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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

AIR WISCONSIN AIRLINES CORP. *v.* HOEPER

CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 12–315. Argued December 9, 2013—Decided January 27, 2014

Respondent Hoeper was a pilot for petitioner Air Wisconsin Airlines Corp. When Air Wisconsin stopped flying from Hoeper's home base on aircraft that he was certified to fly, he needed to become certified on a different type of aircraft to keep his job. After Hoeper failed in his first three attempts to gain certification, Air Wisconsin agreed to give him a fourth and final chance. But he performed poorly during a required training session in a simulator. Hoeper responded angrily to this failure—raising his voice, tossing his headset, using profanity, and accusing the instructor of "railroading the situation."

The instructor called an Air Wisconsin manager, who booked Hoeper on a flight from the test location to Hoeper's home in Denver. Several hours later, the manager discussed Hoeper's behavior with other airline officials. The officials discussed Hoeper's outburst, his impending termination, the history of assaults by disgruntled airline employees, and the chance that—because Hoeper was a Federal Flight Deck Officer (FFDO), permitted "to carry a firearm while engaged in providing air transportation," 49 U. S. C. §44921(f)(1)—he might be armed. At the end of the meeting, an airline executive made the decision to notify the Transportation Security Administration (TSA) of the situation. The manager who had received the initial report from Hoeper's instructor made the call to the TSA. During that call, according to the jury, he made two statements: first, that Hoeper "was an FFDO who may be armed" and that the airline was "concerned about his mental stability and the whereabouts of his firearm"; and second, that an "[u]nstable pilot in [the] FFDO program was terminated today." In response, the TSA removed Hoeper from his plane, searched him, and questioned him about the location of his gun. Hoeper eventually boarded a later flight to Denver, and Air Wisconsin fired him the next day.

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Hoeper sued for defamation in Colorado state court. Air Wisconsin moved for summary judgment and later for a directed verdict, relying on the Aviation and Transportation Security Act (ATSA), which grants airlines and their employees immunity against civil liability for reporting suspicious behavior, 49 U. S. C. §44941(a), except where such disclosure is "made with actual knowledge that the disclosure was false, inaccurate, or misleading" or "made with reckless disregard as to the truth or falsity of that disclosure," §44941(b). The trial court denied the motions and submitted the ATSA immunity question to the jury. The jury found for Hoeper on the defamation claim. The State Supreme Court affirmed. It held that the trial court erred in submitting the immunity question to the jury but that the error was harmless. Laboring under the assumption that even true statements do not qualify for ATSA immunity if they are made recklessly, the court held that Air Wisconsin was not entitled to immunity because its statements to the TSA were made with reckless disregard of their truth or falsity.

Held:

1. ATSA immunity may not be denied to materially true statements. Pp. 7–11.

(a) The ATSA immunity exception is patterned after the actual malice standard of *New York Times Co.* v. *Sullivan*, 376 U. S. 254, which requires material falsity. See, *e.g.*, *Masson* v. *New Yorker Magazine, Inc.*, 501 U. S. 496, 517. Because the material falsity requirement was settled when the ATSA was enacted, Congress presumably meant to incorporate it into the ATSA's immunity exception and did not mean to deny ATSA immunity to true statements made recklessly. This presumption is not rebutted by other indicia of statutory meaning. Section 44941(b)(1) requires falsity, and §44941(b)(2) simply extends the immunity exception from knowing falsehoods to reckless ones. Denying immunity for substantially true reports, on the theory that the person making the report had not yet gathered enough information to be certain of its truth, would defeat the purpose of ATSA immunity: to ensure that air carriers and their employees do not hesitate to provide the TSA with needed information. Pp. 7–10.

(b) Hoeper's arguments that the State Supreme Court's judgment should be affirmed notwithstanding its misapprehension of ATSA's immunity standard are unpersuasive. Hoeper claims that Air Wisconsin did not argue the truth of its statements in asserting immunity, but Air Wisconsin contended in the state court that ATSA's immunity exception incorporates the *New York Times* actual malice standard, which requires material falsity. And the State Supreme Court did not perform the requisite analysis of material falsity in

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finding the record sufficient to support the defamation verdict. A court's deferential review of jury findings cannot substitute for its own analysis of the record; the jury was instructed only to determine falsity, not materiality; and applying the material falsity standard to a defamation claim is quite different from applying it to ATSA immunity. Pp. 10–11.

2. Under the correct material falsity analysis, Air Wisconsin is entitled to immunity as a matter of law. Pp. 12–18.

(a) In the defamation context, a materially false statement is one that "'would have a different effect on the mind of the reader [or listener] from that which the . . . truth would have produced.'" *Masson*, 501 U. S., at 517. This standard suffices in the ATSA context as well, so long as the hypothetical reader or listener is a security officer. For purposes of ATSA immunity, a falsehood cannot be material absent a substantial likelihood that a reasonable security officer would consider it important in determining a response to the supposed threat. Pp. 12–13.

(b) Viewing the evidence in the light most favorable to Hoeper, the Court concludes as a matter of law that any falsehoods in Air Wisconsin's statement to the TSA were not material. First, the Court rejects Hoeper's argument that Air Wisconsin should have qualified its statement that Hoeper "was an FFDO who may be armed" by noting that it had no reason to think he actually was armed. To the extent that Air Wisconsin's statement could have been confusing, any such confusion is immaterial, as a reasonable TSA officer—having been told that Hoeper was an FFDO who was upset about losing his job—would have wanted to investigate whether he was armed. To demand more precise wording would vitiate the purpose of ATSA immunity: to encourage air carriers and their employees, often in fast-moving situations and with little time to fine-tune their diction, to provide the TSA immediately with information about potential threats. Second, Air Wisconsin's statement that Hoeper "was terminated today" was not materially false. While Hoeper had not actually been fired at the time of the statement, everyone involved knew that his firing was imminent. No reasonable TSA officer would care whether an angry, potentially armed airline employee had just been fired or merely knew he was about to meet that fate. Finally, although the details of Hoeper's behavior during the simulator session may be disputed, it would have been correct even under Hoeper's version of the facts for Air Wisconsin to report that Hoeper "blew up" during the test. From a reasonable security officer's perspective, there is no material difference between a statement that Hoeper had "blown up" in a professional setting and a statement that he was unstable. Air Wisconsin's related statement that it was "concerned

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about [Hoeper's] mental stability" is no more troubling. Many of the officials who attended the meeting at airline headquarters might not have framed their concerns in terms of "mental stability," but it would be inconsistent with the ATSA's text and purpose to expose Air Wisconsin to liability because the manager who placed the call to the TSA could have chosen a slightly better phrase to articulate the airline's concern. A statement that would otherwise qualify for ATSA immunity cannot lose that immunity because of some minor imprecision, so long as "the gist" of the statement is accurate, *Masson*, 501 U. S., at 517. Pp. 13–18.

Reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined, and in which SCALIA, THOMAS, and KAGAN, JJ., joined as to Parts I, II, and III–A. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which THOMAS and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 12–315

AIR WISCONSIN AIRLINES CORPORATION, PETITIONER *v.* WILLIAM L. HOEPER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[January 27, 2014]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

In 2001, Congress created the Transportation Security Administration (TSA) to assess and manage threats against air travel. Aviation and Transportation Security Act (ATSA), 49 U. S. C. §44901 *et seq*. To ensure that the TSA would be informed of potential threats, Congress gave airlines and their employees immunity against civil liability for reporting suspicious behavior. §44941(a). But this immunity does not attach to "any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading" or "any disclosure made with reckless disregard as to the truth or falsity of that disclosure." §44941(b).

The question before us is whether ATSA immunity may be denied under §44941(b) without a determination that a disclosure was materially false. We hold that it may not. Because the state courts made no such determination, and because any falsehood in the disclosure here would not have affected a reasonable security officer's assessment of the supposed threat, we reverse the judgment of the Colorado Supreme Court.

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