Per Curiam

SUPREME COURT OF THE UNITED STATES

DAVID THOMPSON, ET AL., *v.* HEATHER HEBDON, EXECUTIVE DIRECTOR OF THE ALASKA PUBLIC OFFICES COMMISSION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19–122. Decided November 25, 2019

PER CURIAM.

Alaska law limits the amount an individual can contribute to a candidate for political office, or to an election-oriented group other than a political party, to $500 per year. Alaska Stat. §15.13.070(b)(1) (2018). Petitioners Aaron Downing and Jim Crawford are Alaska residents. In 2015, they contributed the maximum amounts permitted under Alaska law to candidates or groups of their choice, but wanted to contribute more. They sued members of the Alaska Public Offices Commission, contending that Alaska's individual-to-candidate and individual-to-group contribution limits violate the First Amendment.

The District Court upheld the contribution limits and the Ninth Circuit agreed. 909 F. 3d 1027 (2018); *Thompson* v. *Dauphinais*, 217 F. Supp. 3d 1023 (Alaska 2016). Applying Circuit precedent, the Ninth Circuit analyzed whether the contribution limits furthered a "sufficiently important state interest" and were "closely drawn" to that end. 909 F. 3d, at 1034 (quoting *Montana Right to Life Assn.* v. *Eddleman*, 343 F. 3d 1085, 1092 (2003); internal quotation marks omitted). The court recognized that our decisions in *Citizens United* v. *Federal Election Comm'n* and *McCutcheon* v. *Federal Election Comm'n* narrow "the type of state interest that justifies a First Amendment intrusion on political contributions" to combating "actual quid pro quo corruption or its appearance." 909 F. 3d, at 1034 (citing *McCutcheon* v. *Fed-*

eral Election Comm'n, 572 U. S. 185, 206–207 (2014); *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 359–360 (2010)). The court below explained that under its precedent in this area "the quantum of evidence necessary to justify a legitimate state interest is low: the perceived threat must be merely more than 'mere conjecture' and 'not . . . illusory.'" 909 F. 3d, at 1034 (quoting *Eddleman*, 343 F. 3d, at 1092; some internal quotation marks omitted). The court acknowledged that "*McCutcheon* and *Citizens United* created some doubt as to the continuing vitality of [this] standard," but noted that the Ninth Circuit had recently reaffirmed it. 909 F. 3d, at 1034, n. 2.

After surveying the State's evidence, the court concluded that the individual-to-candidate contribution limit "'focuses narrowly on the state's interest,' 'leaves the contributor free to affiliate with a candidate,' and 'allows the candidate to amass sufficient resources to wage an effective campaign,'" and thus survives First Amendment scrutiny. *Id.*, at 1036 (quoting *Eddleman*, 343 F. 3d, at 1092; alterations omitted); see also 909 F. 3d, at 1036–1039. The court also found the individual-to-group contribution limit valid as a tool for preventing circumvention of the individual-to-candidate limit. See *id.*, at 1039–1040.

In reaching those conclusions, the Ninth Circuit declined to apply our precedent in *Randall* v. *Sorrell*, 548 U. S. 230 (2006), the last time we considered a non-aggregate contribution limit. See 909 F. 3d, at 1037, n. 5. In *Randall*, we invalidated a Vermont law that limited individual contributions on a per-election basis to: $400 to a candidate for Governor, Lieutenant Governor, or other statewide office; $300 to a candidate for state senator; and $200 to a candidate for state representative. JUSTICE BREYER's opinion for the plurality observed that "contribution limits that are too low can . . . harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability."

548 U. S., at 248–249; see also *id.*, at 264–265 (Kennedy, J., concurring in judgment) (agreeing that Vermont's contribution limits violated the First Amendment); *id.*, at 265–273 (THOMAS, J., joined by Scalia, J., concurring in judgment) (agreeing that Vermont's contribution limits violated the First Amendment while arguing that such limits should be subject to strict scrutiny). A contribution limit that is too low can therefore "prove an obstacle to the very electoral fairness it seeks to promote." *Id.*, at 249 (plurality opinion).*

In *Randall*, we identified several "danger signs" about Vermont's law that warranted closer review. *Ibid.* Alaska's limit on campaign contributions shares some of those characteristics. First, Alaska's $500 individual-to-candidate contribution limit is "substantially lower than . . . the limits we have previously upheld." *Id.*, at 253. The lowest campaign contribution limit this Court has upheld remains the limit of $1,075 per two-year election cycle for candidates for Missouri state auditor in 1998. *Id.*, at 251 (citing *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377 (2000)). That limit translates to over $1,600 in today's dollars.

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*The court below declined to consider *Randall* "because no opinion commanded a majority of the Court," 909 F. 3d, at 1037, n. 5, instead relying on its own precedent predating *Randall* by three years. Courts of Appeals from ten Circuits have, however, correctly looked to *Randall* in reviewing campaign finance restrictions. See, *e.g.*, *National Org. for Marriage* v. *McKee*, 649 F. 3d 34, 60–61 (CA1 2011); *Ognibene* v. *Parkes*, 671 F. 3d 174, 192 (CA2 2012); *Preston* v. *Leake*, 660 F. 3d 726, 739–740 (CA4 2011); *Zimmerman* v. *Austin*, 881 F. 3d 378, 387 (CA5 2018); *McNeilly* v. *Land*, 684 F. 3d 611, 617–620 (CA6 2012); *Illinois Liberty PAC* v. *Madigan*, 904 F. 3d 463, 469–470 (CA7 2018); *Minnesota Citizens Concerned for Life, Inc.* v. *Swanson*, 640 F. 3d 304, 319, n. 9 (CA8 2011), rev'd in part on other grounds, 692 F. 3d 864 (2012) (en banc); *Independence Inst.* v. *Williams*, 812 F. 3d 787, 791 (CA10 2016); *Alabama Democratic Conference* v. *Attorney Gen. of Ala.*, 838 F. 3d 1057, 1069–1070 (CA11 2016); *Holmes* v. *Federal Election Comm'n*, 875 F. 3d 1153, 1165 (CADC 2017).

Alaska permits contributions up to 18 months prior to the general election and thus allows a maximum contribution of $1,000 over a comparable two-year period. Alaska Stat. §15.13.074(c)(1). Accordingly, Alaska's limit is less than two-thirds of the contribution limit we upheld in *Shrink*.

Second, Alaska's individual-to-candidate contribution limit is "substantially lower than . . . comparable limits in other States." *Randall*, 548 U. S., at 253. Most state contribution limits apply on a per-election basis, with primary and general elections counting as separate elections. Because an individual can donate the maximum amount in both the primary and general election cycles, the per-election contribution limit is comparable to Alaska's annual limit and 18-month campaign period, which functionally allow contributions in both the election year and the year preceding it. Only five other States have any individual-to-candidate contribution limit of $500 or less per election: Colorado, Connecticut, Kansas, Maine, and Montana. Colo. Const., Art. XXVIII, §3(1)(b); 8 Colo. Code Regs. 1505–6, Rule 10.17.1(b)(2) (2019); Conn. Gen. Stat. §9–611(a)(5) (2017); Kan. Stat. Ann. §25–4153(a)(2) (2018 Cum. Supp.); Me. Rev. Stat. Ann., Tit. 21–A, §1015(1) (2018 Cum. Supp.); Mont. Code Ann. §§13–37–216(1)(a)(ii), (iii) (2017). Moreover, Alaska's $500 contribution limit applies uniformly to all offices, including Governor and Lieutenant Governor. Alaska Stat. §15.13.070(b)(1). But Colorado, Connecticut, Kansas, Maine, and Montana all have limits above $500 for candidates for Governor and Lieutenant Governor, making Alaska's law the most restrictive in the country in this regard. Colo. Const., Art. XXVIII, §3(1)(a)(I); 8 Colo. Code Regs. 1505–6, Rule 10.17.1(b)(1)(A); Conn. Gen. Stat. §§9–611(a)(1), (2); Kan. Stat. Ann. §25–4153(a)(1); Me. Rev. Stat. Ann., Tit. 21–A, §1015(1); Mont. Code Ann. §13–37–216(1)(a)(i).

Third, Alaska's contribution limit is not adjusted for inflation. We observed in *Randall* that Vermont's "failure to

index limits means that limits which are already suspiciously low" will "almost inevitably become too low over time." 548 U. S., at 261. The failure to index "imposes the burden of preventing the decline upon incumbent legislators who may not diligently police the need for changes in limit levels to ensure the adequate financing of electoral challenges." *Ibid.* So too here. In fact, Alaska's $500 contribution limit is the same as it was 23 years ago, in 1996. 1996 Alaska Sess. Laws ch. 48, §10(b)(1).

In *Randall*, we noted that the State had failed to provide "any special justification that might warrant a contribution limit so low." 548 U. S., at 261. The parties dispute whether there are pertinent special justifications here.

In light of all the foregoing, the petition for certiorari is granted, the judgment of the Court of Appeals is vacated, and the case is remanded for that court to revisit whether Alaska's contribution limits are consistent with our First Amendment precedents.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

DAVID THOMPSON, ET AL., *v.* HEATHER HEBDON, EXECUTIVE DIRECTOR OF THE ALASKA PUBLIC OFFICES COMMISSION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19–122. Decided November 25, 2019

Statement of JUSTICE GINSBURG.

I do not oppose a remand to take account of *Randall* v. *Sorrell*, 548 U. S. 230 (2006). I note, however, that Alaska's law does not exhibit certain features found troublesome in Vermont's law. For example, unlike in Vermont, political parties in Alaska are subject to much more lenient contribution limits than individual donors. Alaska Stat. §15.13.070(d) (2018); see *Randall*, 548 U. S., at 256–259. Moreover, Alaska has the second smallest legislature in the country and derives approximately 90 percent of its revenues from one economic sector—the oil and gas industry. As the District Court suggested, these characteristics make Alaska "highly, if not uniquely, vulnerable to corruption in politics and government." *Thompson* v. *Dauphinais*, 217 F. Supp. 3d 1023, 1029 (Alaska 2016). "[S]pecial justification" of this order may warrant Alaska's low individual contribution limit. See *Randall*, 548 U. S., at 261.

SUPREME COURT OF THE UNITED STATES

KENNETH R. ISOM *v.* ARKANSAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 18–9517. Decided November 25, 2019

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Petitioner Kenneth Isom was thrice charged with burglary and theft offenses by Drew County, Arkansas, prosecutor Sam Pope. Isom was acquitted on two of those occasions, but was convicted on the third. After Isom was granted parole three years into his sentence, Prosecutor Pope met with the Office of the Governor to express his concern and to inquire whether Isom could somehow be returned to prison, but to no avail.

Seven years later, a jury convicted Isom of capital murder in a case presided over by Pope himself—now a Drew County judge. Isom sought postconviction relief, which was denied, also by Judge Pope. The Arkansas Supreme Court later granted Isom leave to file a writ of *coram nobis* to challenge the State's suppression of critical evidence under *Brady* v. *Maryland*, 373 U. S. 83 (1963). That suppressed evidence pertained to, among other things, a suggestive photo identification and the inconsistent testimony of a state witness.

Again, Judge Pope presided. Isom filed a recusal motion, alleging that Pope's prior efforts to prosecute Isom (and to rescind his parole) created, at the very least, an appearance of bias requiring recusal under the Due Process Clause. Judge Pope denied the motion. After crediting testimony that supported his original photo-identification ruling, and after limiting discovery relevant to the inconsistent-

testimony issue, Judge Pope also denied *coram nobis* relief.

The Arkansas Supreme Court affirmed. 2018 Ark. 368, 563 S. W. 3d 533. Justices Hart and Wood dissented, concluding that there was at least an appearance of bias that required recusal. Justice Hart reasoned that the unusual *coram nobis* posture presented an especially compelling case for recusal, because Judge Pope was in the "untenable position" of evaluating his own prior findings about whether the photo identification should have been suppressed. *Id.*, at 550. Justice Hart also considered it significant that, after a state witness appeared to become confused during cross-examination, Judge Pope rehabilitated the witness and ordered a recess, after which the witness testified that his prior statements were mistaken. *Id.,* at 551. Justice Wood, in turn, found it difficult to afford Judge Pope the usual deference extended to the close, discretionary decisions of circuit court judges, given his "extensive history" with Isom. *Id.*, at 552.

Our precedents require recusal where the "probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Rippo* v. *Baker*, 580 U. S. ___, ___ (2017) (*per curiam*) (slip op., at 2) (quoting *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975)). The operative inquiry is objective: whether, "considering all the circumstances alleged," *Rippo*, 580 U. S., at ___ (slip op., at 3), "the average judge in [the same] position is likely to be neutral, or whether there is an unconstitutional potential for bias," *Williams* v. *Pennsylvania*, 579 U. S. ___, ___ (2016) (slip op., at 6) (internal quotation marks omitted). This Court has "not set forth a specific test" or required recusal as a matter of course when a judge has had prior involvement with a defendant in his role as a prosecutor. Cf. *id.*, at ___ (slip op., at 5). Nor has it found that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of . . . prior proceedings" constitute a basis for recusal in the ordinary case. *Liteky* v. *United States*, 510

U. S. 540, 555 (1994). Indeed, "it may be necessary and prudent to permit judges to preside over successive causes involving the same parties or issues." *Id.*, at 562 (Kennedy, J., concurring).

At the same time, the Court has acknowledged that "[a]llowing a decisionmaker to review and evaluate his own prior decisions raises problems," *Withrow*, 421 U. S., at 58, n. 25, perhaps because of the risk that a judge might "'be so psychologically wedded to his or her previous position'" that he or she will "'consciously or unconsciously avoid the appearance of having erred or changed position.'" *Williams*, 579 U. S., at ___ (slip op., at 7) (quoting *Withrow*, 421 U. S., at 57). And it has warned that a judge's "personal knowledge and impression" of a case may sometimes outweigh the parties' arguments. *In re Murchison*, 349 U. S. 133, 138 (1955).

The allegations of bias presented to the Arkansas Supreme Court are concerning. But they are complicated by the fact that Isom did not raise the issue of Judge Pope's prior involvement in his prosecutions, either at his capital trial or for nearly 15 years thereafter during his postconviction proceedings. Although the Arkansas Supreme Court did not base its recusal decision on this point, it is a consideration in evaluating whether there was an "unconstitutional potential for bias" in this case sufficient to warrant the grant of certiorari. *Williams*, 579 U. S., at ___ (slip op., at 6) (internal quotation marks omitted). I therefore do not dissent from the denial of certiorari. I write, however, to encourage vigilance about the risk of bias that may arise when trial judges peculiarly familiar with a party sit in judgment of themselves. The Due Process Clause's guarantee of a neutral decisionmaker will mean little if this form of partiality is overlooked or underestimated.

SUPREME COURT OF THE UNITED STATES

RONALD W. PAUL *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 17–8830. Decided November 25, 2019

The petition for a writ of certiorari is denied.

Statement of JUSTICE KAVANAUGH respecting the denial of certiorari.

I agree with the denial of certiorari because this case ultimately raises the same statutory interpretation issue that the Court resolved last Term in *Gundy* v. *United States*, 588 U. S. ___ (2019). I write separately because JUSTICE GORSUCH's scholarly analysis of the Constitution's nondelegation doctrine in his *Gundy* dissent may warrant further consideration in future cases. JUSTICE GORSUCH's opinion built on views expressed by then-Justice Rehnquist some 40 years ago in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607, 685–686 (1980) (Rehnquist, J., concurring in judgment). In that case, Justice Rehnquist opined that major national policy decisions must be made by Congress and the President in the legislative process, not delegated by Congress to the Executive Branch.

In the wake of Justice Rehnquist's opinion, the Court has not adopted a nondelegation principle for major questions. But the Court has applied a closely related statutory interpretation doctrine: In order for an executive or independent agency to exercise regulatory authority over a major policy question of great economic and political importance, Congress must either: (i) expressly and specifically decide the major policy question itself and delegate to the agency the authority to regulate and enforce; or (ii) expressly and specifically delegate to the agency the authority both to decide

the major policy question and to regulate and enforce. See, *e.g., Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302 (2014); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120 (2000); *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218 (1994); Breyer, Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986).

The opinions of Justice Rehnquist and JUSTICE GORSUCH would not allow that second category—congressional delegations to agencies of authority to decide major policy questions—even if Congress expressly and specifically delegates that authority. Under their approach, Congress could delegate to agencies the authority to decide less-major or fill-up-the-details decisions.

Like Justice Rehnquist's opinion 40 years ago, JUSTICE GORSUCH's thoughtful *Gundy* opinion raised important points that may warrant further consideration in future cases.

SUPREME COURT OF THE UNITED STATES

NATIONAL REVIEW, INC.
18–1451 *v.*
MICHAEL E. MANN

COMPETITIVE ENTERPRISE INSTITUTE, ET AL.
18–1477 *v.*
MICHAEL E. MANN

ON PETITIONS FOR WRITS OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 18–1451 and 18–1477. Decided November 25, 2019

The motions of Southeastern Legal Foundation for leave to file briefs as *amicus curiae* are granted. The petitions for writs of certiorari are denied.

JUSTICE ALITO, dissenting from the denial of certiorari.

The petition in this case presents questions that go to the very heart of the constitutional guarantee of freedom of speech and freedom of the press: the protection afforded to journalists and others who use harsh language in criticizing opposing advocacy on one of the most important public issues of the day. If the Court is serious about protecting freedom of expression, we should grant review.

I

Penn State professor Michael Mann is internationally known for his academic work and advocacy on the contentious subject of climate change. As part of this work, Mann and two colleagues produced what has been dubbed the "hockey stick" graph, which depicts a slight dip in temperatures between the years 1050 and 1900, followed by a sharp rise in temperature over the last century. Because thermometer readings for most of this period are not available, Mann attempted to ascertain temperatures for the

earlier years based on other data such as growth rings of ancient trees and corals, ice cores from glaciers, and cave sediment cores. The hockey stick graph has been prominently cited as proof that human activity has led to global warming. Particularly after e-mails from the University of East Anglia's Climate Research Unit were made public, the quality of Mann's work was called into question in some quarters.

Columnists Rand Simberg and Mark Steyn criticized Mann, the hockey stick graph, and an investigation conducted by Penn State into allegations of wrongdoing by Mann. Simberg's and Steyn's comments, which appeared in blogs hosted by the Competitive Enterprise Institute and National Review Online, employed pungent language, accusing Mann of, among other things, "misconduct," "wrongdoing," and the "manipulation" and "tortur[e]" of data. App. to Pet. for Cert. in No. 18–1451, pp. 94a, 98a (App.).

Mann responded by filing a defamation suit in the District of Columbia's Superior Court. Petitioners moved for dismissal, relying in part on the District's anti-SLAPP statute, D. C. Code §16–5502(b) (2012), which requires dismissal of a defamation claim if it is based on speech made "in furtherance of the right of advocacy on issues of public interest" and the plaintiff cannot show that the claim is likely to succeed on the merits. The Superior Court denied the motion, and the D. C. Court of Appeals affirmed. 150 A. 3d 1213, 1247, 1249 (2016). The petition now before us presents two questions: (1) whether a court or jury must determine if a factual connotation is "provably false" and (2) whether the First Amendment permits defamation liability for expressing a subjective opinion about a matter of scientific or political controversy. Both questions merit our review.

II

The first question is important and has divided the lower

courts. See 1 R. Smolla, Law of Defamation §§6.61, 6.62, 6.63 (2d ed. 2019); 1 R. Sack, Defamation §4:3.7 (5th ed. 2019). Federal courts have held that "[w]hether a communication is actionable because it contained a provably false statement of fact is a question of law." *Chambers* v. *Travelers Cos.*, 668 F. 3d 559, 564 (CA8 2012); see also, *e.g.*, *Madison* v. *Frazier*, 539 F. 3d 646, 654 (CA7 2008); *Gray* v. *St. Martin's Press*, *Inc.*, 221 F. 3d 243, 248 (CA1 2000); *Moldea* v. *New York Times Co.*, 15 F. 3d 1137, 1142 (CADC 1994). Some state courts, on the other hand, have held that "it is for the jury to determine whether an ordinary reader would have understood [expression] as a factual assertion." *Good Govt. Group of Seal Beach*, *Inc.* v. *Superior Ct. of Los Angeles Cty.*, 22 Cal. 3d 672, 682, 586 P. 2d 572, 576 (1978); see also, *e.g.*, *Aldoupolis* v. *Globe Newspaper Co.*, 398 Mass. 731, 734, 500 N. E. 2d 794, 797 (2014); *Caron* v. *Bangor Publishing Co.*, 470 A. 2d 782, 784 (Me. 1984). In this case, it appears that the D. C. Court of Appeals has joined the latter camp, leaving it for a jury to decide whether it can be proved as a matter of fact that Mann improperly treated the data in question. See App. 29a, 52a–53a, 65a, n. 46.

Respondent does not deny the existence of a conflict in the decisions of the lower courts. See Brief in Opposition at 30. Nor does he dispute the importance of the question. Instead, he argues that the D. C. Court of Appeals followed the federal rule,* but the D. C. Court of Appeals' opinion repeatedly stated otherwise. See App. 29a (asking what "a jury properly instructed on the applicable legal and constitutional standards could reasonably find"); *id.*, at 52a–53a (repeatedly describing what a jury "could find"); *id.*, at 65a,

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*Respondent's lead argument in opposition to certiorari is that we lack jurisdiction under 28 U. S. C. §1257, see Brief in Opposition 27–30, but petitioners have a strong argument that we have jurisdiction under *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469 (1975). If the Court has doubts on this score, the question of jurisdiction can be considered together with the merits.

n. 46 (stating that in a case like this one, involving what it characterized as a claim of "'ordinary libel,'" "the standard is 'whether a reasonable jury *could find* that the challenged statements were false'" (emphasis in original)). This last statement is especially revealing because it appears in a footnote that was revised in response to petitioners' petition for rehearing, see *id.,* at 1a, n. *, which disputed the correctness of the standard that asks what a jury *could* find, see *id*., at 65a, n. 46. We therefore have before us a decision on an indisputably important question of constitutional law on which there is an acknowledged split in the decisions of the lower courts. A question of this nature deserves a place on our docket.

This question—whether the courts or juries should decide whether an allegedly defamatory statement can be shown to be untrue—is delicate and sensitive and has serious implications for the right to freedom of expression. And two factors make the question especially important in the present case.

First, the question that the jury will apparently be asked to decide—whether petitioners' assertions about Mann's use of scientific data can be shown to be factually false—is highly technical. Whether an academic's use and presentation of data falls within the range deemed reasonable by those in the field is not an easy matter for lay jurors to assess.

Second, the controversial nature of the whole subject of climate change exacerbates the risk that the jurors' determination will be colored by their preconceptions on the matter. When allegedly defamatory speech concerns a political or social issue that arouses intense feelings, selecting an impartial jury presents special difficulties. And when, as is often the case, allegedly defamatory speech is disseminated nationally, a plaintiff may be able to bring suit in whichever jurisdiction seems likely to have the highest percentage of jurors who are sympathetic to the plaintiff's point of view.

See *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 781 (1984) (regular circulation of magazines in forum State sufficient to support jurisdiction in defamation action). For these reasons, the first question presented in the petition calls out for review.

III

The second question may be even more important. The constitutional guarantee of freedom of expression serves many purposes, but its most important role is protection of robust and uninhibited debate on important political and social issues. See *Snyder* v. *Phelps*, 562 U. S. 443, 451–452 (2011); *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). If citizens cannot speak freely and without fear about the most important issues of the day, real self-government is not possible. See *Garrison* v. *Louisiana*, 379 U. S. 64, 74–75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government"). To ensure that our democracy is preserved and is permitted to flourish, this Court must closely scrutinize any restrictions on the statements that can be made on important public policy issues. Otherwise, such restrictions can easily be used to silence the expression of unpopular views.

At issue in this case is the line between, on the one hand, a pungently phrased expression of opinion regarding one of the most hotly debated issues of the day and, on the other, a statement that is worded as an expression of opinion but actually asserts a fact that can be proven in court to be false. *Milkovich* v. *Lorain Journal Co.*, 497 U. S. 1 (1990). Under *Milkovich*, statements in the first category are protected by the First Amendment, but those in the latter are not. *Id.*, at 19–20, 22. And *Milkovich* provided examples of statements that fall into each category. As explained by the Court, a defamation claim could be asserted based on the statement: "In my opinion John Jones is a liar." *Id.*, at 18.

This statement, the Court noted, implied knowledge that Jones had made particular factual statements that could be shown to be false. *Ibid*. As for a statement that could not provide the basis for a valid defamation claim, the Court gave this example: "In my opinion Mayor Jones shows his abysmal ignorance by accepting the teachings of Marx and Lenin." *Id*., at 20.

When an allegedly defamatory statement is couched as an expression of opinion on the quality of a work of scholarship relating to an issue of public concern, on which side of the *Milkovich* line does it fall? This is a very important question that would greatly benefit from clarification by this Court. Although *Milkovich* asserted that its hypothetical statement about the teachings of Marx and Lenin would not be actionable, it did not explain precisely why this was so. Was it the lack of specificity or the nature of statements about economic theories or all scholarly theories or perhaps something else?

In recent years, the Court has made a point of vigilantly enforcing the Free Speech Clause even when the speech at issue made no great contribution to public debate. For example, last Term, in *Iancu* v. *Brunetti*, 588 U. S. ___ (2019), we upheld the right of a manufacturer of jeans to register the trademark "F-U-C-T." Two years before, in *Matal* v. *Tam*, 582 U. S. ___ (2017), we held that a rock group called "The Slants" had the right to register its name.

In earlier cases, the Court went even further. In *United States* v. *Alvarez*, 567 U. S. 709 (2012), the Court held that the First Amendment protected a man's false claim that he had won the Congressional Medal of Honor. In *Snyder*, the successful party had viciously denigrated a deceased soldier outside a church during his funeral. 562 U. S., at 448–449. In *United States* v. *Stevens*, 559 U. S. 460, 466 (2010), the First Amendment claimant had sold videos of dog fights.

If the speech in all these cases had been held to be unprotected, our Nation's system of self-government would not

have been seriously threatened. But as I noted in *Brunetti*, 588 U. S., at ___ (slip op., at 1) (concurring opinion), the protection of even speech as trivial as a naughty trademark for jeans can serve an important purpose: It can demonstrate that this Court is deadly serious about protecting freedom of speech. Our decisions protecting the speech at issue in that case and the others just noted can serve as a promise that we will be vigilant when the freedom of speech and the press are most seriously implicated, that is, in cases involving disfavored speech on important political or social issues.

This is just such a case. Climate change has staked a place at the very center of this Nation's public discourse. Politicians, journalists, academics, and ordinary Americans discuss and debate various aspects of climate change daily—its causes, extent, urgency, consequences, and the appropriate policies for addressing it. The core purpose of the constitutional protection of freedom of expression is to ensure that all opinions on such issues have a chance to be heard and considered.

I do not suggest that speech that touches on an important and controversial issue is always immune from challenge under state defamation law, and I express no opinion on whether the speech at issue in this case is or is not entitled to First Amendment protection. But the standard to be applied in a case like this is immensely important. Political debate frequently involves claims and counterclaims about the validity of academic studies, and today it is something of an understatement to say that our public discourse is often "uninhibited, robust, and wide-open." *New York Times Co.*, 376 U. S., at 270.

I recognize that the decision now before us is interlocutory and that the case may be reviewed later if the ultimate outcome below is adverse to petitioners. But requiring a free speech claimant to undergo a trial after a ruling that may be constitutionally flawed is no small burden. See *Cox*

Broadcasting Corp. v. *Cohn*, 420 U. S. 469, 485 (1975) (observing that "there should be no trial at all" if the statute at issue offended the First Amendment). A journalist who prevails after trial in a defamation case will still have been required to shoulder all the burdens of difficult litigation and may be faced with hefty attorney's fees. Those prospects may deter the uninhibited expression of views that would contribute to healthy public debate.

For these reasons, I would grant the petition in this case, and I respectfully dissent from the denial of certiorari.