing the inhuman conditions of thousands of foreign workers. (J.A. at 4.) As such, Cartman's statements are germane to the controversy at issue.

i. Respondent's prominence in the digital electronics technology world makes him a limited-purpose public figure.

The record supports the reasoned conclusion that Respondent is a limited-purpose public figure. Besides being the subject of the thousands of "I Like Ike" buttons proudly displayed in hundreds of Citrus MegaStores across the United States, Ike's hiring was announced at a press conference covered by several national newspapers. (J.A. at 3-4.) Kyle Broflovski has offered glowing praise of his brother's work in numerous television and magazine interviews, and Ike's picture and contact details are prominently displayed on Citrus' website. (J.A. at 3-4.) Indeed, Kyle Respondent himself has even predicted that Respondent might be as famous as his CEO brother one day. (J.A. at 3.)

Furthermore, Respondent is a public figure amongst the growing segment of the global population that follows news of technological and electronic innovation. Like Jeff Bezos of Amazon.com, the Google trio of Sergey Brin, Eric Schmidt, and Larry Page, Steve Jobs of Apple, and Bill Gates of Microsoft, Respondent is amongst the contingent of technological entrepreneurs whose actions, movements, business decisions, and lifestyles are closely scrutinized and followed by countless people who are interested in technological innovation. To suggest otherwise is to stick one's metaphorical head in the sand. Indeed, even some of the

thousands of Citrus employees who have never even met Respondent have developed a cult following, proudly wearing “I like Ike” buttons at Citrus MegaStores throughout the United States. (J.A. at 3-4.) Although Respondent has never met any of these people, to them he is a technological revolutionary and a pioneer.

ii. Respondent’s aversion to the media does not negate his public figure status.

Although Respondent is reticent about the fame that his position inevitably garners him, such professed anonymity has not deprived him of the media spotlight. Indeed, even if a public figure shuns the spotlight, he may still not be entitled to be classified as a private person, The court in *Waldbaum* emphasized that “person who [shuns public attention] may be continuing in a career that captivates the public, be it in politics, business, the arts, sports, or entertainment.” 627 F.2d at 1295 n. 21. In fact, “because public interest in him persists and because he has chosen to occupy a position that places him in the spotlight and thereby may make him influential, he retains his access to the media and has invited continued attention and comment.” *Id.*

iii. Alternatively, Respondent is a general-purpose public figure who must still prove actual malice.

Alternatively, Respondent is a general purpose public figure because he has achieved such fame that thousands of people across the world know his name and they are affected by the technological revolution he has helped spawn. (J.A. at 3-4.) Courts have found that well-known evangelist ministers are general purpose public figures, *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), as are entertainers, *Carson v. Allied News Co.*, 529 F.2d 206 (7th Cir. 1976), and professional athletes, *Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265 (3rd Cir. 1979). In fact, these courts explain that such public figures are “those who command a substantial amount of independent public interest at the time of the publication of the defamatory

statements, attained through position alone or through purposeful activity amounting to a thrusting of one's personality into the vortex of an important public controversy." *Carson*, 529 F.2d at 209. Additionally, public figures are persons who gain "a special prominence for being involved in a major and well-publicized trade." *Chuy*, 595 F.2d at 1280.

In light of these arguments, Respondent is a general-purpose public figure. Like the entertainer in *Carson*, Respondent commanded considerable independent public interest at the time of publication. He is featured in newspapers, and in television and magazine interviews. (J.A. at 3.) And, like the professional athlete in *Chuy*, Respondent has achieved fame by virtue of his central position in the global digital technologies business. Thus, Respondent can be considered a general-purpose public figure.

Regardless of whether Respondent is a general-purpose public figure or a limited-purpose public figure, he must meet the same evidentiary burden of "actual malice" in the defamation action at bar. In either case, it is implausible to suggest that Respondent is a private individual. For the foregoing reasons, Respondent is a public figure whose defamation claim must meet the actual malice standard.

B. Eric Cartman is not liable for defamation under the actual malice standard because he did not knowingly or recklessly disseminate false information about Respondent.

The standard with which to analyze the statements of a defendant reporter/publisher in a civil defamation action brought by a public figure is the "actual malice" standard. *Gertz*, 418 U.S. 323, 342. "Actual malice" is defined in defamation cases as the mindset that accompanies the dissemination of information that the defendant knew to be false or was dissemination made with reckless disregard for the truth or falsity of the said information. *Id.* The standard further requires not only that the defamatory statements were false, but that the defendant either *knew* that the statements were false or "in fact *entertained serious doubts* as to the truth of his

publication.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) [emphasis added]. Such a showing must be made by demonstrating the *subjective doubts of the defendant himself*, not simply by asserting that a reasonably prudent person would not have published under the circumstances. *Tavoulaareas*, 817 F.2d at 789 (quoting *St. Amant*, 390 U.S. at 731) [emphasis added]. Respondent fails to meet this burden because he fails to demonstrate, by clear and convincing evidence, that Cartman published the statements believing them to be false or with entertaining serious doubts as to their veracity.

The Court in *Anderson v. Liberty Lobby, Inc.* heightened this already rigorous standard in holding that “there is no genuine issue [and summary judgment is appropriate if the evidence propounded by plaintiff is] of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence.” 477 U.S. 242, 253 (1986).

1. Eric Cartman did not publish with actual malice.

The information Professor Chaos provides to Cartman has been consistently accurate and the details he furnished about Citrus were plausible and overwhelmingly truthful. (J.A. at 5, 7.) Thus, Cartman had no justifiable reason to know that such information was false. Rather, because of his longstanding dedication to, and success in, exposing the deplorable workplace conditions fostered by multinational corporations, and because of the consistency of the information that Professor Chaos reliably provided him, Cartman believed wholeheartedly that the information he was disseminating about Respondent was truthful. (J.A. at 5-6.) Indeed, Cartman even writes in the editorial accompanying the relevant posting that he “thinks” the information provided to him by Chaos is true. (J.A. at 6.) Such a belief cannot therefore be properly characterized as reckless because the actual malice standard specifically requires that

the defendant know the information he is spreading is false or that he entertains serious doubts as to its truthfulness. *St. Amant*, 390 U.S. at 731.

Respondent's assertion that Cartman's failure to check Chaos' photograph before publishing it is evidence of recklessness is baseless because a failure to investigate, standing alone, does not constitute actual malice. The test for recklessness focuses solely on whether the defendant actually believed that the information he was publishing was false or whether he had serious doubts about its truthfulness. Indeed, the Court in *St. Amant* held that "Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." 390 U.S. 727, 731. The *Gertz* court notes that "mere proof of failure to investigate, without more, cannot establish reckless disregard for the truth." 418 U.S. 323, 332. As such, the standard explicitly states that it is *not* incumbent upon journalists to employ every software application available to them before publishing important news, as the Respondent seems to suggest.

Indeed, while the presence of Respondent in the Mumbai picture is artificial, *all the other details of the picture are accurate and undisputed.* (J.A. at 7.) The lack of protective gear provided to workers operating dangerous machinery, and the verbal abuse being hurled at the laborers are all truthful, undisputed images of conditions inside a Citrus factory. (J.A. at 7.) By publishing this information, Cartman believed that he was exposing the shocking truth of Citrus' workplace conditions. (J.A. at 6.) Such a mindset is a far cry from the subjective knowledge of false information that the "actual malice" standard requires for public figure plaintiffs to prove in such suits.

2. Eric Cartman did not publish negligently.

In the unlikely event that the Court deems Respondent a mere private individual despite his pervasive global power, Respondent must prove negligence on the part of the alleged defamer. Respondent is similarly unable to satisfy the negligence requirement.

The State of Silverado has adopted a standard of fault for defamation of private individuals that is identical to the standard delineated by the Restatement (Second) of Torts § 580(B).⁴ The standard imposes liability on the defendant if he (a) knows that the statement is false and defames the other; (b) acts in reckless disregard of these matters; or (c) acts negligently in failing to ascertain them. RESTATEMENT (SECOND) OF TORTS § 580(B) (2009). The record is devoid of any evidence indicating that Cartman believed that the information he was publishing was false or that he entertained serious doubts as to its truthfulness, and as such, he can only be held liable if his conduct was negligent.

Cartman was not negligent because the information was “hot news” requiring immediate dissemination to the public and because the nature of the interests served by immediate publication are of great importance.

The factors that inform a negligence determination include a time element, that is, “was the communication a matter of topical news requiring prompt publication to be useful?” and the nature of the interests served by prompt publication, such as whether “informing the public as to a [given] matter of public concern is an important interest in a democracy.” *Id.* § 580(B) cmt. h. Note that the Restatement explains that negligence is assessed by evaluating what a reasonable person would have done under similar circumstances. *Id.* § 580(B) cmt. d. Although reporters’

⁴ The Court explained in *Gertz* that, “so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual.” 418 U.S. 323, 347.

conduct is held to the customary skills normally possessed by other members of the journalistic profession, such customs are not controlling. *Id.* § 580(B) cmt. g.

Because Professor Chaos has a track record of reliable information, Cartman's quick dissemination of this information was reasonable in light of the power at Citrus' disposal and the urgency of the human rights controversy. In this new age of twenty-four hour news and citizen journalism, the rapidity of news dissemination is critical in ensuring that vital information is able to reach a global audience at the critical juncture. Given the impending release of the ePlay Touche', a Citrus device that is certain to revolutionize global technology, Cartman performed his highest journalistic duty by speedily informing Citrus' global consumers and investors of the conditions that contributed to the manufacture of this device *before* they had the opportunity to purchase it.

CONCLUSION

The United States Constitution enshrines the right to freedom of speech and freedom of the press, and the reporter's privilege upholds these respective rights. As such, the federal circuit courts are nearly unanimous in their favor of the reporter's privilege in civil cases. The nature of civil cases is unique in that the federal courts are willing to forego what may be expedient in favor of constitutional freedoms central to our democracy. The reporter's privilege is summarily an important safeguard against those who aim to trade practicality for longstanding and cherished freedoms.

Cartman is a reporter in every sense of the word. He elicits information from various sources with the intention of disseminating such information as news to the more than 100,000 readers who rely on his publications to inform them of government corruption and the operations of multinational corporations. The Court's broad definition of "press" necessarily includes

Cartman and the thousands of bloggers like him, who are the vanguards of a new age of global journalism.

Respondent fails to demonstrate that Professor Chaos' identity cannot be ascertained by alternative means, that Chaos' identity is relevant to the litigation, or that there is a compelling need for the court to know Chaos' identity. Indeed, Cartman's state of mind is the central issue in this litigation, not Professor Chaos' identity. Respondent has thus failed to rebut the constitutional presumption in favor of the reporter's privilege, and it therefore stands.

Respondent is a limited-purpose public figure for the purposes of this defamation suit. Respondent is the Director of Research and Development at a *Fortune 500* digital technology company that commands substantial portions of the global economy. His decisions impact not only the Citrus employees pictured in the posting at issue, but also the purchase and investment decisions of consumers the world over. Simply put, citizens of the world, in addition to his employees, "like Ike."

Because he is a public figure, Respondent must but cannot demonstrate by clear and convincing evidence that Cartman published the information with actual malice, that is, that Cartman published the information knowing that it was false or while entertaining serious doubts as to its truthfulness. Respondent fails to meet this burden because the Record demonstrates that Cartman believed that the information he was publishing was true in fact. What little evidence that exists to the contrary cannot, as a matter of law, satisfy the demanding clear and convincing standard by which Cartman's state of mind is to be judged. Because the privilege applies to Cartman as a reporter in a civil suit, a presumption exists that the privilege applies. Respondent fails to overcome the strong presumption in favor of this important constitutional privilege.

Petitioner's argument is not only grounded in law, but in sound public policy and the traditions of a free nation. Our nation is one founded upon deliberation and democracy. The free flow of information from the media to the public is essential to our nation's proud deference to those who discuss, debate, and dissent. The First Amendment seeks to continue this tradition, and Petitioner respectfully requests that this court continue that line of reasoning.

For the foregoing reasons, Petitioner respectfully requests that this court find in favor of Eric Cartman as a matter of law on both certified questions. As such, the 15th Circuit's ruling overturning the District Court's summary judgment order should be **REVERSED**.

Respectfully Submitted,

Team 112
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Counsel for Petitioner

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