

No. _____

In The
Supreme Court of the United States

JESSE WESLEY,

Petitioner,

v.

TOWN SQUARE MEDIA WEST CENTRAL
RADIO BROADCASTING, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court's decision on a motion to amend a summary judgment should be reviewed with the standard of abuse of discretion or *de novo*.

PARTIES TO THE PROCEEDING

Jesse Wesley is the sole Petitioner in this case. The Respondents are Town Square Media West Central Radio Broadcasting; Town Square Media Tri-Cities LLC; Town Square Media Yakima, LLC.

RULE 29.6 STATEMENT

The Petitioner is not a nongovernmental corporation.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is unreported.

JURISDICTION

Petitioner seeks review of the decision of the United States Court of Appeals for the Ninth Circuit entered on May 15, 2018. Timely petitions for rehearing and rehearing en banc were denied on July 9, 2018. This Court's jurisdiction rests on 28 U.S.C. §1254(1).

LEGAL PROVISIONS INVOLVED

This case does not involve any provisions, treaties, statutes, ordinances or treaties. Instead, this case involves the legal standard of review that an appellate court should apply in reviewing a district court's denial of a motion to amend a summary judgment order. *Benson v. JPMorgan Chase Bank, N.A.*, 673 F.3d 1207, 1211 (9th Cir. 2012).

STATEMENT OF THE CASE

On July 26, 2016, the district court granted Respondents' motion for summary judgment under Fed. R. Civ. P. 56 on all claims despite the fact that Respondents failed to request summary judgment on Petitioner's independent claim of disability retaliation. On

October 3, 2016, the district court denied Petitioner’s motion to amend the summary judgment order pursuant to Fed. R. Civ. P. 60(b)—also known as motion for reconsideration.

The district court had original jurisdiction over Petitioner’s federal law claims pursuant to 28 U.S.C. §1331 and supplemental jurisdiction over Petitioner’s claims of Washington State Law Against Discrimination, RCW 49.60, pursuant to 28 U.S.C. §1331.

On October 17, 2016, Petitioner appealed to the Ninth Circuit Court of Appeals, which reviewed for abuse of discretion Petitioner’s motion to amend summary judgment order.

**THIS COURT SHOULD GRANT REVIEW
OF THE COURT OF APPEALS’ DECISION
BECAUSE ITS DECISION IS IN CONFLICT
WITH THE CURRENT MAJORITY
PRECEDENT IN SISTER CIRCUITS.**

It is the consensus of sister circuit courts to review motions to reconsider the granting of summary judgment *de novo*. *In re Louisiana Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 821 F.3d 265, 269 (2d Cir. 2016), *certified question accepted*, 27 N.Y.3d 1015, 52 N.E.3d 240, 32 N.Y.3d 576 (2016), and *certified question answered*, 28 N.Y.3d 583, 70 N.E.3d 936, 48 N.Y.3d 269 (2016); *Scheick v. Tecumseh Pub. Sch.*, 766 F.3d 523, 528 (6th Cir. 2014); *Dyson v. D.C.*, 710 F.3d 415, 420 (D.C. Cir.

2013); *Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 246 (3d Cir. 2010); *Weese v. Schukman*, 98 F.3d 542, 549 (10th Cir. 1996).

“We normally review a district court’s decision to grant or deny a motion for reconsideration for abuse of discretion. But here, as the parties’ arguments [are] directed to the underlying substantive issue (the propriety vel non of summary judgment) rather than the procedural issue (the desirability vel non of reconsideration), we review *de novo* the summary judgment ruling.” *Best Auto Repair Shop, Inc. v. Universal Ins. Grp.*, 875 F.3d 733, 737 (1st Cir. 2017) (quotations and citations omitted).

The Ninth Circuit itself explains that even though motions for denial of a Fed. R. Civ. P. 60(b) motion are traditionally reviewed for abuses of discretion, denials that rest on the inaccurate view of the law require a *de novo* review because an inaccurate view of the law is inherently an abuse of discretion. *Benson v. JPMorgan Chase Bank, N.A.*, 673 F.3d 1207, 1211 (9th Cir. 2012) (citing *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1100 (9th Cir. 2004)).

The lower court went astray in following its precedent by relying on *Int'l Rehab. Scis. Inc. v. Sebelius* to support its decision to use the abuse of discretion standard in reviewing the district court’s decision on reconsideration of summary judgment. 688 F.3d 994, 1000 (9th Cir. 2012); App. 3. The context in which the *Sebelius* standard of review was created was in reviewing a denial of a motion for a new trial after a jury had

already rendered a verdict and the subsequent motion to reconsider the denial of the motion for a new trial, which are traditionally reviewed for abuse of discretion because these are factual determinations that have been made by the jury. *Floyd v. Laws*, 929 F.2d 1390, 1400 (9th Cir. 1991) (*citing Transgo, Inc. v. Ajax Transmission Parts Corp.*, 768 F.2d 1001, 1013 (9th Cir. 1985) (reviewing an appeal in the context of a jury verdict for abuse of discretion)).

Courts of appeals across the country rely on the standard of review to begin their analysis of each appeal that comes across their docket. This is a perfect opportunity for this Court to reconcile this fundamental issue and establish the appropriate standard of review.



CONCLUSION

For these reasons, the Court should grant the petition.

Respectfully submitted,

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