

No. 23-0044

In the Supreme Court of Texas

**AZTECA INTERNATIONAL CORPORATION D/B/A AZTECA
AMERICA, STATIONS GROUP, LLC, NORTHSTAR MCALLEN
LICENSE, LLC, TV AZTECA, S.A.B. DE C.V., PUBLIMAX, S.A. DE C.V.,
AND PATRICIA CHAPOY,**

Petitioners,

v.

**GLORIA DE LOS ANGELES TREVINO RUIZ, ANGEL GABRIEL DE
JESUS TREVINO, AND ARMANDO ISMAEL GOMEZ MARTINEZ,**

Respondents.

**BRIEF OF PROPOSED AMICI CURIAE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, NATIONAL ASSOCIATION OF HISPANIC
JOURNALISTS, HEARST CORPORATION, TEXAS TRIBUNE,
ADVANCE PUBLICATIONS, THE E.W. SCRIPPS COMPANY, GANNETT
CO., THE MCCLATCHY COMPANY, PROPUBLICA, TEGNA, FORT
WORTH REPORT, NEWS/MEDIA ALLIANCE, AND DALLAS FREE
PRESS IN SUPPORT OF PETITIONERS' MOTION FOR REHEARING**

**On Petition for Review from the Thirteenth Court of Appeals,
Corpus Christi — Edinburg
No. 13-21-00241-CV
Trial Court Case No. C-1027-09-C
139th Judicial District Court, Hidalgo County, Texas**

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IDENTITY OF AMICI CURIAE

Proposed amici are the Reporters Committee for Freedom of the Press (“Reporters Committee”) and other news and media organizations dedicated to defending the First Amendment and newsgathering rights of the press in Texas and throughout the United States: Advance Publications, Inc., Dallas Free Press, The E.W. Scripps Company, Fort Worth Report, Gannett Co., Inc., Hearst Corporation, The McClatchy Company, LLC, National Association of Hispanic Journalists, News/Media Alliance, Pro Publica, Inc., TEGNA Inc., and Texas Tribune (collectively, “amici”). Amici submit this brief because resolution of the legal issues addressed herein will affect the news media’s ability to report and comment on matters of public concern and, in turn, the public’s access to timely information about matters of interest.¹

Lead amicus the Reporters Committee has appeared in this Court as amicus in cases implicating the rights of the press, including matters involving the Texas Citizen Participation Act (“TCPA”). *See, e.g., Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614 (Tex. 2018); *Netflix, Inc. v. Barina*, No. 22-0914 (Tex. petition filed Mar. 13, 2024).

¹ Full interest statements for all amici are set forth in the attached Appendix. The Reporters Committee paid the fees and costs associated with preparing this brief, and no party contributed to its preparation. *See* Tex. R. App. P. 11(c).

In this case, amici write in support of Petitioners Azteca International Corporation d/b/a Azteca America, Stations Group, LLC, Northstar McAllen License, LLC, TV Azteca, S.A.B. DE C.V., Publimax, S.A. DE C.V., and Patricia Chaopy (collectively, “Azteca” or “Petitioners”), and focus on two issues raised by the claims of Plaintiff-Respondent Gloria De Los Angeles Trevino Ruiz (“Trevi”) that have significant implications for the press’s ability to report the news: First, the misapplication below of the group libel doctrine to Statement 22 in Trevi’s Sixth Amended Petition (“Petition” or “Pet.”); and second, the misapplication of the third-party allegation statute to Statements 23 and 24 in Trevi’s Petition.

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INTRODUCTION

At issue in this appeal is whether a public figure may, contrary to this Court’s precedent and express statutory protection, sue a news organization for defamation for accurately recounting third-party allegations that were the subject of criminal proceedings and for publishing commentary that does not mention her at all. Whether this Court considers these two issues is of vital importance to the ability of the press to report the news and will be widely felt beyond the parties here. Amici write to address the Court of Appeals’ misapplication of the group libel doctrine and of Texas’ third-party allegations defense, which, if not corrected, will diminish the legal protections on which the news media rely and, in turn, chill journalism essential to an informed public.

Lower courts have been admonished not to “exert too great a ‘chilling effect’ on First Amendment activities” when applying the law of defamation. *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 632 (Tex. 2018). In some cases, the lines are admittedly difficult to draw. But here, where the claims relate to decades-old allegations about a public figure—allegations that are featured in various civil and criminal proceedings, are part of numerous public records, have been made in public, interviews, books, and more—and where Trevi’s claim is being allowed to proceed despite relying on statements in which she was not named or identified, the decision below raises particular concerns. The aforementioned errors by the Court

of Appeals go to the heart of a significant amount of news reporting and may “lead publishers to curtail protected speech in an attempt to ‘steer wider of the unlawful zone’ of unprotected speech.” *Id.* at 632-33 (citing *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967)).² In a state where “the defamation action has been narrowly tailored to limit free speech as little as possible,” *Cain v. Hearst Corp.*, 878 S.W.2d 577, 582 (Tex. 1994), the misapplication of the law to the facts here calls for this Court’s correction.

For the reasons herein, amici urge the Court to foster a free press and an informed public in Texas by granting Azteca’s motion, reviewing and reversing the Court of Appeals’ decision, and issuing an opinion reaffirming Texas law concerning group libel and third-party allegation reporting.

ARGUMENT

I. The decision below resurrects group libel in Texas and will chill public interest reporting.

A. The rule that the defamatory statement must single the plaintiff out protects journalism.

It is black letter defamation law that unless a plaintiff can show that the statement of which she complains is “of and concerning” her, the plaintiff has no viable cause of action. *See Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893

² Amici agree with Azteca that the challenged statements are non-actionable, and subject to dismissal, on several grounds but focus this brief on group libel and third-party allegations reporting because of the treatment of these doctrines below and its likely impact on reporting.

(Tex. 1960) (plaintiff not specifically referenced in the allegedly defamatory articles had no viable defamation claim). As this Court observed in another case arising out of news reporting about criminal allegations, “the asserted libel must refer to some ascertained or ascertainable person, and that person must be the plaintiff.” *Id.* (manager of body shop not defamed by reporting about area body shops, including his, colluding in “car wrecking” fraud ring) (citations omitted). That the defamatory matter have specific application to the plaintiff is not only a common law prerequisite but also—at least regarding speech about matters of public concern, like the reporting at issue in this case—a constitutional one. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 288 (1964) (plaintiff’s claim was “constitutionally defective” because he could not show that the challenged statements were “of and concerning” him).

The burden rests on the plaintiff to show “that the attack was read as specifically directed at” her. *Cox Tex. Newspapers, L.P. v. Penick*, 219 S.W.3d 425, 433 (Tex. App.—Austin 2007, pet. denied) (editorial criticizing prosecution that did not name a specific district attorney was not “of and concerning” the plaintiff district attorney (citing *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966)); see also *Harvest House Publishers v. Loc. Church*, 190 S.W.3d 204, 213 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (statements were not “of and concerning the church,” as it was not reasonable “to conclude that the book accuses the church, and, in fact, every other church named in the book, of rape, murder, child molestation, drug smuggling,

etc.” (citing *Newspapers, Inc.*, 339 S.W.2d at 893)); *Vice v. Kasprzak*, 318 S.W.3d 1, 13 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (affirming denial of summary judgment as to libel plaintiff who was expressly named, and reversing as to two other plaintiffs not identified in the challenged publication). Whether a plaintiff can do so “is a question of law for the court.” *Ledig v. Duke Energy Corp.*, 193 S.W.3d 167, 180 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *see also Lilith Fund for Reprod. Equity v. Dickson*, 662 S.W.3d 355, 368 (Tex. 2023) (dismissing under the TCPA defendant’s statement that “does not identify the plaintiffs . . . and thus is not actionable as to them”). The question for the court ““is not whether some actual readers were misled, as they inevitably will be, but whether the hypothetical reasonable reader could be.”” *Housman v. Publicaciones Paso del Norte, S.A. DE C.V.*, 242 S.W.3d 518, 525-26 (Tex. App.—El Paso 2007, no pet.) (quoting *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157 (Tex. 2004)); *accord* Restatement (Second) of Torts § 564, cmt. B (“[I]t is ‘not enough . . . that the defamatory matter is actually understood as intended to refer to the plaintiff; the interpretation must be reasonable in light of all the circumstances.’”).

Absent the forgoing rules, untold numbers of unnamed plaintiffs aggrieved by others’ exercise of their First Amendment rights—including news reporting—would have claims arising out of commentary or criticism of groups. The prohibition on “group libel” follows from these rules and protects speech on matters of public

concern. *Provisional Gov't of New Afrika v. Amer. Broad.*, 609 F. Supp. 104, 108 (D.D.C. 1985) (observing the “limitations the concept of group libel imposes on actions for defamation”) (citation omitted). Under the “group libel doctrine,” as it is sometimes called, if a challenged “statement refers to some, but not all members of the group, and does not identify to which members it refers, it is not a statement of and concerning the plaintiff.” *Harvest House Publishers*, 190 S.W.3d at 214; *see also, e.g., Wright v. Rosenbaum*, 344 S.W.2d 228, 231–33 (Tex. Civ. App.—Houston 1961, no writ) (statement that “one of the four ladies” stole a dress did not defame the four ladies); *Eskew v. Plantation Foods, Inc.*, 905 S.W.2d 461, 462 (Tex. App.—Waco 1995, no writ) (statement that some, but not everyone, terminated by a company were involved in wrongdoing did not single out and defame two terminated plaintiffs); *Harris v. Sante Fe Townsite Co.*, 125 S.W. 77, 80 (Tex. Civ. App. 1910, writ ref'd) (statements claiming that nine unnamed women from neighborhood with 15 female residents unlawfully cut a fence did not identify or single out plaintiffs); *Ledig*, 193 S.W.3d at 180 (“a member of a group has no cause of action for a defamatory statement directed to some or less than all of a group when there is nothing to single out the plaintiff.”).³

³ Even before *N.Y. Times v. Sullivan*, this Court in *Newspapers, Inc. v. Matthews* led the way in this area of law. *See Eskew*, 905 S.W.2d at 462 (citing Debra T. Landis, Annotation, *Defamation of Class or Group as Actionable By Individual Member*, 52 A.L.R.4th Group Defamation, 618, 638–40 (1987)). There is by now great uniformity on this issue of constitutional dimension, making the lower court decision here an outlier. *See, e.g., Guimbellot v. Rowell*, 184 F. App'x 447, 450 (5th Cir. 2006) (affirming dismissal where “statements at issue discuss building owners

Last year, this Court in *Lilith Fund for Reproductive Equity v. Dickson* recognized the risks to public discourse when plaintiffs—participants in the ongoing societal debate over abortion—attempted to weaponize defamation law to silence critical speech. 662 S.W.3d 355 (Tex. 2023). This Court dismissed, pursuant to the TCPA, a claim by a pro-choice advocacy organization over a statement by defendant pro-life activists referring “to unspecified entities or individuals who violate the [local] ordinance” prohibiting assisting women seeking abortions. *Id.* at 369 & n.71. The Court observed that the statement did “not identify the plaintiffs” specifically and “thus is not actionable as to them.” *Id.* at 369. Although plaintiffs believed their identification was clear from the context, the Court held that “the question is not whether a statement *may* mislead *any* reader,” but rather whether a reasonable reader would assume the defendants were specifically referring to the plaintiffs. *Id.* at 368 (emphasis added). Sensitive to “the state’s commitment to the free exchange of ideas enshrined in our Texas and United States Constitutions,” the Court rejected the attempt to sidestep the requirement that plaintiff show that the alleged defamation

and managers in general” but no specific plaintiff) (Louisiana law); *Clark v. Maurer*, 824 F.2d 565, 567 (7th Cir. 1987) (holding publication that referenced 24 sanitation works was not “stigmatizing the plaintiffs” specifically) (Illinois law); *Farber v. Cornils*, 487 P.2d 689, 691 (Idaho 1971) (holding plaintiffs could not show that radio editorial criticizing condition of properties and the decisions of owners referred to plaintiffs); *Cohn v. Brecher*, 192 N.Y.S.2d 877, 878 (Sup. Ct. 1959) (holding the statement “one of you is a crook” is insufficiently specific to “let a jury determine whether the alleged remark was specifically directed toward [the plaintiff] and him alone”).

was about *the plaintiff* and shoehorn into the courtroom a debate better left for the public square. *Id.* at 369.

News organizations rely on this body of law to protect “the social interest in free press discussion of matters of general concern.” *E.g., Serv. Parking Corp. v. Wash. Times. Co.*, 92 F.2d 502, 505 (D.C. Cir. 1937). The media routinely reports and comments on the activities of groups of people—often as a way to discuss cultural trends and political movements, or to provide greater context for current events. *See, e.g., Schuster v. U.S. News & World Rep., Inc.*, 602 F.2d 850, 853 (8th Cir. 1979) (finding no cause of action for plaintiffs not identified by name but referenced as part of “background information on the controversy” that “was primarily directed toward” broader social issues) (citation omitted); *Riss & Co. v. Ass’n of Am. R.R.s*, 187 F. Supp. 323, 325 (D.D.C. 1960) (same, for newspaper articles about illegal cargo carried by railroads); *O’Brien v. Williamson Daily News*, 735 F. Supp. 218, 222 (E.D. Ky. 1990), *aff’d*, 931 F.2d 893 (6th Cir. 1991) (same, for wire service report about high school teachers allegedly having affairs with students).

If this well-established doctrine is weakened, the floodgates will open with litigation from unidentified plaintiffs over statements that cannot reasonably be read to refer to them. *See Schuster*, 602 F.2d at 853 (group libel claims would lead to “proliferation of libel actions that could have a devastating effect on the financial

viability of the media and a chilling effect on the presentation of public issues.”); *Mich. United Conservation Clubs v. CBS News*, 485 F. Supp. 893, 900 (W.D. Mich. 1980), *aff’d Mich. United Conservation Clubs v. CBS News, A Div. of CBS, Inc.*, 665 F.2d 110 (6th Cir. 1981) (“If plaintiffs were allowed to proceed with this claim, it could invite any number of vexatious lawsuits and seriously interfere with public discussion of issues, or groups, which are in the public eye”). That, as courts and scholars have warned, “would be especially damaging to the media, and could result in the public receiving less information about topics of general concern,” *Mich. United Conservation Clubs*, 485 F. Supp. at 900, and thus “would come at a significant cost to free expression,” Hon. Robert D. Sack, *Sack on Defamation: Libel, Slander, and Related Problems* § 2:9:4, at 1-187 (5th ed. 2017) (collecting cases).

B. Trevi was not identified in Azteca’s critical commentary about *La Voz* and was not defamed by it.

Trevi alleges she was defamed by the following commentary about *La Voz*, a Mexican television show that, over the years, has featured more than 20 judges, including Trevi:

Televisa’s part is a disgusting double standard, and I’m going to tell you why. Because they attack Julian in this case. Yes, they accuse him of money laundering, but they have had judges in that program that are much more dangerous criminals and criminals much more disgusting. It is worse that they have accepted other judges who have had much more important crimes that can damage much

more their image as a brand than one who is accused of money laundering. Worse is the one who is accused of murder and other things.

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Regarding this commentary, the Court of Appeals wrote: “There are specific indicators of a single judge being referred to, not a group. The statement specifically refers to one judge ‘who is accused of murder and other things.’ This is not a statement referring to a group of people. Accordingly, it does not fall within the group libel doctrine.” *Azteca Int’l Corp. v. Ruiz*, No. 13-21-00241-CV, 2022 WL 17983161, at *8 (Tex. App.—Corpus Christi-Edinburg Dec. 29, 2022, pet. denied, motion for rehearing pending) [hereinafter “Op.”]. This was legal error.

Trevi’s claim fails because the commentary does not specifically single her out. *See Newspapers, Inc.*, 339 S.W.2d at 893-94 (“The settled law requires that the false statement point to the plaintiff and to no one else.”). Last year’s decision in *Lilith Fund* illustrates this principle. 662 S.W.3d 355 (Tex. 2023). There too, the plaintiffs argued that, given the facts included in the challenged statement, the small number of similar area organizations, and defendants’ past statements, this statement would be understood as about plaintiffs. This Court was unpersuaded and noted that the statement did “not identify the plaintiffs specifically” and rejected plaintiffs’ insistence the average listener would assume it was about them. The same is true here. While Trevi may assume she is the subject of the commentary, she is not

named or otherwise identified, and nothing in it refers to her in particular. *Id.*; see also *Newspapers, Inc.*, 339 S.W.2d at 894; *Scelfo v. Rutgers Univ.*, 282 A.2d 445, 448 (N.J. Super. 1971) (dismissing statement not “reasonably susceptible of a definite application to a particular individual”) (citing *Rosenblatt*, 383 U.S. at 86).

The decision in *Wright v. Rosenbaum* further shows why Trevi’s claim fails. 344 S.W.2d at 232. The defendant there stated that “one of the four ladies” with whom he had been doing business had committed theft. *Id.* at 231. The ladies alleged the accusation was defamatory, but the court directed the verdict for defendant. *Id.* at 229. The appellate court affirmed, finding that the challenged statement was about a group, and, because the statement neither defamed *all* of the group, nor specified which lady allegedly stole, no individual plaintiff had a cause of action. *Id.* at 232; see also *Harvest House Publishers*, 190 S.W.3d at 214 (emphasis original) (challenged publication must identify plaintiff or “must create the inference that *all members* of the group have participated in the activity that forms the basis of the libel suit”). This was so even though—as here—the statement referred to just one member of the group. *Wright*, 344 S.W.2d at 231–32; see also *Huckabee v. Time Warner Ent. Co. L.P.*, 19 S.W.3d 413, 429 (Tex. 2000) (holding that documentary commenting on rulings in “one family courthouse in one county of one great state” could not be construed as an attack on the judge presiding over specific proceedings but was instead a critique of family courts generally).

Because the challenged references to one judge of a group of more than 20 television judges do not specifically point to Trevi, they cannot, consistent with federal and Texas law, be construed as defamatory statements “of and concerning” her specifically. Azteca’s TCPA motion should have been granted as to Statement 22 in the Petition.

II. The third-party allegations rule is essential to news reporting, and the Court of Appeals’ decision undercutting it will chill journalism on matters of public concern.

The freedom to report on newsworthy allegations made by third parties is essential for the press to perform its democratic function. Texas law recognizes this and expressly protects against defamation claims arising out of accurate reporting on third-party allegations about matters of public concern. By permitting Trevi’s claim—premised on Azteca’s accurate reporting of the years-old allegations against Trevi and the ongoing debate surrounding her culpability, which included the fact that she had been *exonerated and acquitted* of charges related to those allegations—to proceed, the Court of Appeals ignored the plain language of this statute. *See Op.* at 8-9. Such uncertainty in Texas defamation law, if undisturbed, will chill news reporting.

In actions against the media, “the defense [of truth] applies to an accurate reporting of allegations made by a third party regarding a matter of public concern.” Tex. Civ. Prac. & Rem. Code Section 73.005(b) (amended 2015); *see also Dallas*

Morning News, Inc. v. Hall, 579 S.W.3d 370, 380 (Tex. 2019) (“media outlets that accurately report allegations made by a third party about matters of public concern can assert the truth as a defense”).⁴ When the statements at issue “were made by a media defendant over a [matter of] public concern,” it is the burden of the “plaintiff to prove [they] were false.” *KBMT Operating Co., LLC v. Toledo*, 492 S.W.3d 710, 713-14 (Tex. 2016) (citing *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)).⁵ Moreover, under the TCPA, “the plaintiff has the burden . . . to show falsity at the motion-to-dismiss stage.” *Hall*, 579 S.W.3d at 380.

Importantly, when the allegations covered by the provision are “accurate[ly] report[ed],” they are, for purpose of the statute’s application, true. Tex. Civ. Prac. & Rem. Code §§ 73.005(a)-(b); see *Hall*, 579 S.W.3d at 381 (discussing protections for reporting “without regard for whether the information” from proceedings or allegations “is actually true.” (citing, *inter alia*, § 73.005(b)).⁶ The third-party

⁴ The statutory amendment “codifie[d] 25 years of Texas common law . . . so long as the defendant-media can establish that the underlying allegations: (1) were made, and (2) were accurately reported.” Certain Defenses to Libel Actions, 2015 Tex. Sess. Law Serv. Ch. 191 (S.B. 627) (Vernon’s).

⁵ A defendant’s “statement need not be perfectly true[;] as long as it is substantially true, it is not false.” *E.g.*, *Toledo*, 492 S.W.3d at 714. “A broadcast with specific statements that err in the details but that correctly convey the gist of a story”—meaning its “main theme, central idea, thesis, or essence”—“is substantially true.” *Tatum*, 554 S.W.3d at 629.

⁶ This likewise applies to the official proceeding defense, Section 73.002(b)(1). See *Toledo*, 492 S.W.3d at 717 (explaining “the truth of the report” about an official investigation or proceeding is “measured by the scope of the [official] investigation, not by whether the misconduct being investigated could ultimately be proved” and affirming dismissal where gist of broadcast discussing medical board’s investigation into alleged “unprofessional conduct” of plaintiff-doctor was substantially true when compared to board’s report and press release). Amici agree with

allegation rule is designed to allow the freedom to report on matters of public concern, including “providing context for readers.” *Hall*, 579 S.W.3d at 382. It recognizes that often the existence of allegations alone makes them newsworthy. *See ProPublica v. Frazier*, No. 01-22-00281-CV, 2024 WL 1774224, at *11, *13, *14, *16 (Tex. App.—Houston [1st Dist.] Apr. 25, 2024, no pet. h.) (finding no liability for article that plaintiff has been accused of violating federal research rules); *Lowry v. Fox Television Stations, LLC.*, No. 01-20-00627-CV, 2022 WL 2720509 (Tex. App.—Houston [1st Dist.] July 14, 2022, no pet.) (no liability when defendant’s reporting substantially reflected allegations against plaintiff in criminal case). Courts need not decide whether the speaker is right or wrong, only whether the speaker accurately reported what was alleged. *Gallaher v. Denton Media Co., Inc.*, No. 02-21-00164-CV, 2022 WL 2071779, at *9 (Tex. App.—Fort Worth June 9, 2022, no pet.) (unpublished) (holding that media defendant only has to show its accurate reporting of allegations, not allegations’ underlying truth).

Here, the challenged passage in Azteca’s online article begins by reporting that Trevi and Sergio Andrade—her manager, convicted of leading a sex trafficking scheme and who Trevi has since accused of having abused her, too—were trending

Petitioners that Statements 23 and 24 are also subject to dismissal as fair accounts of official proceedings.

on social media. The article notes that there remains “a very heated debate among people” regarding Trevi’s personal culpability in Andrade’s sex ring, and explains:

And perhaps there are many young people who do not remember or do not know about the Trevi-Andrade case, in which, through the singer, the manager recruited young girls to later abuse them, Gloria *was accused of* being an accomplice, because it was pointed out that she helped him convince women to join the clan and then, to accede to Sergio’s sexual requests, as that would open doors for [them] in the world of show business.

Thus, a network began to be woven in which there were rapes, pregnancies, forced abortions, beatings, fear, threats and so on. Gloria and Sergio were arrested, she was under pressure for four years, eight months and eight days. On September 21, 2004, *she was acquitted and exonerated* by the Seventh Criminal Judge of Chihuahua for the crimes of kidnapping and corruption of minors, to the detriment of Karina Alejandra Yapor.

App. Tab. 5 (emphasis added). Demonstrating the ongoing public debate, the article juxtaposes its reporting with four tweets from Twitter users who defend Trevi solely as a victim of Andrade and four tweets from users who believe she also bears some responsibility. *Id.*

Yet there is no indication that the Court of Appeals considered this article as a whole, as required. *See, e.g., Tatum*, 554 S.W.3d at 628-29 (discussing how “substantial truth” analysis requires court to consider publication as a whole). Without doing so, the Court of Appeals could not determine the “gist” of the article

or assess whether it was an accurate report of the third-party allegations it described.

Id.

Azteca’s reporting relayed the existence of third-party allegations of sexual misconduct and the facts surrounding those accusations.⁷ It did not take a position as to Trevi’s complicity or lack thereof and expressly disclosed that she had been “acquitted and exonerated.” The Court of Appeals’ conclusion that the article’s statements were not protected by the third-party allegation defense because Azteca added language “insert[ing] opinions as to the veracity of the allegations . . . implying the guilt of Trevi,” is unsupported by the text of the article and the governing law. Op. at 19.

In particular, *Dallas Morning News, Inc. v. Hall* illustrates the lower court’s error here. In *Hall*, this Court found that the reporting of third-party allegations regarding a compounding pharmacy involved in a kick-back scheme, as well as the details of search warrants and lawsuits against the pharmacy, “fell within the [statutory] protections.” 579 S.W.3d at 382. The Court agreed with the plaintiff that “assertions” made by its critics and published as part of the defendant’s coverage “are certainly not flattering, especially when placed in proximity to the notion that [plaintiff’s pharmacy] is under federal investigation. But not flattering is not

⁷ Trevi’s story—including that she fled to Brazil, was extradited, served a prison sentence on separate charges, and was tried and acquitted in connection with the accusations discussed in Azteca’s online article—has been widely reported.

defamatory—especially in the face of the third-party-allegation rule and the official-proceeding privilege.” *Id.* at 381. Given that the “plaintiff has the burden under the [TCPA] to show falsity at the motion-to-dismiss stage,” and the defendants’ articles were accurate representations of the allegations, the reporting was “not a ground for a libel action,” and dismissal was appropriate. *Id.* at 380-82.

Numerous courts have applied the same analysis and—after comparing the gist of news reporting with the allegations made by third parties—dismissed libel claims against media defendants. *See ProPublica Inc*, 2024 WL 1774224, at *11, *13, *14, *16 (reversing trial court and dismissing defamation claims where article’s reporting on allegations regarding doctor’s violations of federal research rules and ethical guidelines, conflicts of interest, and the above-average mortality rate of his patients were substantially true and “[we]re not more damaging to [Plaintiff’s] reputation than a truthful statement would have been” (citation omitted)); *Bostic v. Daily Dot, LLC*, No. 1:22-CV-158-RP, 2023 WL 2317789, at *8 (W.D. Tex. Mar. 1, 2023) (dismissing based on finding that reporting of third-party allegations was substantially true); *Gallaher*, 2022 WL 2071779, at *9 (same); *Broder v. Nexstar Broad. Grp., Inc.*, No. 03-19-00484-CV, 2021 WL 2273470, at *11 (Tex. App.—Austin June 3, 2021, no pet.) (unpublished) (same).

Newsrooms around the country report on allegations on a daily basis. Permitting a claim against Azteca’s accurate reporting on third-party allegations

contravenes this Court’s precedent and the clear statutory language and produces worrisome potential consequences for the media and the public at large. As this Court has observed, “[t]he media does not simply report on individual events in isolation. Commonly, reporting involves investigating, tracking down related stories, and providing context for readers.” *Hall*, 579 S.W.3d at 382. A failure to protect allegations reporting as the statute intended likely “will chill First Amendment speech.” *Id.* Creating an unwritten exception to the third-party allegation defense for providing context not only flies in the face of *Hall*, but also violates principles of statutory construction by imposing an unwritten exception to the law. Such a result will stymie public interest reporting and result in a less informed citizenry.

If not corrected, the lower court’s decision will discourage reporting about newsworthy allegations made by third parties against public figures and organizations—an important and routine task of journalists—by raising the specter that such reporting will lead to protracted, expensive defamation litigation. This Court should grant review and reverse the lower court’s decision as to Statements 23 and 24 in the Petition, which are protected under a straightforward application of the third-party allegation defense codified in Section 73.005(b).

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to grant the Petition and reverse the decision of the Court of Appeals.

Dated: June 7, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief includes 4,433 words, exclusive of those sections identified in Tex. R. App. P. 9.4(i)(1) as excluded from the word count, and was produced in 14-point font with 12-point footnotes.”

CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure, I certify that a true and correct copy of this document was served via e-service and/or e-mail on the following counsel of record on this 7th day of June, 2024.

APPENDIX OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as *Vogue*, *Vanity Fair*, *The New Yorker*, *Wired*, and *GQ*, local news media companies producing newspapers and digital properties in ten different metro areas and states, including Texas, and American City Business Journals, publisher of business journals in over forty cities, including Houston, Dallas, Austin, and San Antonio, Texas.

Dallas Free Press is a nonprofit, nonpartisan newsroom focusing on community journalism efforts in South Dallas and West Dallas, two of the city's historically redlined neighborhoods. It tackles complex civic issues with solutions journalism, with the belief that all neighborhoods deserve reporting and storytelling

that values their community and holds leaders accountable. Founded in 2020 by award-winning journalist Keri Mitchell, the *Dallas Free Press* was named 2021's "New Publisher of the Year" by Local Independent Online News (LION) Publishers for "being truly rooted in community and public service . . . starting from a place of community listening, meeting real information needs, and centering equity."

The E.W. Scripps Company is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. These include KRIS-TV in Corpus Christi (NBC), KZTV-TV in Corpus Christi (CBS) and KXXV-TV in Waco (ABC). Scripps also owns Scripps Networks, which reaches nearly every American through the national news outlets Court TV and Newsy and popular entertainment brands ION, Bounce, Grit, Laff and Court TV Mystery. The company also runs an award-winning investigative reporting newsroom in Washington, D.C., and is the longtime steward of the Scripps National Spelling Bee.

Fort Worth Report is a nonprofit, nonpartisan news organization filling the community's need for local journalism. It launched in 2021 to provide more news about local government, schools, business, arts and culture, the environment, health care and other important issues in the Fort Worth area. In October 2022, *Fort Worth Report* was named as the best new large publisher at a national independent journalism contest by Local Independent Online News, a professional organization of over 400 US and Canadian independent news publishers. Fort Worth Report is a

recipient of a \$1.1 million grant from the American Journalism Project to support the long-term financial sustainability of its mission to support local journalism.

Gannett Co., Inc. is the largest local newspaper company in the United States. Its more than 200 local daily brands in 43 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month. In Texas, Gannett proudly publishes *The Austin American-Statesman* (Austin), *Amarillo Globe-News* (Amarillo), *The Abilene Reporter-News* (Abilene), *Corpus Christi Caller-Times* (Corpus Christi), *The El Paso Times* (El Paso), *Standard-Times* (San Angelo), *Times Record News* (Wichita Falls), and *Lubbock Avalanche-Journal* (Lubbock).

Hearst Corporation publishes the *Houston Chronicle*, with its audience of more than 3 million in Houston, 13 million across Texas and 154 million nationwide. It also publishes, among others, the *San Antonio Express-News*, *Laredo Morning Times*, *Midland Reporter-Telegram*, *Plainview Herald*, and *Beaumont Enterprise* in Texas, and popular online news websites Chron.com (serving more than 6 million readers in Houston and surrounding areas) and MySA.com (San Antonio and surrounding areas). Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily newspapers, including the *Chronicle*, and more than 30 weekly newspapers; hundreds of magazines around the world,

including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

The McClatchy Company, LLC is the publisher of the *Fort Worth Star-Telegram* as well as other iconic brands such as the *Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, *The Charlotte Observer*, and *The (Raleigh) News & Observer* and the *Sun Herald* (Biloxi, Miss.). McClatchy operates media companies in 30 U.S. markets in 16 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats.

The National Association of Hispanic Journalists ("NAHJ") is dedicated to the recognition and professional advancement of Hispanics in the news industry. Established in April 1984, NAHJ created a national voice and unified vision for all Hispanic journalists.

The News/Media Alliance represents over 2,200 diverse publishers in the U.S., including Texas, and internationally. These publishers range from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only

outlets to papers who have printed news since before the Constitutional Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-only properties. The Alliance diligently advocates for newspapers, magazine, and digital publishers, on issues that affect them today.

Pro Publica, Inc. (“ProPublica“) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the *Chicago Tribune*) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the *Texas Tribune*, which launched in March 2020, and a series of Local Reporting Network partnerships.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including over a dozen stations across the state of Texas.

The Texas Tribune is a nonpartisan, nonprofit media organization that promotes civic engagement and discourse on public policy, politics, government, and other matters of statewide concern.