

No. 20-1318

SUPREME COURT OF THE UNITED STATES

**Vincent W. Shack,
Petitioner,**

vs.

**NBC UNIVERSAL MEDIA, LLC et al,
IMG WORLDWIDE, INC,
LADIES PROFESSIONAL GOLF ASSOCIATION,
SAMSUNG ELECTRONICS AMERICA INC., AND DOES 1 TO 10
Respondent.**

**On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Ninth Circuit**

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Vincent Shack respectfully petitions for rehearing of the Court's decision issued on June 1, 2021. Shack v. NBC UNIVERSAL MEDIA, LLC., IMG WORLDWIDE, INC, LADIES PROFESSIONAL GOLF ASSOCIATION, SAMSUNG ELECTRONICS AMERICA INC., AND DOES 1 TO 10, No. 20-1318 (June 1, 2021). Mr. Shack moves this Court to grant this petition for rehearing and consider the merits of the case with briefing and oral argument. In the alternative, should the Court again choose not to grant Petitioner's Writ for Certiorari on the merits without briefing and oral argument, Petitioner respectfully requests that the Court issue an order summarily granting certiorari, vacating the judgment below, and remanding to the Ninth Circuit Court of Appeal for reconsideration. Pursuant to Supreme Court Rule 44.2, this petition for rehearing is filed within 25 days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 44.2 states, among other things, that the grounds for rehearing "shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." As set forth below, the Petitioner presents several claims that have not been substantively reviewed by this Court or the Ninth Circuit Court of Appeals, including a substantive error by the California trial court, which violated the Federal Rules of Civil Procedure.

I. THE NINTH CIRCUIT SHOULD HAVE REVIEWED PETITIONER'S APPEAL PURSUANT TO RULE 60 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Petitioner believes the Ninth Circuit erroneously dismissed his appeal due to an untimely filing. However, even if the Court determines that Petitioner's appeal is not based on a prior ruling from either the California State Supreme Court or the Ninth Circuit Court of Appeals, it may still consider the Petition on its merits pursuant to the Federal Rules of Civil Procedures. In particular, Rule 60(b), which addresses relief from a final judgment or order, clearly states that "the court may relieve a party or its legal representatives from a final judgment, order or proceeding" for a number of reasons, including "mistake, inadvertence, surprise, or excusable neglect." Federal Rules of Civil Procedure, Rule 60(b)(1). In this instance, Petitioner believes it would be appropriate for the court to grant certain allowances on the basis of inadvertence and excusable neglect. As the Court is aware, Petitioner is a *pro se* litigant and has been litigating this case for nearly 12 years. While most people would just walk away, especially in the face of big corporations such as NBC and Samsung, there are those of us who believe that justice should be afforded to every American and that no one, even a powerful corporation, is above the law. This is what Petitioner has been fighting for all along – the right to have his case heard, on the merits, by a court of competent jurisdiction. And although there may have been inadvertent missteps along the way, as one would expect from someone who is not an attorney especially facing all the challenges we have endured in this global COVID pandemic, Petitioner has dutifully sought to meet every rule of procedure to the best of his

ability. In filing an appeal from the Ninth Circuit, Petitioner relied on advice provided by Supreme Court personnel who noted that a petition could be filed once a final decision was rendered by the U.S. Court of Appeals. Upon receiving that final determination from the Ninth Circuit of Appeal, Petitioner timely filed an appeal with the Supreme Court in the hopes that at last the injustice that took place nearly 12 years ago would finally be corrected.

In addition, as this Court has found in the past, an untimely filing is not an automatic bar to having the subsequent appeal heard. In such cases, the Court may also consider whether equitable considerations require it to treat the filing as it were timely. The Court may also relieve Petitioner from an untimely filing by invoking the “unique circumstances” or “lulling doctrine.” Petitioner respectfully requests that the Court accept this filing as timely and decide on the merits or, as discussed below, remand back to the Ninth Circuit for further consideration.

II. THIS COURT SHOULD NOT UPHOLD CALIFORNIA’S IMPROPER APPLICATION OF ITS SLAPP AND ANTI-SLAPP STATUTES

A. Petitioner’s Claim Should Never Have Been Classified as A SLAPP Suit

A key and unaddressed issue in this case is whether the Defendants should have been allowed to use California’s ANTI-SLAPP statute to counter Petitioner Shack’s original claims. California’s ANTI-SLAPP statute has the limited purpose of permitting defendants to challenge a SLAPP suit filed against it. To base a challenge on California’s SLAPP statute, a defendant must first show that plaintiff’s suit was based on an “act in furtherance of [plaintiff’s] right of petition or

free speech under the United States or California Constitution in connection with a public issue.” California’s ANTI-SLAPP statute very clearly lays out the four categories of activities that may form the basis of a plaintiff’s SLAPP suit:

- (1) any written or oral statement or writing made before a legislative, executive or any other judicial proceeding or any other official proceeding authorized by law;
- (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
- (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or
- (4) any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest.

Cal. Civ. Proc. Code § 425.16(e)(1-4).

Neither of the four categories outlined above apply to this case, undermining any argument that the Petitioner’s lawsuit amounted to a SLAPP action subject to the anti-SLAPP statute. To the contrary, Petitioner’s original lawsuit centered on assault, battery and other civil rights violations arising from the actions of an aggressive individual hired to film a professional women’s tournament. Petitioner’s Shack’s legal claims in no way challenged the Defendants’ ability to exercise their free speech or discourage public participation in a manner inconsistent with California’s SLAPP statute or the First Amendment of the United States

Constitution. The activity at the center of this case was assault and battery pure and simple -- actions not covered by California's Anti-SLAPP statute or the Constitution. The fact that the assault and battery against Mr. Shack happened in the commission of filming a public sporting event or that it was reported to the police does not change the nature of Petitioner Shack's primary claim and certainly should not be used to allow Defendant's to circumvent the law. Thus, the California court's decision to dismiss the original lawsuit on that basis was an erroneous application of California's Anti-SLAPP statute, which must be corrected if justice is to prevail.

B. The Trial Court's Failure to Grant Petitioner Leave to Amend His Original Complaint to Avoid the SLAPP Statute Violated Federal Rules of Civil Procedure

In addition to erroneously categorizing Petitioner Shack's original claim as a SLAPP activity, the California Court, upon treating the claim as a SLAPP activity, failed to provide Petitioner with a meaningful opportunity to amend his original complaint to move it outside the realm of the SLAPP statutes and related considerations. In fact, the state court granted Petitioner Shack leave to amend the complaint, but during the intervening period permitted Defendants to file Motions to Dismiss under the state's Anti-SLAPP statute, which was ultimately (and incorrectly) granted.

There is clear and uncontroverted precedent that the court's actions were in error and warrant further consideration. For example, the Ninth Circuit has ruled that "granting a defendant's anti-SLAPP motion to strike a plaintiff's initial

complaint without granting the plaintiff leave to amend would directly collide with Federal Rule of Civil Procedure 15(a)'s policy favoring liberal amendment." *Verizon Del. Inc. v. Covad Communications Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004). In this case, Petitioner was never granted a real opportunity to amend his complaint. The court's failure to extend such leave to Petitioner is a direct violation of the Federal Rules of Civil Procedures as set forth in *Verizon v. Covad*, and must be remedied by this Court.

III. THE SIGNIFICANT CONSTITUTIONAL QUESTIONS SUPPORT GRANT OF CERTIORARI, VACATE AND REMAND TO THE NINTH CIRCUIT COURT OF APPEAL

In denying the Petitioner's Petition for Writ of Certiorari, the Court did not review or render a decision on the substance of Petitioner Shack's petition. And while Petitioner understands the Court's limited resources and inability to substantively address every petition received, there remain other options for a review on the merits that would not burden this Court and yet provide the Petitioner with the relief required by laws of equity and justice. In the past, this Court has issued orders summarily granting certiorari, vacating the judgment below, and remanding to the lower court for reconsideration ("GVR"). In fact, the Court has employed GVR as a tool in a number of scenarios, some of which are at issue in this case. For example, in *Webster v. Cooper*, 558 U.S. 1039 (2009), the Court noted the liberties it sometimes takes to exercise its power to GVR even where there may not be an intervening factor. The Court referenced its decision in *Robinson v. Story*, 469 U.S. 1081 (1984), where it GVR'd on the basis of a case

decided long before the Court of Appeals ruled. 558 U.S., 1039. Thus, while Petitioner's appeal to the Ninth Circuit was rejected as untimely, the substantive and consequential legal issues under consideration warrant a full hearing and, thus, would be an appropriate application of the Court's GVR tool.

CONCLUSION

Mr. Shack respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

RESPECTFULLY SUBMITTED this 23rd day of June, 2021.

Dated: 06/23/2021
Sign: Vincent W. Shack
Vincent W. Shack
Plaintiff, pro se

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

Dated: 06/23/2021
Sign: Vincent W. Shack
Vincent W. Shack
Plaintiff, pro se