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tex-10951004
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 15-0790

IN THE SUPREME COURT OF TEXAS

D MAGAZINE PARTNERS, L.P. D/B/A D MAGAZINE, MAGAZINE LIMITED PARTNERS, L.P., AND ALLISON MEDIA, INC.,

Petitioners,
v.
JANAY BENDER ROSENTHAL,

Respondent.

On Appeal from the Fifth Court of Appeals at Dallas, Texas
No. 05-14-00951-CV

BRIEF OF AMICUS CURIAE TEXAS PRESS ASSOCIATION, TEXAS ASSOCIATION OF BROADCASTERS, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AND FREEDOM OF INFORMATION FOUNDATION OF TEXAS IN SUPPORT OF PETITION FOR REVIEW

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June 2, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Freedom of Information Foundation of Texas ("FOIFT" or the "Foundation") is a nonprofit Texas corporation based in Austin representing members statewide concerned about the free flow of information and open government at the state and local levels. The Foundation's board of directors includes journalists, lawyers, academics and public members. Since the founding of FOIFT in 1978 as an outgrowth of the Dallas Press Club, the Foundation's mission has been to serve as a statewide clearing house of information on open government and First Amendment issues and to take action in the public interest on those issues. In particular, the Foundation has a long history of education and advocacy efforts in connection with the Texas Public Information Act.

The Reporters Committee for Freedom of the Press ("RCFP") is an unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. RCFP has provided representation, guidance and research in First Amendment litigation since 1970.

The Texas Association of Broadcasters ("TAB") is a non-profit organization that represents more than 1,300 free, over-the-air television and radio broadcast stations licensed by the Federal Communications Commission to serve communities throughout Texas. Founded in 1951, TAB provides numerous

services on behalf of its members, including the publication of guidebooks on legal issues relating to open government and media law. TAB also advocates for interests important to its membership before the Legislature and in courts.

The Texas Press Association ("TPA") is a non-profit industry association representing nearly 500 daily and weekly newspapers in Texas, each of which upholds a strong tradition of journalistic integrity and community service. TPA, founded more than 130 years ago, performs numerous services on behalf of its members, including advocating legislation relating to free speech and press and taking legal action to protect the First Amendment and open government.[1]

[1] No fee has been paid for the preparation of this amicus brief. *See* Tex. R. App. P. 11(c).

INTRODUCTION

This case presents an opportunity for the Court to provide much-needed guidance on an issue that is of increasing importance in defamation and other litigation: whether, when, and how a court may rely on Wikipedia and similar online content in resolving important issues of meaning. As the Court recognized in *Neely v. Wilson*, assessing a publication's meaning, or "gist," is "crucial" in evaluating a defamation claim. 418 S.W.3d 52, 63 (Tex. 2013). Until a court determines what the challenged publication means—or what it is reasonably capable of meaning—questions of truth, privilege, and state of mind cannot be answered.

Here, called upon to determine the "gist" of a page-long article, the Majority focused its attention on a single term in the article—*welfare queen*. Rather than construe the term in light of the publication as a whole, it consulted Wikipedia. This reliance on Wikipedia violated several well-established principles of defamation law. Moreover, because the Majority did not have the benefit of briefing from the parties on this issue, its analysis violated the Texas Rules of Evidence, ignored potentially relevant alternative sources, and misunderstood the significance of the Wikipedia content. In short, the Majority used the wrong source in the wrong way.

The Majority's "gist" analysis raises serious questions about the proper role

of Wikipedia and similar online sources in judicial decision-making. Some of these questions—such as the role of any user-generated content in divining the mind of the hypothetical "reasonable reader"—are important questions of defamation law. But other questions raised by the Majority's analysis are not unique to defamation law, as issues of "meaning" arise when courts are called upon to interpret contracts, statutes, and communications. In the face of ever-expanding availability of content from unverified, collaborative websites, like Wikipedia, Texas courts and counsel need guidance on whether, when, and how to use it.

ARGUMENT

A. The Majority's Reliance on Wikipedia as the Linchpin of Its "Gist" Analysis Violated Well-Established Standards of Defamation Law.

In defamation cases, a court's "crucial" inquiry into the meaning of a challenged publication is guided by well-established standards. *Id.* This Court "has long held that an allegedly defamatory publication should be construed as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it." *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000) (citations omitted). Construing the publication "as a whole" requires focus on "'the entirety of a publication and not just on individual statements.'" *In re Lipsky*, 460 S.W.3d 579, 594 (Tex. 2015) (quoting *Bentley v. Bunton*, 94 S.W.3d 561, 579 (Tex. 2002)). Specific words and phrases may not be

considered in isolation, but must be viewed in light of the publication as a whole. *Turner*, 38 S.W.3d at 115.

This analysis requires supreme sensitivity to issues of context and tone. As Justice Holmes noted nearly a century ago, "[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne v. Eisner*, 245 U.S. 418, 425 (1918); *see also St. Surin v. V.I. Daily News, Inc.*, 21 F.3d 1309, 1317 (3d Cir. 1994) ("Words take on meaning in the company of other words. They are gregarious. They take on tone and color from syntax and context."). Context often makes the difference between a merely unflattering statement and a defamatory one. *See, e.g.*, *AOL, Inc. v. Malouf*, No. 05–13–01637–CV & No. 05–14–00568–CV, 2015 WL 1535669, *4 (Tex. App.—Dallas, Apr. 2, 2015, no pet.) (mem. op.) (terms "charged" and "stolen" did not impute criminal conduct when considered in light of the article as a whole); *Newspaper Holdings, Inc. v. Crazy Hotel Assisted Living, Ltd.*, 416 S.W.3d 71, 86 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (term "'elderly abuse' was a strong choice of words," but meaning of term was "softened" based on overall context of publication as a whole). Indeed, words or phrases that might connote criminal conduct in certain contexts do not, as a matter of law, in others. *Compare Greenbelt Co-op Pub. Assn. v. Bresler*, 398 U.S. 6, 14 (1970) (in context,

statements referring to "blackmail" could not reasonably be interpreted as accusing the plaintiff of an actual criminal offense) *with Good Gov't Grp., Inc. of Seal Beach v. Superior Court*, 586 P.2d 572, 577 (Cal. 1978) (in context, statement referring to "blackmail" was capable of defamatory meaning).

Tone also matters. Like context, tone can affect whether a word or phrase should be interpreted literally or figuratively. *See New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 161 (Tex. 2004) (noting publication's "general and intentionally irreverent tone"). The same word might accuse someone of a crime, or it might compliment them—all depending on the tone of the publication in which the word appears. *See, e.g., Knievel v. ESPN*, 393 F.3d 1068, 1077 (9th Cir. 2005) (calling stuntman a "pimp" in caption of photograph of him with two women at awards show, posted on website page that was "lighthearted" and "jocular" in tone not reasonably capable of defamatory meaning).

This analysis of context and tone requires careful consideration *by the court*. The court's inquiry "is objective, not subjective." *Isaacks*, 146 S.W.3d at 157. The court may not delegate its role as the embodiment of the hypothetical "reasonable reader" to the parties or to witnesses offering "meaning" testimony. *See United Way of San Antonio, Inc. v. Helping Hands Lifeline Found., Inc.*, 949 S.W.2d 707, 713 (Tex. App.—San Antonio 1997, writ denied) (expert testimony as to defamatory meaning of statement improper); *San Francisco Bay Guardian, Inc.*

v. Superior Court, 17 Cal.App.4th 655, 21 Cal.Rptr.2d 464, 467 (1993) (declaration evidence from actual readers regarding meaning of publication "does not raise a question of fact as to the view of the average reader"). Similarly, the court should limit its reliance on external sources in determining the meaning of a word or phrase, as used in the challenged publication. Even dictionaries should be approached with caution because they define words and phrases in isolation, not in the context of how they are used in the publication as a whole. *See* Robert D. Sack, *Sack on Defamation: Libel, Slander & Related Problems*, § 2-24 (4th ed. 2010) ("Because context is so important, dictionary definitions are often of little value.") (citing cases); *but see San Antonio Express News v. Dracos*, 922 S.W.2d 242, 248 (Tex. App—San Antonio 1996, no writ) ("Reference to dictionary definitions is appropriate for evaluating libelous content.").

In this case, the Majority's "gist" analysis violated several of these well-established standards. The Majority's interpretation of the *D Magazine* article as accusing Ms. Rosenthal of criminal welfare fraud is based primarily on the presence of the term *welfare queen* in the article, not on the article as a whole. By isolating this term from the context in which it appeared, the Majority improperly assigned the article a meaning that is internally inconsistent. *See D Magazine Partners, L.P. v. Rosenthal*, 475 S.W.3d 470, 491 (Tex. App.—Dallas, pet. filed) (Brown, J., dissenting) (the Majority's analysis "appears to produce an internally

inconsistent understanding of the essence of the article"). As Justice Brown noted in dissent, the article cannot be interpreted as accusing Ms. Rosenthal of "fraud" against the system and, at the same time, of legally exploiting the system. *Id.* ("Either the article suggests appellee could use the system to her advantage or it suggests she set out to cheat the system.").

The Majority's heavy reliance on the term *welfare queen* as the linchpin of its "gist" analysis also ignores the tone of the article. As Justice Brown correctly observed, the article is "satirical" in tone. *Id.* at 492 ("The tone of the article underscores its satirical purpose. An ordinary person reading the opening paragraph would 'hear' the tone immediately."). This Court has cautioned against an overly literal reading of isolated words and phrases in satirical works. *See Isaacks*, 146 S.W.3d at 156-57 (citing *Pring v. Penthouse Int'l, Ltd.*, 695 F.2d 438, 442 (10th Cir. 1982) (in satirical publication, "the charged portions could not be taken literally")). Here, the casual, satirical tone of the article supports a much more flexible interpretation of the term *welfare queen* than the Majority's rigid reading.

Moreover, even if *any* single word or phrase could ever bear such interpretive weight in a page-long satirical article, the term *welfare queen* cannot. Like other politically-charged terms, *welfare queen* escapes precise definition. In various areas of defamation law, courts have proceeded with caution when

considering the effect of such loaded terms. For example, this Court has refused to find evidence of actual malice where language that "'bristle[s] with ambiguity'" is involved. *Freedom Newspapers of Texas v. Cantu*, 168 S.W.3d 847, 856 (Tex. 2005) (quoting *Time, Inc. v. Pape*, 401 U.S. 279, 290 (1971)). Similarly, the U.S. Supreme Court has held that such "loose, figurative" language often falls within the category of nonactionable rhetorical hyperbole. *See, e.g.*, *Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 283 (1974) ("scab" not actionable in context); *Greenbelt*, 398 U.S. at 14 ("blackmail" not actionable in context).

But rather than concede the impossibility of precisely defining a term like *welfare queen*, the Majority attempted just that. And, again, it violated established standards of "gist" analysis. The Majority failed to acknowledge that, unadorned by its external social and political context, the term says nothing about criminality. The juxtaposition of the words "welfare" and "queen" suggests only a disconnect between economic dependency and regal living conditions. The term itself is silent on the issue of whether that disconnect might be the product of poor regulatory oversight, of bad social policy, of legal manipulation of the system, or of criminal fraud.

Furthermore, even if a precise definition of *welfare queen* were possible, and even if resort to a dictionary were permissible, Wikipedia is not a dictionary. At best, Wikipedia's "openly editable content" represents the subjective opinions of

an unknown community of the website's users. But, as noted above, the mind of the hypothetical "reasonable reader" is not discovered through subjective inquiry or illuminated by the testimony of actual readers. The proper inquiry is objective, and actual-reader evidence is irrelevant. *See Isaacks*, 146 S.W.3d at 157 (citing *San Francisco Bay Guardian*, 21 Cal.Rptr.2d at 467 ("The question is not one that is to be answered by taking a poll of readers[.]")). Indeed, subjective evidence sourced from Wikipedia is even more inappropriate to a "gist" analysis than actual-reader testimony because the Wikipedia users likely never have read the challenged publication. Thus, regardless of whether their "definition" of the term *in isolation* is reliable, it says nothing about how the term is used in the challenged publication.

In sum, the Majority's analysis did not adhere to the standards established by this Court and the U.S. Supreme Court for determining the "gist" of a challenged publication. And its missteps have serious implications for the protection of free speech. Adherence to constitutional standards in determining "meaning" in defamation cases protects the vigor of public debate and the vitality of free expression. When courts derogate from their duty to conduct a rigorous, textual analysis of a publication and choose to rely instead on user-generated Internet content to determine "meaning," free speech suffers. If plaintiffs are allowed to litigate issues of falsity, privilege, and state of mind based on any "meaning" that

might possibly be supported by any online, user-generated content, libel litigation will become more common and more costly— and a chilling effect will ensue.

B. The Majority Made Several Errors in its Use of the Wikipedia Entry for *Welfare Queen*.

Even if content from unverified, collaborative websites could have some proper role in a court's "gist" analysis, the Majority's use of the Wikipedia entry for *welfare queen* was still improper for several reasons. Granting review in this case would give the Court an opportunity to provide crucial guidance regarding the appropriate use of Wikipedia content—in defamation actions and in other types of cases.

1. The Majority Improperly Took Judicial Notice of Wikipedia.

Because the definition of *welfare queen* is not in the appellate record, the only potential evidentiary basis for the Majority's consideration of Wikipedia content is judicial notice. This was contrary to the Texas Rules of Evidence, which allow a court to take judicial notice of a fact like the definition of a word or phrase only if it is "not subject to reasonable dispute" and "can be accurately and readily determined from sources *whose accuracy cannot reasonably be questioned*." Tex. R. Evid. 201(b) (emphasis added). Wikipedia content does not satisfy this standard.

As prominent judges and scholars have recognized, Wikipedia can be a valuable resource for information, but concerns over reliability and contributor bias

preclude reliance on it in resolving important issues in a case. *See* Noam Cohen, *Courts Turn to Wikipedia, but Selectively*, N.Y. Times (Jan. 29, 2007) (quoting Judge Richard Posner as stating that "Wikipedia is a terrific resource, . . . [but i]t wouldn't be right to use it in a critical issue."). By its nature, Wikipedia is an inherently unreliable source. Founded in 2001, the website is a free, web-based encyclopedia "based on a model of openly editable content."[2] With virtually no restrictions, Wikipedia permits anyone to create and to review entries—and to do so anonymously.[3] These "editors" need not be experts in the field or have any lexicographical experience. In fact, as Wikipedia notes, "it is not a formal requirement to be familiar with [the subject of the article] before contributing."[4] At any given time, an entry "may contain undetected misinformation, errors, or vandalism."[5] Indeed, Wikipedia acknowledges that, in many important ways, its content compares poorly with the reliability of professionally-edited encyclopedias and other reference works.[6]

In addition to concerns of accuracy, content from unverified collaborative websites may be undermined by its contributors' biases. Wikipedia expresses a

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[2] Wikipedia: About, WIKIPEDIA, https://en.wikipedia.org/wiki/Wikipedia:About (last visited May 27, 2016) (hereinafter, "About Wikipedia").
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *See* Wikipedia: Researching with Wikipedia, https://en.wikipedia.org/wiki/Wikipedia:Researching_with_Wikipedia#Notable_weaknesses_of_Wikipedia (last visited May 29, 2016).

hope that, over time, entries will become more accurate and balanced, but it candidly acknowledges that some subjects "become caught up in a heavily unbalanced viewpoint" for months or even years.[7] Similarly, some entries might be interesting or controversial only in part, so that all of the community's attention is focused on a small segment of the entry, leaving the rest of it potentially inaccurate or unbalanced.[8]

These problems of reliability and bias are inherent to Wikipedia's openly-editable process. Wikipedia has attempted to mitigate these problems by allowing the Wikipedia community to designate its best entries as "featured articles" and its entries of reasonably high quality "good articles."[9] Currently, there are over 4,500 "featured articles" and another 22,000 articles that have been designated "good articles."[10]

The entry for *welfare queen* is neither a "featured article" nor a "good article."[11] While the article contains some sourcing, the definition of the term in the first sentence contains no reference to any source.[12] The "View History" tab of the entry shows that this definition was drafted mainly by two anonymous users—

[7] Wikipedia: About Wikipedia.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *See* Welfare queen, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Welfare_queen&oldid=669710811 (last visited May 29, 2016) (hereinafter "Wikipedia: Welfare queen").
[12] *Id.*

"Chalyres" and "141.156.240.102".[13] There is no way to determine what qualifications these users have to define the term. Chalyres's contributor page states that his or her other entries include "Slavery," the "2006 Oaxaca protests," and "U2charist," a communion service set to the music of U2.[14] The anonymous user "141.156.240.102" has not set up his or her own contributor page, but the website shows that his or her contribution to Wikipedia has been largely focused on the development of the entry for "List of *Family Guy* characters."[15] Moreover, since the drafting of the *welfare queen* entry's first sentence in November 2006, most of the additional development and revisions of the entry have focused on Ronald Reagan's connection to the term.[16]

Thus, to the extent the Majority assumed it was taking judicial notice of the common meaning of the term *welfare queen*, as validated by millions of internet users, it was incorrect. The Wikipedia "definition" of *welfare queen* represents nothing more than what two individuals—one with a self-described interest in

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[13] Welfare queen: Difference between revisions WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Welfare_queen&diff=85743686&oldid=85451054 (last visited May 30, 2016) (hereinafter, "Wikipedia: Welfare queen history").

[14] User: Chalyres, WIKIPEDIA, https://en.wikipedia.org/wiki/User:Chalyres (May 30, 2016) (hereinafter, "Wikipedia User: Chalyres").

[15] User contributions, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Special:Contributions/141.156.240.102&offset=&limit=500&target=141.156.240.102 (last visited May 30, 2016).

[16] Wikipedia: Welfare queen history. In fact, the claim that Reagan used the phrase in a radio commentary—a fact cited by the court of appeals in this case—has since been removed from the article. Welfare queen: Difference between revisions, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Welfare_queen&diff=687015783&oldid=681673132 (October 22, 2015).

"European paganism"[17] and the other a fan of *Family Guy*—thought it meant in November 2006.

2. The Majority Did Not Consider Other Dictionary Sources for the Definition of *Welfare Queen.*

These problems with the Wikipedia entry for *welfare queen* could have been ameliorated by the Majority's consideration of other source material. *See* Jason C. Miller and Hannah B. Murray, *Wikipedia in Court: When and How Citing Wikipedia and Other Consensus Websites Is Appropriate*, 84 St. John's Law Review 633, 652 (2010) ("[C]ourts should consider the available alternatives. Even if accuracy of Wikipedia is not in question, courts should ask whether a traditional dictionary entry or newspaper article is available that would provide the same information with greater confidence to some readers."). Even though *welfare queen* does not appear in every dictionary, it does appear in the online Oxford English Dictionary ("OED"), which defines the term as "a woman perceived to be living in luxury on benefits obtained by exploiting or defrauding the welfare system."[18] The OED does not state that a *welfare queen* must be either guilty of a crime or have had several children outside of marriage.

Further, even if Wikipedia has a role to play in some cases as a source of information about how a word or phrase is commonly used, it should not be the

[17] Wikipedia User: Chalyres.
[18] *See* Ex. 1 (copy of entry for "welfare queen" in online OED).

sole such source. Wikipedia is not the only openly-editable, online source of information, and it is arguably not even the best such source for determining the common meaning of a word or phrase. The Wikimedia Foundation, which hosts various "wiki" projects, has a separate, dictionary project—Wiktionary. The Wiktionary entry for *welfare queen* states that the term refers to "[a] woman collecting welfare, seen as doing so out of laziness, rather than genuine need."[19] Notably, YourDictionary.com, which is an *edited* compendium of dictionary definitions from various print and online dictionaries, uses this Wiktionary definition for its entry on *welfare queen* instead of Wikipedia's.[20] Similarly, Urban Dictionary, which is another openly-editable online dictionary, defines the term *welfare queen* as "[a] woman, regardless of race who is living off the welfare system purely because of laziness and not due to any real need."[21]

Thus, even if the Majority had been correct to consult external sources to determine the meaning of *welfare queen*, Wikipedia should have been, at most, *one of several sources*. Had the Majority consulted these other potential sources, it could not have defined the term as it did.

3. The Majority Misconstrued the Relevance of the Source Material for the Wikipedia Entry on *Welfare Queen.*

[19] Welfare queen, WIKTIONARY, https://en.wiktionary.org/wiki/welfare_queen (last visited May 30, 2016).
[20] Welfare queen, YOUR DICTIONARY, http://www.yourdictionary.com/welfare-queen (last visited May 30, 2016).
[21] Welfare queen, URBAN DICTIONARY, http://www.urbandictionary.com/define.php?term=welfare%20queen (last visited May 30, 2016).

As a result of the reliability and bias concerns inherent with any Wikipedia content, courts must be extraordinarily careful in *how* they use Wikipedia. Here, the Majority relied on Wikipedia to determine the meaning of a term that was not universally present in dictionaries. But Wikipedia does not purport to be a *dictionary*; it describes itself as an *encyclopedia*. Thus, much of the content of a Wikipedia entry will be unhelpful for the limited purpose of determining the meaning of a word or phrase.

Without the benefit of briefing from the parties on this issue, the Majority misconstrued the entry for *welfare queen*, citing it in support of a definition that the entry does not support. The Majority asserted that the term *welfare queen* had a specific definition, stating

> The term 'Welfare Queen' has two meanings; it can mean either (1) a woman who has defrauded the welfare system by using false information to obtain benefits to which she is not legally entitled, and it can also mean (2) a woman who has exploited the welfare system by having children out of wedlock and avoiding marital relationships for the purpose of continuing to qualify for government benefits.

475 S.W.3d at 482. This definition does not appear anywhere in the Wikipedia entry for *welfare queen*. Rather, the first sentence of the Wikipedia entry for *welfare queen* states that "[it] is a pejorative phrase used in the United States to refer to people, usually women, who are accused of collecting excessive welfare

payments through fraud or manipulation."[22] This is significant because, as another Wikipedia entry explains, the first sentence of any Wikipedia entry for a term that is capable of definition "should give a concise definition" of that term.[23]

For *welfare queen*, the first sentence of the Wikipedia entry makes clear that criminal "fraud" is not essential to the definition; legal "manipulation" is sufficient. As Petitioners demonstrate, the distinction between criminal fraud and legal manipulation of the system would be dispositive in this case. *See* Reply BOM at 12-13. An accusation of criminal fraud is actionable defamation, but an accusation that someone legally manipulates the system is not. *See Falk & Mayfield LLP v. Molzan*, 974 S.W.2d 821, 824 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (accusing one "of legally manipulating the civil justice system" is "absolutely protected" by the U.S. and Texas constitutional protections for free speech).

Moving beyond the definitional first sentence, the Wikipedia entry for *welfare queen* veers into a sociological discussion of the term. Like the Majority, the Wikipedia entry is particularly focused on Linda Taylor, a Chicago resident to whom presidential candidate Ronald Reagan referred during a January 1976

[22] Wikipedia: Welfare queen.
[23] Lead section TT first sentence content, WIKIPEDIA, https://en.wikipedia.org/wiki/Wikipedia:Lead_section_TT_first_sentence_content#cite_ref-5 (last visited May 30, 2016) ("If its subject is amenable to definition, then the first sentence should give a concise definition[.]").

campaign speech.[24] But this apparent origin story is unlikely to be of any relevance in determining how the average reader of *D Magazine* understands the term *welfare queen*. In 1976, the average reader of *D Magazine* was in elementary school[25] and probably not living in Chicago.

To be sure, Linda Taylor was a criminal. But her 1970's-era crimes do little to inform the common usage of the term *welfare queen* in today's popular discourse, much less the usage of the term within the *D Magazine* article. As *Slate* reported in an article cited in the Wikipedia entry and in the Majority's opinion, Taylor was no ordinary fraudster.[26] She was a con artist and a sociopath, responsible for extensive theft, human trafficking, and possible kidnappings and murder.[27] In detailing Taylor's crimes, *Slate*'s article demonstrates that she is not a representative example of a "welfare queen," as that term has been used in modern political debates over welfare reform and other issues. Indeed, that is the point of the *Slate* article. But the Majority's discussion overlooks this point, incorrectly imbuing the term *welfare queen* with the inimitable criminality of Linda Taylor.

In short, the Majority did not just use the wrong source, it *misused* the wrong source. The Wikipedia entry on which the Majority relied simply does not support

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[24] Wikipedia: Welfare queen.

[25] D Magazine demographics, http://about.dmagazine.com/media-kits/d-magazine/demographics/ (last visited May 30, 2016) (average reader is 49 years old).

[26] Josh Levin, *The Welfare Queen*, Slate (Dec. 19, 2013) (http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.htm).

[27] *Id.*

the definition of *welfare queen* that the Majority articulated.

CONCLUSION

For the reasons discussed in this amicus brief and in the briefs of Petitioners, the Majority's reliance on Wikipedia as the linchpin of its "gist" analysis was erroneous for several reasons. Some of the Majority's missteps could have been avoided if the parties had been given an opportunity to address the issue at the trial court or in the court of appeals. But even with the assistance of briefing and additional evidence from the parties, the court of appeals still might have struggled. Moreover, other courts considering the appropriateness of Wikipedia evidence—in various types of cases and for various issues—would benefit from the guidance of this Court on this issue.

Accordingly, amicus curiae Texas Press Association, Texas Association of Broadcasters, Reporters Committee for Freedom of the Press, and Freedom of Information Foundation of Texas respectfully request that the Court grant the Petition for Review and reverse the trial court's order denying Defendants' motion to dismiss.

Respectfully submitted,

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/s/ *Marc A. Fuller*

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CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief includes 4,157 words (exclusive of words that do not have to be included for word-count purposes) and was produced in 14-point font with 12-point footnotes.

/s/ *Marc A. Fuller*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief was electronically served on the following counsel of record in accordance with the applicable procedural rules this 2nd day of June, 2016 as follows:

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EXHIBIT 1

1947 *Ann. Reg. 1946* 205 Mr Lewis [*sc.* a trade-union leader]..refused even to discuss his demands until he had been granted a 'welfare fund' financed by a royalty on coal.

2012 K. BALES *Disposable People* vii. 241 Producers had to agree..to turn over 1 percent of the carpet wholesale price to a welfare fund for child workers.

welfare hotel *n. U.S.* a hotel in which people receiving welfare benefits are housed until more permanent accommodation can be found for them.

1915 *Edwardsville (*Illinois*) Intelligencer* 20 Mar. 1/7 Dr. M. W. Harrison..found the man in the Welfare Hotel near the lead works.

1977 *N.Y. Rev. Bks.* 15 Sept. 3/1 One welfare hotel in New York, the scene of repeated mayhem, is next to the local police station.

2012 *USA Today* (Nexis) 21 Aug. 3 A, As shelters fill to capacity, welfare hotels and other homeless living units have opened.

welfare manager *n.* orig. *U.S.* (now chiefly *hist.*) a person employed in a factory, etc., to oversee the welfare of workers.

1904 *N.Y. Times* 4 June (Mag.) 1/6 The provisions for the rational comfort of employes which the social secretary or welfare manager has instituted and personally supervises.

1959 E. H. PHELPS BROWN *Growth Brit. Industr. Relations* ii. 77 By 1906 the duties of the welfare manager were generally considered to be: engaging new workers, suggesting improvements in factory conditions, organizing clubs, and editing the magazine.

2006 A. E. KERSTEN *Labor's Home Front* vi. 183 Harvester's new welfare manager..made an intensive investigation of industrial disease and accidents and devised a benefits-plan proposal.

welfare queen *n. colloq. derogatory* (orig. and chiefly *U.S.*) a woman perceived to be living in luxury on benefits obtained by exploiting or defrauding the welfare system.

Although often associated with Ronald Reagan and his unsuccessful 1976 presidential campaign, there is no evidence that he used the term.

1974 *Chicago Tribune* 12 Oct. 3/1 Linda Taylor, the 47-year-old 'welfare queen', was being held in jail.

1991 *Nation* 16 Dec. 770/2 Ronald Reagan's fables of welfare queens in Cadillacs.

2011 K. GUSTAFSON *Cheating Welfare* ii. 36 The figure of the welfare queen offered contradictory stereotypes about the rationality of poor women.

welfare roll *n. N. Amer.* a list of those entitled to or receiving welfare benefits from the state.