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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SHAHID BUTTAR FOR CONGRESS
 15 COMMITTEE, et al.,

16 Plaintiffs,

17 vs.

18 HEARST COMMUNICATIONS, INC.,
 19 Defendant.

20 Case No.: 3:21-cv-05566-EMC

21 **MOTION FOR LEAVE TO FILE BRIEF**
 22 **OF *AMICUS CURIAE* THE CENTER**
 23 **FOR SECURITY, RACE AND**
 24 **RELIGION AT RUTGERS LAW**
 25 **SCHOOL**

26 Hearing Date: December 15, 2022
 27 Time: 1:30 p.m.
 28 Place: via videoconference

19 The Center for Security, Race and Religion (“CSRR”) at Rutgers Law School, through
 20 undersigned counsel, respectfully moves for leave to submit a brief as *amicus curiae* in
 21 opposition to Defendant Hearst Communications, Inc.’s Motion to Dismiss and Special Motion
 22 to Strike Plaintiffs’ First Amended Complaint (*see* Dkt. No. 47). A copy of the proposed brief is
 23 attached as Exhibit A to this motion and includes a statement of CSRR’s interest in this matter.
 24 CSRR respectfully submits that the proposed *amicus curiae* brief will assist the Court in
 25 addressing the merits of Plaintiffs’ claims and Defendant’s pending motion to dismiss.

26 **INTEREST OF *AMICUS CURIAE***

27 The Center for Security, Race and Rights (“CSRR”) at Rutgers Law School engages in
 28 research, education, and advocacy on law and policy that adversely impact the civil and human

1 rights of America’s diverse Muslim, Arab, and South Asian communities through an interfaith,
 2 cross-racial, and interdisciplinary approach. CSRR’s work encompasses three themes: the
 3 contemporary and historical intersection of race and religion in the United States;
 4 criminalization of Muslim identity through United States and global national security laws and
 5 policies; and transnational rights and security arising from relations between the United States
 6 and Muslim majority countries.¹

8 ARGUMENT

9 **A. Standard for Filing an *Amicus* Brief in the Northern District of California**

10 “There are no strict prerequisites that must be established prior to qualifying for amicus
 11 status; an individual seeking to appear as amicus must merely make a showing that his
 12 participation is useful or otherwise desirable to the court.” *California ex rel. Becerra v. U.S.*
 13 *Dep’t of Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019). “District courts frequently
 14 welcome amicus briefs from non-parties concerning legal issues that have potential ramifications
 15 beyond the parties directly involved or if the amicus has unique information or perspective that
 16 can help the court beyond the help that the lawyers for the parties are able to provide.” *NGV*
 17 *Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)
 18 (citations and internal quotation marks omitted). The “classic role of amicus curiae is to assist a
 19 court in a case of public interest by supplementing the efforts of counsel” *California ex rel.*
 20 *Becerra*, 381 F. Supp. 3d at 1163–64. “[W]hether to allow Amici to file a brief is solely within
 21 the Court’s discretion, and generally courts have exercised great liberality in permitting amicus
 22 briefs.” *Id.* at 1164; *see also Levin Richmond Terminal Corp. v. City of Richmond*, 482 F. Supp.
 23 3d 944, 951 n.1 (N.D. Cal. 2020).

24 **B. The Proposed *Amicus* Brief Offers a Unique Perspective Not Available from the** 25 **Parties and Will Aid the Court in Evaluating the Public Interest Impact at Stake**

28 ¹ *See Our Mission*, THE CENTER FOR SECURITY, RACE AND RELIGION, RUTGERS LAW SCHOOL,
 available at <https://csrr.rutgers.edu/about/our-mission/>.

1 The proposed amicus brief will assist the Court in evaluating the merits of Plaintiffs’
2 claims and Defendant’s pending motion to dismiss. *Winter v. Natural Res. Def. Council, Inc.*,
3 555 U.S. 7, 20 (2008). “In exercising their sound discretion, courts of equity should pay
4 particular regard for the public consequences in employing the extraordinary remedy of
5 injunction.” *Id.* at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)
6 (quotation marks omitted)). CSRR is well-positioned to provide its unique perspective to assist
7 the Court in evaluating the merits of Plaintiffs’ claims and Defendant’s motion to dismiss,
8 including the public interest in a pluralistic and equitable nation that provides equal opportunity
9 for minorities to run for political office without facing fallacious and racist attacks
10 disproportionately targeted at them.

11
12 No party would be prejudiced by the filing of this amicus brief. This brief is being filed in
13 time for all parties to respond.

14 **CONCLUSION**

15 For the foregoing reasons, the motion for leave to file the proposed amicus brief should
16 be granted. The proposed amicus brief is attached as Exhibit A. Pursuant to Civil L.R. 7-2(c), a
17 copy of the proposed order pertaining to this motion is attached.

18 DATED: October 27, 2022

19 Respectfully submitted,

20 **THE CENTER FOR SECURITY, RACE AND
21 RELIGION—RUTGERS LAW SCHOOL**

22 By: /s/ Sahar F. Aziz

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CIVIL LOCAL RULE 5-1(i)(3) ATTESTATION

I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories hereto.

Dated: October 27, 2022

By: /s/ Sahar F. Aziz
SAHAR F. AZIZ

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1 **INTEREST OF AMICUS CURIAE¹**

2 The Center for Security, Race and Rights (“CSRR”) at Rutgers Law School engages in
3 research, education, and advocacy on law and policy that adversely impact the civil and human
4 rights of America’s diverse Muslim, Arab, and South Asian communities through an interfaith,
5 cross-racial, and interdisciplinary approach. CSRR’s work encompasses three themes: the
6 contemporary and historical intersection of race and religion in the United States;
7 criminalization of Muslim identity through United States and global national security laws and
8 policies; and transnational rights and security arising from relations between the United States
9 and Muslim majority countries.²

10
11 **SUMMARY OF ARGUMENT**

12 Islamophobia is pervasive and normalized in American society. Presumptions that
13 Muslims are terrorists and anti-American have infected politics over the past twenty years.³ One
14 of the most pernicious Islamophobic stereotypes is that Muslim immigrant men are misogynistic
15 and regularly engage in sexual misconduct. Such anti-Muslim stereotypes are taken as true by
16 the public in large part because the media has perpetuated these stereotypes without
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21 ¹ Counsel for Plaintiffs consented to this brief via email. Counsel for Defendant indicated via
22 email that they “do not consent to [the filing of the brief], but we do not plan to object to its
23 filing.”

24 ² See *Our Mission*, THE CENTER FOR SECURITY, RACE AND RELIGION, RUTGERS LAW SCHOOL,
25 available at <https://csrr.rutgers.edu/about/our-mission/>.

26 ³ Sahar F. Aziz, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* (2022);
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Registry: The Precursor to Internment?, 2017 *B.Y.U. L. REV.* 779 (2018).

1 consequence or accountability. The resulting Islamophobia causes tangible harm to Muslims’
 2 livelihoods, safety, and civil rights.⁴

3 A perverse feedback loop fuels Islamophobia. Politicians and pundits propagate anger
 4 and fear of Muslims, which the media often covers as clickbait.⁵ As media publishes more anti-
 5 Muslim stories, negative public perceptions of Muslims solidify. Among the harms arising from
 6 biased journalism is defamation of high-profile Muslims. Muslims running for elected office are
 7 frequently targeted in Islamophobic smear campaigns, making the cost of political participation
 8 prohibitively high.⁶ In a study examining the experiences of Muslim candidates who ran in the
 9 2018 midterm elections, researchers found “a social media narrative of manufactured outrage
 10
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 13 ⁴ See, e.g., *Nationwide Anti-Mosque Activity*, AM. CIVIL LIBERTIES UNION (last updated Jan.
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 23 https://www.usccr.gov/files/pubs/docs/ARAB_MUSLIM_9-30-14.pdf.

19 ⁵ Savvas Zannettou, et al., *The Web of False Information: Rumors, Fake News, Hoaxes,*
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21 ⁶ Delaram Takyar, *When Interest Doesn’t Turn into Action: Discrimination, Group*
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 32 *carson-threatening-note/6644525002/*.

1 that was disproportionately Islamophobic, xenophobic, racist, and misogynistic.”⁷ The
2 disproportionately Islamophobic vitriol is likely to deter many Muslims from running for
3 elected office, lest their professional and personal reputations be ruined.

4 While the media is certainly free to publish criticism of political candidates, it corrupts
5 the political process and harms individuals’ reputations when news outlets publish false
6 information that exploits and perpetuates racist stereotypes against minority candidates. Absent
7 judicial accountability of media misconduct, the destructive Islamophobia feedback loop will
8 continue, and American Muslims will remain at the margins of their country’s political system.

9 The public interest is served when the United States is a pluralistic and equitable nation
10 that provides equal opportunity for minorities to run for political office without facing fallacious
11 and racist attacks disproportionately targeted at them.

12
13 **ARGUMENT**

14
15 **A. Islamophobia, including stereotypes that Muslim immigrant men are misogynistic
16 and engage in sexual misconduct, is pervasive and normalized in American society**

17 *Islamophobia* is the dread, hatred, and hostility towards Islam and Muslims perpetrated
18 by a series of closed views that imply and attribute negative and derogatory stereotypes and
19 beliefs to Muslims.⁸ Professor John Tehranian concisely summarizes the phenomena as:

22
23 ⁷ Craig Timberg, *Twitter Fueled Attacks on Muslim Candidates in 2018, Study Finds*, WASH.
24 POST (Nov. 4, 2019), available at https://www.washingtonpost.com/business/economy/twitter-fueled-attacks-on-muslim-candidates-in-2018-study-finds/2019/11/04/be0bf432-ff51-11e9-9518-1e76abc088b6_story.html; Lawrence Pintak, et al., *#Islamophobia: Stoking Fear and Prejudice in the 2018 Midterms*. SOCIAL SCI. RESEARCH COUNCIL (2019), available at <https://www.ssrc.org/publications/islamophobia-stoking-fear-and-prejudice-in-the-2018-midterms/>.

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27 ⁸ Gordon Conway, *Islamophobia: A Challenge for Us All*, RUNNYMEDE TRUST (1997).

1 “[w]hen virtually every single piece of mainstream media that features Middle-Easterners
2 inextricably involves themes of terrorism, violence, misogyny and/or religious extremism, one
3 must conclude the presence of a systematic failure to portray Middle-Eastern peoples with
4 accuracy.”⁹

5
6 Numerous polls have shown a troublingly high rate of anti-Muslim bias in the United
7 States. A 2006 Pew poll found that 40 to 60 percent of respondents in the U.S. and several
8 Western European countries chose “violent” as a characteristic they associated with Muslims.¹⁰
9 A 2006 USA Today/Gallup poll reported that 39 percent of Americans “felt at least some
10 prejudice against Muslims” and 39 percent supported requiring Muslims, including U.S.
11 citizens, to carry special identification.¹¹ The same poll found that 51 percent of Americans
12 believed Muslims are not loyal to the United States and a quarter of Americans did not want a
13 Muslim as a neighbor.¹² A 2010 poll by *Time* magazine found that 28 percent of voters reported
14 that Muslims should not be eligible to serve on the U.S. Supreme Court, and nearly one-third
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22 ⁹ John Tehranian, *The Last Minstrel Show?: Racial Profiling, the War on Terrorism and the*
Mass Media, 41 CONN. L. REV. 781, 814 (2009).

23 ¹⁰ *Europe’s Muslims More Moderate: The Great Divide: How Westerners and Muslims View*
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25 [view-each-other](https://www.pewresearch.org/global/2006/06/22/the-great-divide-how-westerners-and-muslims-view-each-other).

26 ¹¹ Lydia Saad, *Anti-Muslim Sentiments Fairly Commonplace*, GALLUP (Aug. 10, 2006), available
at <http://media.gallup.com/worldpoll/pdf/antimuslimsentiment81006.pdf>.

27 ¹² *Id.*

1 believed Muslims should be barred from running for president.¹³ More recently, a 2019 Gallup
2 poll found that 33 percent of Americans would not vote for a Muslim presidential candidate.¹⁴

3 Such insidious anti-Muslim biases arise, in part, from a consistent dosage of
4 Islamophobic stereotypes in media and film. For instance, one analysis of over 900 American
5 films found that most portrayed Arabs and Muslims as “stock villains, blonde-lusting sheiks,
6 maidens, or Egyptian or Palestinian terrorists”¹⁵ rather than as everyday people with family and
7 friends.¹⁶

8
9 A widespread Islamophobic stereotype is that Muslim immigrant men are misogynistic
10 and regularly engage in sexual misconduct.¹⁷ Islam is negatively portrayed as a threatening
11 religion that encourages men to oppress women.¹⁸ The media unquestioningly depicts Muslim
12 men as distinctly sexist in nature, which adversely shapes public attitudes toward Muslims in
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20 ¹³ Amaney Jamal and Liali Albana, *Demographics, Political Participation, and Representation*,
21 In Juliane Hammer and Omid Safi (Eds.), *THE CAMBRIDGE COMPANION TO AMERICAN ISLAM*
(2013).

22 ¹⁴ Justin McCarthy, *Less Than Half in U.S. Would Vote for a Socialist for President*, GALLUP
(May 9, 2019), available at [https://news.gallup.com/poll/254120/less-half-vote-socialist-
23 president.aspx](https://news.gallup.com/poll/254120/less-half-vote-socialist-president.aspx).

24 ¹⁵ Tung Yin, *Jack Bauer Syndrome: Hollywood’s Depiction of National Security Law*, 17 S. CAL.
INTERDISCIPLINARY L.J. 279 (2008).

25 ¹⁶ Sahar F. Aziz, *Sticks and Stones, the Words That Hurt: Entrenched Stereotypes Eight Years*
26 *After 9/11*, 13 N.Y.C. L. REV. 33, 39 (2009).

27 ¹⁷ See Sabrina Alimahomed-Wilson, *When the FBI Knocks: Racialized State Surveillance of*
Muslims, 45 CRITICAL SOCIOLOGY 871 (2018).

28 ¹⁸ Edward Said, *Islam through Western Eyes*, 26 THE NATION 14 (1980).

1 their daily lives.¹⁹ Even if not guilty of terrorism, Muslim men are still framed as threatening:
2 anti-American, misogynistic, and sexually deviant.²⁰

3 The mainstreaming of these invidious stereotypes causes the public to take as true false
4 publications about a Muslim male’s alleged misconduct toward women.

5 **B. Islamophobic stereotypes perpetuated in the media harm Muslims’ civil rights**

6 Islamophobia intensifies through a perverse feedback loop—the more anger toward and
7 fear of Muslims that politicians and groups propagate, the more media coverage they receive.

8 The negative media stories then increase suspicions that Muslims are aggressive and illiberal.²¹
9 Media coverage shapes public perception.²² Beyond describing the *who, what, where, when* of a
10 story, the news are powerful systems of meaning that shape how societal reality is constructed
11 and communicated to the public.²³

12 After more than a decade of steady escalation, anti-Muslim media coverage reached an
13 all-time high in 2015, according to the Media Tenor report “Coverage of Islam.”²⁴ Specifically,
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17 ¹⁹ See generally Rochelle Terman, *Islamophobia and Media Portrayals of Muslim Women: A*
18 *Computational Text Analysis of U.S. News Coverage*, 61 INT’L STUDIES QUARTERLY 489 (2017);
19 Rochelle Terman, *The News Media Offer Slanted Coverage of Muslim Countries’ Treatment of*
20 *Women*, WASH. POST (May 5, 2017), available at
<https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/05/the-news-media-offer-slanted-coverage-of-muslim-countries-treatment-of-women/>.

21 ²⁰ Evelyn Asultany, *Regulating Sympathy for the Muslim Man*, ARABS AND MUSLIMS IN THE
22 MEDIA: RACE AND REPRESENTATION AFTER 9/11 128 (2012); Muniba Saleem, et al., *Exposure to*
23 *Muslims in Media and Support for Public Policies Harming Muslims*, 46 COMMC’N RESEARCH
24 841 (2017).

25 ²¹ Saleem, et al., *supra* note 20.

26 ²² *Social Communication and The Mass Policy Agenda*, In Michael Bruce MacKuen and Steven
27 Lane Coombs (Eds.), MORE THAN NEWS: MEDIA POWER IN PUBLIC AFFAIRS 19 (1981).

28 ²³ Hajar Yazdiha, *All the Muslims Fit to Print: Racial Frames as Mechanisms of Muslim*
Ethnoracial Formation in the New York Times from 1992 to 2010, 6 SOCIOLOGY OF RACE AND
ETHNICITY 501, 513 (2020).

²⁴ *Coverage of Islam*, MEDIA TENOR (2015).

1 the report found (1) in television media coverage of religious protagonists, over 80 percent
 2 covered Islam in a negative light; (2) in the United States, the United Kingdom, and Germany,
 3 nine out of ten articles about Islam were negative; (3) coverage of Muslim protagonists focused
 4 on the Islamic State and other “Islamist” terrorist networks (e.g., Al-Qaeda, Boko Haram,
 5 Taliban, al-Shabaab); (4) the increased coverage of mainstream Muslims tended to be negative
 6 (more than 50 percent of reports); and (5) the vast majority of stories on Islam or Muslims
 7 focused on war and conflict.²⁵

9 To put media bias into perspective, a study released in 2015 by 416 Labs, a Toronto-
 10 based consulting firm, found that the *New York Times* portrayed Islam and Muslims more
 11 negatively than alcohol, cancer, and cocaine, among other benchmarked words.²⁶ News
 12 coverage of terrorism lacked balance, resulting in the propagation of stereotypes that Muslims
 13 are suspect, and Islam is incompatible with American values.²⁷

15 Research shows that exposure to negative representations of Muslims in the media not
 16 only contributes to negative attitudes towards Muslims, but also causes Americans to support
 17 policies that harm Muslims internationally and domestically.²⁸ Newspaper coverage of Muslim
 18 women routinely emphasize women’s rights violations and gender inequality, constructing a
 19 frame of Muslim men as sexist and oppressive in nature.²⁹ Moreover, media outlets frequently

22 ²⁵ *Id.*

23 ²⁶ *Are Muslims Collectively Responsible?*, 416 LABS (Nov. 2015).

24 ²⁷ See Evelyn Alsultany, *Arabs and Muslims in the Media after 9/11: Representational Strategies for a “Postrace” Era*, 65 JOHNS HOPKINS UNIV. PRESS 161–69 (March 2013).

25 ²⁸ Muniba Saleem, *Spreading Islamophobia: Consequences of Negative Media Representations*, INSTITUTE FOR SOCIAL POLICY & UNDERSTANDING (2017).

26 ²⁹ Terman, *supra* note 18 Rochelle Terman, *Islamophobia and Media Portrayals of Muslim Women: A Computational Text Analysis of U.S. News Coverage*, 61 INT’L STUDIES QUARTERLY 489 (2017)

1 portray Muslims abroad as violent, aggressive, and misogynistic. Indeed, one scholar found
 2 “[s]tories about women in the Muslim world are usually centered about one particular issue—
 3 namely, gender inequality.”³⁰ This one-sided media coverage consequently “shap[es] attitudes
 4 toward Muslim minorities in the West because media consumers generally do not differentiate
 5 between Muslims at home and Muslims abroad.”³¹
 6

7 In this environment, the public is primed to believe Islamophobic stereotypes—
 8 including that Muslim men are misogynistic—without looking at the specific facts of the case or
 9 inquiring into the credibility of the witnesses. This enables media to publish attack pieces
 10 against high profile Muslims without rigorous fact checking. Nor do media outlets fear their
 11 reputations will be harmed because it is almost taken as true that an immigrant Muslim man
 12 with a foreign name would be misogynistic or engage in sexual misconduct.
 13

14 For example, U.S. media coverage of the 9/11 events was dominated by messages of
 15 fear and anger originating from press releases of fringe anti-Muslim organizations rather than
 16 mainstream civil society groups with more moderate messages.³² Similarly, in the late 2000s,
 17 when an Islamic community center in New York City was being considered for construction,
 18 individuals who paid more attention to the anti-Muslim press coverage were more likely to
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21 ³⁰ Rochelle Terman, *The News Media Offer Slanted Coverage of Muslim Countries’ Treatment of*
 22 *Women*, WASH. POST (May 5, 2017), available at
 23 [https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/05/the-news-media-offer-](https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/05/the-news-media-offer-slanted-coverage-of-muslim-countries-treatment-of-women/)
[slanted-coverage-of-muslim-countries-treatment-of-women/](https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/05/the-news-media-offer-slanted-coverage-of-muslim-countries-treatment-of-women/).

24 ³¹ Terman, *supra* note 19, at 490; see also *Social Communication and The Mass Policy Agenda*,
 25 In Michael Bruce MacKuen and Steven Lane Coombs (Eds.), MORE THAN NEWS: MEDIA POWER
 IN PUBLIC AFFAIRS 19 (1981).

26 ³² Christopher Bail, *The Fringe Effect: Civil Society Organizations and the Evolution of Media*
 27 *Discourse about Islam Since the September 11th Attacks*, 77 AM. SOCIOLOGICAL REV. 855
 (2012).

1 believe that Islam is a religion of violence and that Muslims should not have the same rights as
2 other religious groups.³³

3 Such exposure contributes to stereotypical beliefs by strengthening mental linkages
4 between social groups and biased attributes.³⁴ Once these mental connections are established,
5 they can be activated by subsequent exposure to stereotypical media cues, thereby solidifying
6 racial or ethnic prejudice.³⁵ In this way, media coverage can highlight and shape a story related
7 to Muslims and Islam that portrays women as victims of violence and sexism brought on by a
8 culture of angry and misogynist men.³⁶ Muslim men pay the price in their individual lives
9 through presumptions of guilt when accused of misogyny, even when the evidence is
10 uncorroborated.
11

12 **C. Media corrupts the political process when it publishes false information that**
13 **buttresses racist stereotypes against minority candidates**
14

15 While the media should be free to criticize the policy positions of all candidates, it
16 corrupts the political process when it publishes false information that exploits and perpetuates
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20 ³³ Christine Ogan, et al., *The Rise of Anti-Muslim Prejudice: Media and Islamophobia in Europe and the United States*, 76 INT’L COMM’N GAZETTE 27, 42 (2014).

21 ³⁴ Florian Arendt and Temple Northup, *Effects of Long-Term Exposure to News Stereotypes on Implicit and Explicit Attitudes*, 9 INT’L J. COMM’N 732 (2015).

22 ³⁵ Anita Atwell Seate and Dana Mastro, *Exposure to Immigration in the News: The Impact of Group-Level Emotions on Intergroup Behavior*, 44 COMM’N RESEARCH 817 (2017); Jörg Matthes and Desirée Schmuck, *The Effects of Anti-Immigrant Right-Wing Populist Ads on Implicit and Explicit Attitudes: A Moderated Mediation Model*, 44 COMM’N RESEARCH 556 (2017); David Schieferdecker and Hartmut Wessler, *Bridging Segregation via Media Exposure? Ingroup Identification, Outgroup Distance, and Low Direct Contact Reduce Outgroup Appearance in Media Repertoires*, 67 J. COMM’N 993 (2017).

26 ³⁶ Todd H. Green, *THE FEAR OF ISLAM: AN INTRODUCTION TO ISLAMOPHOBIA IN THE WEST* 240 (2015).
27

1 racist stereotypes against minority candidates.³⁷ When readers are primed to believe Muslim
 2 men are misogynistic, published false allegations of sexual misconduct are presumed to be true.
 3 This makes fact checking and including the candidate’s response even more crucial. Moreover,
 4 “[w]hen Muslims feel that the media are biased against them, they are more likely to feel lower
 5 trust in government, to feel lower identification with their national communities, and to feel a
 6 greater affiliation to an imagined global Muslim community.”³⁸
 7

8 The American political system is based on the principal of equal opportunity for all to
 9 participate in the process, up to and including running for elected office. When media publish
 10 false and racist stories about candidates belonging to a community whose members are already
 11 perceived as dangerous outsiders, it not only harms the candidates’ reputation but also
 12 contributes to the exclusion of that minority group from the political process. In the context of
 13 defamation, a victim’s right to recovery for defamation trumps the defamer’s First Amendment
 14 interests because when it comes to defamatory falsehoods, “the truth rarely catches up with a
 15 lie” so the “opportunity for rebuttal seldom suffices to undo harm.” *United States v. Alvarez*,
 16 617 F.3d 1198, 1211 (9th Cir. 2010), *aff’d*, 567 U.S. 709 (2012) (quoting *Gertz v. Robert*
 17 *Welch, Inc.*, 418 U.S. 323, 344 n.9 (1974)). Media stories that repeat false claims without
 18 sufficient inquiry into their veracity or accuracy do so with a reckless disregard for what
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 22 ³⁷ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (“The need to avoid self-censorship by
 23 the news media is, however, not the only societal value at issue. If it were, this Court would have
 24 embraced long ago the view that publishers and broadcasters enjoy an unconditional and
 25 indefeasible immunity from liability for defamation.”); *Nevada State J. Pub. Co. v. Henderson*,
 26 294 F. 60, 63 (9th Cir. 1923) (“Neither the newspaper nor the citizen may with impunity falsely
 27 charge the candidate or the public officer with specific acts of criminality or shameful
 28 misconduct.”).

³⁸ Erik Bleich and Maurits van der Veen, COVERING MUSLIMS: AMERICAN NEWSPAPERS IN
 COMPARATIVE PERSPECTIVE 7 (2022).

1 viewers or readers would interpret as defamatory. See *Khawar v. Globe Int’l, Inc.*, 19 Cal. 4th
 2 254, 276, 965 P.2d 696, 709 (Cal. 1998), *as modified* (Dec. 22, 1998) (citing *Harte–Hanks*
 3 *Comm’ns v. Connaughton*, 491 U.S. 657, 682 (1989) (“Although failure to investigate will not
 4 alone support a finding of actual malice, . . . the purposeful avoidance of the truth is in a
 5 different category.” (citations omitted)).

6
 7 In a media environment where increased consumption translates into increased profits,
 8 the primary goal of news may not be accurate reporting. Instead, editors may focus on coverage
 9 more likely to draw in and keep audiences for longer periods of time.³⁹ This occurs through
 10 overrepresentation of Muslims as terrorists, or highlighting interracial, interethnic, or interfaith
 11 conflict.⁴⁰ “If the goal is to maximize an audience (and therefore ad revenue) already facing a
 12 glut of down-the-middle serious news, then the trick is to hype and promote any kind of row to
 13 get a huge influx of partisan readers,” says James Ball in his 2017 book on fake news.⁴¹ “If a
 14 story is going to go unchecked . . . why not make it up entirely and reduce costs even further?”⁴²

15
 16 In the case of Muslims, candidates are unfairly disadvantaged because false and
 17 defamatory media coverage is rarely questioned in a society where anti-Muslim bias is
 18 prevalent. That is, Muslims seeking to run for elected office do not have access to a fair playing
 19 field when the media perpetuate Islamophobia through fallacious stories.⁴³ Furthermore, the
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 22 ³⁹ Travis L. Dixon and Daniel Linz, *Race and the Misrepresentation of Victimization on Local*
Television News, 27 COMMC’N RESEARCH 547 (2000).

23 ⁴⁰ Travis L. Dixon and Charlotte L. Williams, *The Changing Misrepresentation of Race and*
Crime on Network and Cable News, 65 J. COMMC’N 24, 34 (2015).

24 ⁴¹ James Ball, POST-TRUTH: HOW BULLSHIT CONQUERED THE WORLD 11 (2017).

25 ⁴² *Id.*

26 ⁴³ R. Kelly Garrett, Erik C. Nisbet, and Emily K. Lynch, *Undermining the Corrective Effects of*
Media-Based Political Fact Checking? The Role of Contextual Cues and Naïve Theory, 63 J.
 27 COMMC’N 617, 620 (2013) (“Naïve theories which imply that a group, whether it is defined by

1 harm is not only individual for that particular candidate, but collective. Even when voters do *not*
2 condone these stereotypes, they may unintentionally and without their awareness rely on
3 stereotypes when forming judgments of political candidates.⁴⁴

4 At best, the long-term result is severe under-representation of citizens from America’s
5 third largest faith group. At worst, the result is the exclusion of Muslims from elected office.⁴⁵
6 Free speech laws are intended to encourage robust public debate based on facts, not false
7 information perpetuating Islamophobic stereotypes.
8

9 **CONCLUSION**

10 For the reasons set forth above, the undersigned respectfully urge the Court to reject
11 Defendant’s motion to dismiss.

12 DATED: October 27, 2022

Respectfully submitted,

13
14 **THE CENTER FOR SECURITY, RACE AND
RELIGION—RUTGERS LAW SCHOOL**

15 By: /s/ Sahar F. Aziz

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20

21 religion, race, ideology, or something else, threatens the dominant social order can be
22 particularly powerful.”).

23 ⁴⁴ Adam J. Berinsky and Tali Mendelberg, *The Indirect Effects of Discredited Stereotypes in*
24 *Judgments of Jewish Leaders*, 49 AM. J. POLITICAL SCI. 845 (2005); Nayda Terkildsen, *When*
25 *White Voters Evaluate Black Candidates: The Processing Implications of Candidate Skin Color,*
26 *Prejudice, and Self-Monitoring*, 37 AM. J. POLITICAL SCI. 1032–53 (1993); Nicholas A.
27 Valentino, Vincent L. Hutchings and Ismail K. White, *Cues That Matter: How Political Ads*
28 *Prime Racial Attitudes During Campaigns*, 96 AM. POLITICAL SCI. REV. 75 (2002).

⁴⁵ Michael Lipka, *Muslims and Islam: Key Findings in the U.S. and Around the World*, PEW
RESEARCH CTR. (2015), available at <http://www.pewresearch.org/fact-tank/2015/12/07/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world>.

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4 **CIVIL LOCAL RULE 5-1(i)(3) ATTESTATION**

5 I hereby attest that concurrence in the filing of this document has been obtained from
6 each of the other signatories hereto.

7 Dated: October 27, 2022

By: /s/ Sahar F. Aziz

8 SAHAR F. AZIZ
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 SHAHID BUTTAR FOR CONGRESS
COMMITTEE, et al.,

11 Plaintiffs,

12 vs.

13 HEARST COMMUNICATIONS, INC.,

14 Defendant.

) Case No.: 3:21-cv-05566-EMC
) _____
)

) **[PROPOSED] ORDER GRANTING**
) **MOTION FOR LEAVE TO FILE BRIEF**
) **OF *AMICUS CURIAE* THE CENTER**
) **FOR SECURITY, RACE AND**
) **RELIGION AT RUTGERS LAW**
) **SCHOOL**

) Hearing Date: December 15, 2022
) Time: 1:30 p.m.
) Place: via videoconference

15
16
17
18 _____
19 On _____, 2022, the Court heard the Motion for Leave to File Brief of
20 *Amicus Curiae* The Center for Security, Race and Religion at Rutgers Law School (the
21 “Motion”). Having considered the papers submitted in support of and in opposition to the
22 Motion, the Motion is hereby **GRANTED**. The *amicus* brief attached to the Motion as Exhibit A
23 is hereby filed.
24

25 **IT IS SO ORDERED.**

26 Dated: _____

27 _____
THE HONORABLE EDWARD M. CHEN
28 UNITED STATES DISTRICT COURT JUDGE