No. 15-666

In the Supreme Court of the United States

TAYLOR BELL,
Petitioner,
v.
ITAWAMBA COUNTY SCHOOL BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court Of Appeals for the Fifth Circuit

AMICI CURIAE BRIEF OF ERIK NIELSON, CHARIS E. KUBRIN, TRAVIS L. GOSA, MICHAEL RENDER (AKA "KILLER MIKE") AND OTHER SCHOLARS AND ARTISTS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Interests of *Amici Curiae*..... 1

Summary of Argument 3

Argument..... 6

A. "Fight the power": The politics of hip hop 6

B. "Put my Glock away, I got a stronger weapon that never runs out of ammunition": The non-literal rhetoric of hip hop..... 12

C. "They ain't scared of rap music—they scared of us": Rap's bad rap..... 19

Conclusion 23

TABLE OF AUTHORITIES

Cases

Brown v. *Entm't Merchants Ass'n*, 131 S. Ct. 2729 (2011) 4

United States v. *Playboy Entm't Group, Inc.*, 529 U.S. 803 (2000) 4

Songs & Films

8 MILE (Universal Pictures 2002) 14

BOB MARLEY, *I Shot the Sheriff, on* BURNIN' (Island Records 1973) 19

E-40, *It's On, On Sight, on* THE ELEMENT OF SURPRISE (Jive & Sick Wid It Records 1998) 15-16

EMINEM, *Kim, on* THE MARSHALL MATHERS LP (Interscope Records, Aftermath Entertainment & Shady Records 2000) 17

ERIC CLAPTON, *I Shot the Sheriff, on* 461 OCEAN BOULEVARD (RSO 1974) 19

GUCCI MANE, *Texas Margarita, on* BRICK FACTORY: VOLUME I (available for download from www.livemixtapes.com 2014) 15-16

ICE CUBE, *We Had to Tear this Mothafucka Up*, *on* THE PREDATOR (Priority Records & EMI 1992) . 18

JOEY BADA$$, *Aim High*, (single available for download on www.avscion.com 2015) 16-17

JOHNNY CASH, *Delia's Gone, on* THE SOUND OF JOHNNY CASH (Columbia Records 1962) 18-19

JOHNNY CASH, *Folsom Prison Blues, on* AT SAN QUENTIN (Columbia Records 1969) 18

KENDRICK LAMAR, *Let Me Be Me, on* KENDRICK LAMAR (Top Dawg Entertainment 2009) 16-17

KILLER MIKE, *Butane, on* R.A.P. MUSIC (Williams Street Records 2012)..... 17

LIL WAYNE, *Bill Gates, on* I AM NOT A HUMAN BEING (Young Money, Cash Money & Universal Motown 2010)..... 15-16

NAS, *Breathe, on* UNTITLED (Def Jam Recordings & Columbia Records 2008)..... 16-17

NAS, *Ether*, on STILLMATIC (Ill Will Records & Columbia Records 2001)..... 14

RICK ROSS, *Burn, on* HOOD BILLIONAIRE (Maybach Music Group, Def Jam Recordings & Slip-n-Slide Records 2014)..... 18

SCARFACE, *Diary of a Madman, on* MR. SCARFACE IS BACK (Rap-A-Lot Records 1991)..... 15-16

WAKA FLOCKA FLAME, *Where It At, on* DUFLOCKA RANT: HALF-TIME SHOW (available for download on www.livemixtapes.com 2013) 15-16

Miscellaneous

Mary E. Ballard, Doris G. Bazzini & Alan R. Dodson, *Genre of Music and Lyrical Content: Expectation Effects*, 160 J. GENETIC PSYCH. 476 (1999) ... 20-21

Amy Binder, *Constructing a Racial Rhetoric: Media Depictions of Harm in Heavy Metal and Rap Music*, 58 AM. SOC. REV. 753 (1993) 21

PETER BLECHA, TABOO TUNES: A HISTORY OF BANNED BANDS AND CENSORED SONGS (2014) 9

Galen V. Bodenhausen & Meryl Lichtenstein, *Social Stereotypes and Information-Processing Strategies: The Impact of Task Complexity*, 52 J. PERSON. & SOC. PSYCH. 871 (1987) 20

ADAM BRADLEY, BOOK OF RHYMES: THE POETICS OF HIP HOP (2009) 14-15

PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE (2010) 7

JEFF CHANG, CAN'T STOP, WON'T STOP: A HISTORY OF THE HIP HOP GENERATION (2005) 8

Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1 (2007) 15

Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSON. & SOC. PSYCH. 5 (1989) 20

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Christopher Emdin, *Affiliation and Alienation: Hip-Hop, Rap, and Urban Science Education*, 42 J. CURRICULUM STUD. 1 (2010) 11

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Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. APPLIED SOC. PSYCH. 705 (1999) 23

Henry Louis Gates Jr., *Foreword* to THE ANTHOLOGY OF RAP (Adam Bradley & Andrew DuBois eds., 2011) 13

Travis L. Gosa, *The Fifth Element: Knowledge*, *in* THE CAMBRIDGE COMPANION TO HIP-HOP (Justin A. Williams ed., 2015) 8

David L. Hamilton, *A Cognitive-Attributional Analysis of Stereotyping*, 12 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 53 (1979) 20

Mark Lamont Hill & Emery Petchauer, SCHOOLING HIP-HOP: EXPANDING HIP-HOP BASED EDUCATION ACROSS THE CURRICULUM (2013) 11

Hip Hop on Trial Debate (June 27, 2012), https://www.youtube.com/watch?v=r3-7Y0xG89Q (last visited December 12, 2015) 10

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JAY-Z, DECODED (2011) 10

James D. Johnson, Brad J. Bushman & John F. Dovidio, *Support for Harmful Treatment and Reduction of Empathy Toward Blacks: "Remnants" of Stereotype Activation Among Hurricane Katrina and "Lil' Kim,"* 44 J. EXPERIMENTAL SOC. PSYCH. 1506 (2008)..... 22

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CHERYL L. KEYES, RAP MUSIC AND STREET CONSCIOUSNESS (2002) 6

Bakari Kitwana & Elizabeth Méndez Berry, *It's Bigger Than Barack: Hip Hop Political Organizing, 2004-2013*, *in* THE HIP HOP & OBAMA READER (Travis L. Gosa & Erik Nielson eds., 2015)..... 11

Charis E. Kubrin, *Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music*, 52 SOC. PROB. 360 (2005) 15

Charis E. Kubrin & Erik Nielson, *Rap on Trial*, 4 RACE & JUST. 185 (2014) 9

Ziva Kunda & Steven J. Spencer, *When Do Stereotypes Come to Mind and When Do They Color Judgment? A Goal-Based Theoretical Framework for Stereotype Activation and Application*, 129 PSYCH. BULL. 522 (2003) 20

Theresa A. Martinez, *Popular Culture as Oppositional Culture: Rap as Resistance*, 40 SOC. PERSP. 265 (1997) 9

Matthias Mauch, Robert M. MacCallum, Mark Levy & Armand M. Leroi, *The Evolution of Popular Music: USA 1960-2010*, ROYAL SOCIETY OPEN SCIENCE 1 (2015), http://rsos.royalsocietypublishing.org/content/royopensci/2/5/150081.full.pdf 7

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Jo Piazza, *Tupac Song Selected for Vatican Playlist*, CNN (Dec. 4, 2009), http://edition.cnn.com/2009/SHOWBIZ/Music/12/04/tupacvatican.playlist/ 12

EMMETT G. PRICE III, HIP HOP CULTURE (2006) 7

EITHNE QUINN, NUTHIN' BUT A "G" THANG (2004) ... 13

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TRICIA ROSE, BLACK NOISE: RAP MUSIC AND BLACK CULTURE IN CONTEMPORARY AMERICA (1994) 9, 10

Laurie A. Rudman & Matthew R. Lee, *Implicit and Explicit Consequences of Exposure to Violent and Misogynous Rap Music*, 5 GROUP PROCESSES & INTERGROUP RELATIONS 133 (2002) 22

LESTER K. SPENCE, STARE IN THE DARKNESS: THE LIMITS OF HIP-HOP AND BLACK POLITICS (2011) 11

STEVE STOUTE, THE TANNING OF AMERICA: HOW HIP-HOP CREATED A CULTURE THAT REWROTE THE RULES OF THE NEW ECONOMY (2011) 7

INTERESTS OF *AMICI CURIAE*[1]

Erik Nielson is Assistant Professor of Liberal Arts at the University of Richmond. He has published peer-reviewed articles on African American music and poetry—with a particular emphasis on rap music—and is co-editor of *The Hip Hop & Obama Reader*. Nielson writes regularly on race, politics, and popular culture for national media outlets such as *The New York Times, The Washington Post, The Atlantic,* and *NPR*. He has served as an expert witness or consultant in criminal cases involving rap music as evidence.

Charis E. Kubrin is Professor of Criminology, Law & Society at the University of California, Irvine. She has written or edited five books and has published dozens of peer-reviewed articles, many of which focus on the intersection of music, culture, and social identity. Her writing has been featured in the *The New York Times, The Los Angeles Times, Forbes,* and *CNN*. She has served as an expert witness or consultant in criminal cases involving rap music as evidence. She recently gave a TED Talk entitled "The Threatening Nature of…Rap Music?"

Travis L. Gosa is Assistant Professor of Africana Studies at Cornell University, where his

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[1] As required by Rule 37.6, *Amici Curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one besides *Amici Curiae* or their counsel made a monetary contribution to preparation and submission of this brief. Counsel of record received timely notice of the intent to file this brief under Rule 37.2(a), and the parties have provided written consent for the filing of this brief.

research and teaching focus on hip hop culture, educational inequality, and African American youth. He serves on the advisory board of Cornell's Hip Hop Collection, the largest archive on early hip hop culture in the United States. His book, *School of Hard Knocks: Hip Hop and the Fight for Equal Education*, will be published in 2016. He is the co-editor of *The Hip Hop & Obama Reader*, which centers on contemporary politics, activism, and social change.

Michael Render (aka "Killer Mike") is a Grammy-winning rapper, activist, author, and public speaker. His recent album with rapper and producer El-P, *Run the Jewels 2*, was the most critically acclaimed record of the year in 2014. When he isn't recording or performing, he can be found in television studios or university lecture halls talking about a wide range of issues, particularly those related to race and social justice. He performs as Killer Mike—but for this brief, in particular, it probably is worth noting that he has never actually killed anyone.

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SUMMARY OF ARGUMENT

This Court should grant certiorari because the Fifth Circuit's decision effectively denies First Amendment protections to rap music, arguably the

most influential musical genre of the last 50 years. Using rap as his voice of protest, Taylor Bell recorded a song calling attention to serious problems facing students at his school.

In its ruling, the Fifth Circuit focused on the violent rhetoric in Bell's song. Although the lyrics cited in the ruling are commonplace in rap and reflect some of the genre's most basic conventions, the Fifth Circuit ruled that they were "threatening, harassing, and intimidating." As a result, the Government punished a young man for his art—and, more disturbing, for the musical genre by which he chose to express himself.

"Under our Constitution, 'esthetic and moral judgments about art and literature . . . are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority.'" *Brown* v. *Entm't Merchants Ass'n*, 131 S. Ct. 2729, 2733 (2011) (quoting *United States* v. *Playboy Entm't Group, Inc.*, 529 U.S. 803, 818 (2000)). Yet this did not apply to Taylor Bell.

In December 2010, several female students told Bell—then a high school senior with a nearly spotless disciplinary record—that two coaches at their school were engaging in inappropriate sexual behavior toward them and other female students. Convinced that any report of this misconduct to school officials would fall on deaf ears, Bell—an aspiring rap musician—wrote a song about the coaches' behavior during winter break and recorded it in a professional studio. He posted the song, *PSK da Truth*, to Facebook and YouTube.

In *PSK da Truth*, Bell calls out the coaches by name, at times using aggressive rhetoric to condemn their behavior. When school administrators confronted him about the song, Bell insisted—as he still does—that while the accusations about the coaches were true, the rhetoric directed at them was not intended to be threatening or taken literally. *PSK da Truth* was, according to Bell, just a song.

Following a lengthy decision-making process, Bell was suspended and sent to an "alternative school" by the school's Disciplinary Committee. A Committee member suggested that Bell's use of profanity in the song was the reason for his suspension: "Censor that stuff. Don't put all those bad words in it . . . The bad words ain't making it better."

In attempting to censor Bell's artistic expression, the school, and later the Fifth Circuit, essentially took aim at rap music, a sophisticated form of poetry that has served as an important vehicle for social commentary and political protest, particularly among young men and women of color. By taking Bell's song lyrics literally rather than as forms of artistic expression, both the school and the Fifth Circuit essentially delegitimized rap as an art form that is entitled to full protection under the Constitution.

But rap most certainly is art. Like all poets, rappers privilege figurative language and employ a full range of literary devices. They also invent new words, invert the meanings of others, and lace their lyrics with dense slang and coded references that outsiders frequently do not understand. What's more, rappers famously rely on exaggeration and

hyperbole as they craft the larger-than-life characters that have entertained fans for decades.

Bell's lyrics reflect these complex traditions. Told from the perspective of T-Bizzle—the fictional character created by Bell to narrate the song—*PSK da Truth* is intentionally provocative. But it draws on the conventions of mainstream rap, particularly the highly successful subgenre of "gangsta" rap.

As this brief discusses, the phrases deemed "threats" by the Fifth Circuit were, in actuality, well-worn rap lyrics borrowed—at times nearly verbatim—from some of music's most successful and acclaimed performers.

Reading these violent lyrics as a type of autobiography ignores rap's artistic conventions, thereby negating it as an art form, and perpetuates enduring stereotypes about the inherent criminality of young men of color, the primary producers of rap music. Studies establish that many people also harbor negative stereotypes about rap music that they do not have about other musical genres.

If our judicial system allows these stereotypes to go unchallenged, justice will continue to be elusive for those Americans most in need of a voice—a voice that rap music has given them.

ARGUMENT

A. "Fight the power": The politics of hip hop.

Rap music, defined as a "musical form that makes use of rhyme, rhythmic speech, and street vernacular, which is recited or loosely chanted over a musical soundtrack," is among the most influential

and commercially successful musical genres of the past several decades. CHERYL L. KEYES, RAP MUSIC AND STREET CONSCIOUSNESS 1 (2002).

Rap, a central component of hip hop culture, is responsible for more musical innovation than the British Invasion of the 1960s—led by The Beatles and The Rolling Stones—and the rise of rap is "the single most important event" in popular music during the past 50 years. Matthias Mauch, Robert M. MacCallum, Mark Levy & Armand M. Leroi, *The Evolution of Popular Music: USA 1960-2010*, ROYAL SOCIETY OPEN SCIENCE 1, 6-8 (2015), http://rsos.royalsocietypublishing.org/content/royopensci/2/5/150081.full.pdf.

Over its 40-year history, rap's influence has extended far beyond music. Since the 1980s, multinational corporations increasingly have incorporated rap into their marketing and advertising campaigns, and so today, companies like Apple, Duncan Hines, Hewlett Packard, and Procter & Gamble all incorporate rap and hip hop culture into their branding. STEVE STOUTE, THE TANNING OF AMERICA: HOW HIP-HOP CREATED A CULTURE THAT REWROTE THE RULES OF THE NEW ECONOMY 187-89 (2011). Hip hop's influence can also be found in fashion, seen in film, and heard in the everyday speech of younger generations. PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 124-25 (2010). In short, hip hop is everywhere.

But hip hop's cultural presence today is a far cry from its humble beginnings in the 1970s, when it emerged out of the South Bronx, an area of New York City that had become one of the nation's most extreme examples of urban decay. EMMETT G. PRICE

III, HIP HOP CULTURE 4-7 (2006). With thousands of burnt-out or abandoned buildings, the physical landscape mirrored the hopelessness faced by its residents, who were forced to deal with the combined effects of poverty, unemployment, gang violence, and isolation from mainstream America. JEFF CHANG, CAN'T STOP, WON'T STOP: A HISTORY OF THE HIP HOP GENERATION 10-19 (2005).

Hip hop—a cultural movement comprised of performance arts such as MCing ("rapping"), DJing ("spinning"), breakdancing ("b-boying"), and graffiti ("writing")—began as a response to these dire conditions. Pioneers like Afrika Bambaataa (once a gang leader himself) used spiritual and political consciousness ("knowledge of self") to develop hip hop as a tool for ending gang violence by providing an outlet that transformed the inherent competitiveness and territoriality of gang life into something artistic and productive. Dance competitions, rap battles, and other competitive *performances* replaced actual *fighting*, and rap in particular eventually became an alternative, legal source of income for blacks and Latinos otherwise cut off from labor market opportunities. Travis L. Gosa, *The Fifth Element: Knowledge*, *in* THE CAMBRIDGE COMPANION TO HIP-HOP 56, 58-61 (Justin A. Williams ed., 2015).

Rap also developed as a way to raise awareness about social problems by criticizing public figures who appeared uninterested in the plight of urban America's most vulnerable citizens. By the late 1980s, rappers took this social and political commentary to mainstream audiences, with groups like Public Enemy, Boogie Down Productions, and

Niggaz Wit Attitudes (N.W.A) launching powerful attacks against the establishment, addressing a wide range of social problems including racism, economic inequality, and police brutality.

As rap's influence grew, scholars began to acknowledge the genre's important political role in giving "voice to the tensions and contradictions in the public urban landscape." TRICIA ROSE, BLACK NOISE: RAP MUSIC AND BLACK CULTURE IN CONTEMPORARY AMERICA 22 (1994). For many, rap demonstrated a revival of the black nationalism and political progressivism of the late 1960s and early 1970s, causing scholars to recognize rap's "profound potential as a basis for a language of liberation." *Ibid* at 144. Today, even as much of rap has gone mainstream, it remains typical for scholars, journalists, and fans alike to acknowledge rap as "an expression of oppositional culture." Theresa A. Martinez, *Popular Culture as Oppositional Culture: Rap as Resistance*, 40 SOC. PERSP. 265, 268 (1997); Charis E. Kubrin & Erik Nielson, *Rap on Trial*, 4 RACE & JUST. 185, 189 (2014).

Predictably, challenging the status quo made rappers targets. The members of N.W.A, for example, found themselves and their record label targeted for intimidation by the FBI and local law enforcement agencies after the release of their protest song *Fuck tha Police* (which *Rolling Stone* named among the 500 greatest songs ever written), as did other artists who released anti-police tracks in the years that followed.

Even rappers who struck a less combative pose found themselves entangled with the law. In the late 1980s and early 1990s, artists like LL Cool

J, Too Short, and 2 Live Crew were arrested for performances that authorities deemed lewd or profane. *See* PETER BLECHA, TABOO TUNES: A HISTORY OF BANNED BANDS AND CENSORED SONGS 16-18 (2014); Travis L. Dixon & Daniel G. Linz, *Obscenity Law and Sexually Explicit Rap Music: Understanding the Effects of Sex, Attitudes, and Beliefs*, 25 J. APPLIED COMM. RES. 217, 219-20 (1997). Other rappers were denied opportunities to perform in public venues, often thanks to police pressure. ROSE, *supra*, at 132-35.

Today, although rap music has entered the mainstream, the suspicion, fear, and anger it provokes remain. Rap is vilified in the press by critics from a variety of perspectives, either as "fake" music or as a scourge to minority communities. *See*, *e.g.*, Hip Hop on Trial Debate (June 27, 2012), https://www.youtube.com/watch?v=r3-7Y0xG89Q (last visited December 12, 2015). Alongside this criticism comes continued scrutiny from law enforcement, including police task forces created for the express purpose of surveilling rappers. Erik Nielson, *"Here Come the Cops": Policing the Resistance in Rap Music*, 15 INT'L J. CULTURAL STUD. 349, 350 (2011).

In his memoir, *Decoded*, Jay-Z—one of the best-selling artists in history—recounts being following around New York City by the same "hip hop cop" for seven years and, at one point, being arrested for no reason other than so police could "paint the picture of me as a menace to society." JAY-Z, DECODED 162 (2011). Jay-Z explains why rappers, as opposed to artists in other genres, receive such treatment: "The difference is obvious, of course:

Rappers are young black men telling stories that the police, among others, don't want to hear." *Ibid*.

Despite the misperceptions that continue to result in the persecution of rap, many people have begun to see its profound capacity to improve lives. Educators use rap lyrics to develop critical thinking skills and foster a sense of civic responsibility. In the classroom, hip hop provides an accessible language for teaching about the social problems facing disadvantaged youth. The writing and analysis of rap lyrics—including those with violent themes—is used in peer mediation to preempt and decrease *actual* violence in urban schools. In addition to improving student-teacher relationships and defusing tensions between students, using rap music can even boost academic achievement. *See generally* Christopher Emdin, *Affiliation and Alienation: Hip-Hop, Rap, and Urban Science Education*, 42 J. CURRICULUM STUD. 1 (2010); Mark Lamont Hill & Emery Petchauer, SCHOOLING HIP-HOP: EXPANDING HIP-HOP BASED EDUCATION ACROSS THE CURRICULUM 31 (2013).

Rap also has proven itself as a potent tool for political engagement and mobilization. Research demonstrates that people who listen to rap music are more likely to engage in certain types of political protest. LESTER K. SPENCE, STARE IN THE DARKNESS: THE LIMITS OF HIP-HOP AND BLACK POLITICS 65-71 (2011). On a wider scale, hip hop has become a central component of a variety of local and national political organizations, which have developed increasingly sophisticated methods for engaging young voters in the political process. *See generally* Bakari Kitwana & Elizabeth Méndez Berry, *It's*

Bigger Than Barack: Hip Hop Political Organizing, 2004-2013, *in* THE HIP HOP & OBAMA READER 54 (Travis L. Gosa & Erik Nielson eds., 2015). Even presidential candidates—from both parties—have begun embracing hip hop in their campaigns.

Perhaps recognizing the transformative power of hip hop, both in the U.S. and abroad, the Vatican included the song *Changes* by Tupac Shakur (a rapper well known for using violent rhetoric to attack institutions of power) on its official MySpace playlist in 2009. Jo Piazza, *Tupac Song Selected for Vatican Playlist*, CNN (Dec. 4, 2009), http://edition.cnn.com/2009/SHOWBIZ/Music/12/04/tupacvatican.playlist/. The song includes lyrics like "Give the crack to the kids, who the hell cares, one less hungry mouth on the welfare" and "My stomach hurts, so I'm looking for a purse to snatch." The Vatican—unlike the Disciplinary Committee and Fifth Circuit—apparently recognized the difference between artistic expression and literal truth.

Like Tupac Shakur, Taylor Bell was using his music to effect *changes*. In the final portion of the video for his song *PSK da Truth*, Bell says that in rapping about sexual misconduct at his high school, he is trying to raise awareness about similar injustices around the world: "It's something that's been going on, you know, worldwide for a long time that I just felt like, you know, I needed to address."

Following a long line of rappers before him, Bell saw an opportunity to confront injustice. In the best traditions of art and advocacy, he seized it—placing himself squarely within the tradition of social and political protest that has in many ways defined rap music. To preserve that tradition in rap,

and in art generally, this Court should hear Bell's case.

B. "Put my Glock away, I got a stronger weapon that never runs out of ammunition": The non-literal rhetoric of hip hop.

Rap's global appeal is no doubt rooted in its willingness to challenge social conventions. But its success also owes to its willingness to challenge artistic conventions. Drawing on black musical and storytelling traditions dating back centuries, rappers have fashioned a poetic form that thrives on the sophisticated manipulation of language, often drawing its strength from "shattering taboos, sending up stereotype, and relishing risqué language and subject matter." Henry Louis Gates Jr., *Foreword* to THE ANTHOLOGY OF RAP xxv (Adam Bradley & Andrew DuBois eds., 2011).

Critically for this case, though, rap "complicates or even rejects literal interpretation," something that is true of many of rap's artistic and linguistic antecedents. *Ibid.* In the early decades of the Jim Crow era, for example, folk tales began cropping up in the Deep South, circulating orally throughout the African American community. These tales, or toasts, were early prototypes for rap; delivered in rhymed form, they could be bawdy and profane, and they celebrated the clever underdog who outwitted his opponent or the hero who instilled fear in those who dared oppose him. *See* Michael Render & Erik Nielson, *Rap Lyrics Are Fiction—But Prosecutors Are Treating Them Like Admissions of Guilt*, VOX (Mar. 26, 2015), http://www.vox.com /2015/3/26/8291871/rap-lyrics-mac-phipps; EITHNE QUINN, NUTHIN' BUT A "G" THANG 97-99 (2004).

The coarse language, explicit themes, and violent rhetoric sometimes found in the toasts is also apparent in "the dozens," verbal competitions in which two opponents trade insults—often in rhyme—until a winner emerges. Taken literally, the barbs traded in the dozens may sound like threats or incitements to violence. But as with African American word games generally, linguistic virtuosity is prized above all else, and the winner is the person able to overpower an opponent intellectually rather than physically.

The emphases on competition and verbal dexterity inherent to the dozens are very much at the heart of rap music as well. This is especially apparent in rap battles (competitions, like those depicted in the 2002 film *8 Mile,* in which rappers "battle" each other in improvised rhymes) and so-called "diss tracks" (recorded songs in which rappers "diss," or *dis*respect, one another). 8 MILE (Universal Pictures 2002). In both, the insults can be vicious and the rhetoric can be violent, but those familiar with the genre know the words exchanged are not to be taken at face value.

For example, in the song *Ether*—one of the most famous "diss tracks" in rap history—well-known rapper Nas takes aim at rival Jay-Z and his label Roc-A-Fella Records, at one point rhyming: "Hot rocks fellas, put you in a dry spot, fellas / in a pine box with nine shots from my Glock, fellas." NAS, *Ether*, on STILLMATIC (Ill Will Records & Columbia Records 2001). As fans of rap music understand, the violence here is metaphorical—the "hot rocks" (bullets) being fired are figurative, not literal. Neither rapper engaged in physical violence

against the other; in fact, after trading "diss tracks," they eventually became collaborators.

Songs like *Ether* reveal some of the most basic characteristics of rap as a creative form. Not only is the genre imbued with an inherent sense of competitiveness, it also is "a complex linguistic art where words are constantly in flux, changing meanings and intentions, texture and sound." ADAM BRADLEY, BOOK OF RHYMES: THE POETICS OF HIP HOP 89 (2009).

Like all poets, rappers privilege figurative language, relying on a full range of literary devices such as simile and metaphor. But in the tradition of African American vernacular, they also invent new words, invert the meaning of others, and lace their lyrics with dense slang and coded references that are intentionally inscrutable to outside observers. What's more, rappers famously rely on exaggeration and hyperbole as they craft the larger-than-life characters that have entertained fans for decades. Charis E. Kubrin, *Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music*, 52 SOC. PROB. 360, 369 (2005); Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 25 (2007).

It is with these complex traditions in mind that we should interpret Taylor Bell's lyrics in *PSK da Truth*. Told from the narrative perspective of T-Bizzle—a character not to be conflated with Bell himself—the song is intentionally provocative. But it clearly engages the conventions of mainstream rap, particularly the commercially successful subgenre of "gangsta" rap (something signaled by the song title

itself, which draws on the 1985 song *PSK What Does it Mean?* by Schoolly D, an early and influential figure in gangsta-type rap).

When Bell raps, "fucking with the wrong one gon' get a pistol down your mouth (Boww!)," he is channeling well-worn phrases used by popular and established artists like Lil Wayne ("Pistol in your mouth, I can not make out what you tryin' to say"), Gucci Mane ("Put the pistol in ya mouth like dentures"), Waka Flocka Flame ("Niggas know I got a pistol in his mouth"), E-40 ("Put the pistol in his mouth and make it hurt, ooh"), and Scarface ("Put a pistol in his mouth, and blow his fucking brains out"). LIL WAYNE, *Bill Gates, on* I AM NOT A HUMAN BEING (Young Money, Cash Money & Universal Motown 2010); GUCCI MANE, *Texas Margarita, on* BRICK FACTORY: VOLUME I (available for download from www.livemixtapes.com 2014); WAKA FLOCKA FLAME, *Where It At, on* DUFLOCKA RANT: HALF-TIME SHOW (available for download on www.livemixtapes.com 2013); SCARFACE, *Diary of a Madman, on* MR. SCARFACE IS BACK (Rap-A-Lot Records 1991); E-40, *It's On, On Sight, on* THE ELEMENT OF SURPRISE (Jive & Sick Wid It Records 1998).

Similarly, when Bell says, "Middle fingers up, if you want to cap that nigga / Middle fingers up, he get no mercy, nigga" he is drawing on commonly-used phrases by mainstream artists. Whether it's the countless rappers—including heavyweights Jay-Z, Snoop Dogg, Ice Cube, 2Pac, and Cool G Rap—who have popularized the phrase "bust a cap" (to shoot someone), or the numerous artists who have released songs titled *No Mercy*, there is little

question that Bell's lyrics are highly imitative of rap's most prominent—and critically acclaimed—figures.

Equally imitative is the phrase "middle fingers up," a rebellious refrain that can be heard in scores of songs by a wide range of rappers like Nas ("Middle fingers up, fuck the police"), Kendrick Lamar ("middle finger up, give a fuck how they feel"), and Joey BADA$$ ("if you don't give a fuck, put your middle fingers up"). NAS, *Breathe, on* UNTITLED (Def Jam Recordings & Columbia Records 2008); KENDRICK LAMAR, *Let Me Be Me, on* KENDRICK LAMAR (Top Dawg Entertainment 2009); JOEY BADA$$, *Aim High*, (single available for download on www.avscion.com 2015).

In *Butane (Champion's Anthem)*, a song by Killer Mike (one of the authors of this brief), rapper El-P draws on this phrase, too, ending the track with "Middle fingers up on the Titanic as it's going down." Killer Mike, *Butane, on* R.A.P. MUSIC (Williams Street Records 2012).

Many other elements of Bell's song—for example the stock references to drug dealing ("I'm a serve this nigga like I serve the junkies with some crack")—are reminders that *PSK da Truth* both replicates and builds upon some of rap music's most basic conventions.

Even the portions of the song that appear to be unique, such as those identifying the school officials by name, are nothing new to rap. Eminem—who has won 15 Grammy Awards and sold more than 45 million albums in the United States—is well known for pushing boundaries with shocking, often

violent lyrics. Some of those lyrics refer to his ex-wife, Kim Mathers, by name. In one song, titled *Kim*, he depicts her murder with lines like "Now shut the fuck up and get what's coming to you! / You were supposed to love me! / Now bleed bitch, bleed!" EMINEM, *Kim, on* THE MARSHALL MATHERS LP (Interscope Records, Aftermath Entertainment & Shady Records 2000). Marshall Mathers (Eminem's given name, not to be confused with the fictional identity in his music) has never been accused of trying to kill his wife; in fact, after their divorce in 2001, they remarried in 2006.

Likewise, after the beating of Rodney King by Los Angeles Police officers and the riots that followed, rapper Ice Cube identified some of the police officers by name in his song *We Had to Tear this Mothafucka Up*, at various points describing the revenge he would take against them with lines like "Born, wicked, Laurence Powell, foul/ Cut his fuckin' throat and I smile" and "Pretty soon we'll catch Sergeant Koon / Shoot him in the face, run up in him with a broom." Ice Cube, We Had to Tear this Mothafucka Up, on The Predator (Priority Records & EMI 1992). Of course, O'Shea Jackson (Ice Cube's given name)—an accomplished Hollywood actor, director, and producer with dozens of film credits to his name—never intended to carry out the acts depicted in the song.

More recently, high profile cases of police violence have prompted hip hop artists to employ similar rhetoric as a means of protest. So when, for example, Rick Ross raps, "George Zimmerman, when I see you, you gotta burn," a response to Zimmerman's highly publicized shooting of Trayvon

Martin, he is engaging in an established tradition of decrying social injustice rather than levying a true threat against George Zimmerman. RICK ROSS, *Burn, on* HOOD BILLIONAIRE (Maybach Music Group, Def Jam Recordings & Slip-n-Slide Records 2014).

The themes found in Taylor Bell's song, and in rap generally, are in fact common across popular culture. In *Folsom Prison Blues*, country artist Johnny Cash famously sang, "I shot a man in Reno just to watch him die." JOHNNY CASH, *Folsom Prison Blues, on* AT SAN QUENTIN (Columbia Records 1969). Another first-person account of violence recorded by Cash, *Delia's Gone*, includes lines like "First time I shot her, I shot her in the side. / Hard to watch her suffer but with the second shot she died." JOHNNY CASH, *Delia's Gone, on* THE SOUND OF JOHNNY CASH (Columbia Records 1962).

Cash, of course, was no more guilty of these crimes than Eric Clapton and Bob Marley were of killing police officers when they recorded their respective versions of *I Shot the Sheriff*. ERIC CLAPTON, *I Shot the Sheriff, on* 461 OCEAN BOULEVARD (RSO 1974); BOB MARLEY, *I Shot the Sheriff, on* BURNIN' (Island Records 1973).

Whether as a means of protest or simply as a form of entertainment, films, poems, works of visual art, and video games regularly take (metaphorical) aim at public figures as well, often employing violent rhetoric or imagery. They may be controversial, but they are given prominent public platforms to challenge and provoke their audiences, even if that means offending them as well.

C. "They ain't scared of rap music—they scared of us": Rap's bad rap.

Langston Hughes once wrote that "[a]n artist must be free to choose what he does, certainly, but he must also never be afraid to do what he might choose. Langston Hughes, *The Negro Artist and the Racial Mountain, in* THE NORTON ANTHOLOGY OF AFRICAN AMERICAN LITERATURE 1311, 1314 (Henry Louis Gates, *et al.* eds., 2d ed. 2004). While many Americans no doubt would agree with this sentiment, the reality is that artists have every reason to be fearful if they choose to rap because people who don't understand the genre often fear it.

The visceral response that many people have to rap music stems in large part from broader racial stereotypes, especially about young men of color. In 1954, Gordon Allport defined stereotypes as categories of seemingly associated traits that are used to process information more quickly. This definition has been revised to include knowledge and expectations about a social group. Individuals may be consciously aware of stereotypes, but stereotyping can also occur at an unconscious level. Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSON. & SOC. PSYCH. 5, 6 (1989).

Stereotypes are most likely to be utilized when the decision maker has minimal information, needs to simplify a complex decision, and must make an evaluative judgment. *See* Ziva Kunda & Steven J. Spencer, *When Do Stereotypes Come to Mind and When Do They Color Judgment? A Goal-Based Theoretical Framework for Stereotype Activation and Application*, 129 PSYCH. BULL. 522, 540 (2003);

Galen V. Bodenhausen & Meryl Lichtenstein, *Social Stereotypes and Information-Processing Strategies: The Impact of Task Complexity*, 52 J. PERSON. & SOC. PSYCH. 871, 871 (1987). When interpreting ambiguous behaviors or events, stereotypes are often used to make inferences about a person or a situation. David L. Hamilton, *A Cognitive-Attributional Analysis of Stereotyping*, 12 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 53, 53 (1979).

Studies have explored stereotypes about music, particularly music genres that are considered violent or harmful to society. For example, country and pop are frequently regarded as less threatening than both rock and rap. Mary E. Ballard, Doris G. Bazzini & Alan R. Dodson, *Genre of Music and Lyrical Content: Expectation Effects*, 160 J. GENETIC PSYCH. 476, 484 (1999); Peter J. Rentfrow & Samuel D. Gosling, *The Content and Validity of Music-Genre Stereotypes Among College Students*, 35 PSYCH. OF MUSIC 306, 315-18 (2007). Yet the stereotypes associated with rock and rap differ from one another. Rap music is perceived as more likely to cause listeners to hurt others, while rock music is perceived as more likely to cause listeners to hurt themselves. One scholar has posited that these differences occur because rap is associated with black audiences while rock genres, like heavy metal, are associated with white audiences. Amy Binder, *Constructing a Racial Rhetoric: Media Depictions of Harm in Heavy Metal and Rap Music*, 58 AM. SOC. REV. 753, 765-66 (1993).

Similarly, research establishes that fans of heavy metal music are viewed as more self-destructive, while fans of rap are seen as more

threatening to the community. Rentfrow & Gosling, *supra*, at 315-18.

Research shows that stereotypes about violent music and the people who consume it also extend to the individuals who produce it. For example, one researcher conducted an experiment to determine the impact violent rap lyrics might have on potential jurors. Participants were presented with basic biographical information about a hypothetical 18-year old African American man but only some were shown a set of violent, sexually explicit rap lyrics that he had written. Participants were then asked about their perceptions regarding the young man's personality. The study revealed that the lyrics exerted a significant impact, generating more negative evaluations of the young man's character on all dimensions. And those who read the lyrics were significantly more likely to deem the man capable of committing murder. Stuart P. Fischoff, *Gangsta' Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCH. 795, 803 (1999).

According to this research, rap lyrics also activate stereotypes related to race more broadly, that is, beyond rap music fans/artists. Exposure to rap music increases the ease of associating black people with negative traits like hostility, being violent, and being sexist, and it causes people to be less empathetic toward black victims. Laurie A. Rudman & Matthew R. Lee, *Implicit and Explicit Consequences of Exposure to Violent and Misogynous Rap Music*, 5 GROUP PROCESSES & INTERGROUP RELATIONS 133, 146 (2002); James D. Johnson, Brad J. Bushman & John F. Dovidio, *Support for Harmful Treatment and Reduction of*

Empathy Toward Blacks: "Remnants" of Stereotype Activation Among Hurricane Katrina and "Lil' Kim," 44 J. EXPERIMENTAL SOC. PSYCH. 1506, 1506 (2008). Participants who listened to violent rap music (compared to non-violent rap or no music at all) were likely to view the man presented to them in the experiment as more inherently violent and less intelligent. James D. Johnson, Sophie Trawalter & John F. Dovidio, *Converging Interracial Consequences of Exposure to Violent Rap Music on Stereotypical Attributions of Blacks*, 36 J. EXPERIMENTAL SOC. PSYCH. 233, 245-47 (2000).

A handful of studies have examined the direct impact of these stereotypes. In these studies, people who are given identical sets of lyrics—but who are told these lyrics come from different musical genres—are asked about their perceptions of the lyrics. One study, for example, presented respondents with sexually explicit rap lyrics or sexually explicit non-rap lyrics. Importantly, the researchers discovered that the sexually explicit music was considered more offensive and less artistic when it was rap compared to when it was non-rap. Dixon & Linz, *supra*, at 234-35.

In a related study, participants read a set of lyrics from folk group Kingston Trio's 1960 song, *Bad Man's Blunder*, and were told that the lyrics were either from a rap or country music song. After reading the lyrics, participants evaluated them and responded to questions about the offensiveness of the song, the threatening nature of the song, the need for regulation of the song, and if the song would incite violence. The responses were significantly more negative when the lyrics were represented as

rap, revealing that the ***same lyrical passage*** viewed as acceptable in a country song is considered dangerous and offensive when identified as a rap song. Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J. APPLIED SOC. PSYCH. 705, 711 (1999).

All of this research reveals that stereotypical assumptions play a far greater role in our decision-making than we may realize. And some of this stereotyping may account for what happened in this case. If we don't work to acknowledge and, when necessary, combat these stereotypes, the consequences can be serious and life altering—particularly for a young man like Taylor Bell.

CONCLUSION

The decision by the court of appeals punishes a student for his art—and perpetuates unfair and inaccurate stereotypes—by mischaracterizing often-used rap music phrases as "threats." The decision either failed to understand, or failed to acknowledge, Taylor Bell's rap song as artistic expression. As a result, Bell's petition for certiorari should be granted.

Respectfully submitted,

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