No. _____

In the
Supreme Court of the United States

BALUBHAI PATEL, DTWO & E, INC.,
STUART UNION, LLC,
Petitioners,

v.

MANUEL CHAVEZ,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeal of California Second Appellate District, Division One

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress has specifically protected plaintiffs who bring federal civil rights actions under 42 U.S.C. § 1983 from having to pay fees unless their suit is "frivolous, unreasonable, or without foundation." Hughes v Rowe, 449 U.S. 5, 15 (1980) (per curiam). Congress enacted this protection to ensure that plaintiffs will not be deterred from bringing good faith actions to vindicate the fundamental rights here involved by the prospect of having to pay their opponent's counsel fees should they lose. As this Court has explained, "[a]ny less stringent of a standard would substantially add to the risks inhering in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement of the civil rights laws." Hughes, 449 U.S. at 15 (quoting Christianburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978)). This Court has also held that the fee shifting provisions of 42 U.S.C. § 1988(b) is an integral part of the remedy necessary to obtain compliance with 42 U.S.C. § 1983 and applies equally to § 1983 cases filed in state or federal court. See Maine v. Thiboutot, 448 U.S. 1, 11 (1980). The California Court of Appeal held that the State's anti-SLAPP statute, California Code of Civil Procedure § 425.16(c)(1), which requires a court to order a plaintiff who loses a motion brought under the statute to pay the prevailing defendants' attorney's fees, did not unduly burden a substantive federal right when applied to a plaintiffs 42 U.S.C. § 1983 claim, and therefore the statute was not preempted under the Supremacy Clause.

The question presented is:

Whether California's anti-SLAPP statute's

mandatory attorney fee shifting provisions in favor of a prevailing defendant conflicts with, and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting 42 U.S.C. § 1983, and is therefore preempted under the Supremacy Clause?

PARTIES TO THE PROCEEDINGS

Balubhai Patel, DTWO & E, Inc., a California Corporation,, and Stuart Union, LLC, a California Limited Liability Company, were plaintiffs in the California Superior Court and appellants in the California Court of Appeal.

Manuel Chavez was a defendant in the California Superior Court and a respondent in the California Court of Appeal.

CORPORATE DISCLOSURE STATEMENT

Petitioner DTWO & E, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Stuart Union, LLC has no parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The opinion of the Court of Appeal of the State of California Second Appellate District Division One is reported at 48 Cal.App.5th 484 (2020), *Balubhai Patel et al. v. Manuel Chavez*, No. B291695, April 30, 2020.

The order of the California Supreme Court denying review is not reported, *Balubhai Patel et al. v. Manuel Chavez*, No. S262418, August 12, 2020.

The minute order of the California Superior Court granting respondent's ant-SLAPP motion is not reported, *Balubhai Patel et al. v. Julie A Su, et al.*, No. BC681074, June 11, 2018.

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Balubhai Patel, DTWO & E, Inc., a California Corporation, and Stuart Union, LLC, a California Limited Liability Company, respectfully petition this Court for a writ of certiorari to review the judgment of the California Court of Appeal.

OPINIONS BELOW

The opinion of the Court of Appeal is reported at 48 Cal.App.5th 484 (2020) and is reproduced in the appendix hereto at App. 2-20. The order of the California Supreme Court denying review is not reported and is reproduced at App. 1. The minute order of the California Superior Court granting respondent's ant-SLAPP motion is not reported and is reproduced at App. 21-22.

STATEMENT OF JURISDICTION

The California Court of Appeal issued its opinion on April 30, 2020. The California Supreme Court denied review on August 12, 2020. This petition is timely filed within 150 days of the denial of review by the California Supreme Court. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the appendix.

INTRODUCTION

Three decades ago, Professors George Pring and Penelope Canan warned of a "new and very disturbing trend" : "Americans by the thousands [were] being sued, simply for ... 'speaking out' on political issues." George W. Pring & Penelope Canan, "Strategic Lawsuits Against Public Participation" ("SLAPPS"): An Introduction, for Bench, Bar and Bystanders, 12 Bridgeport L. Rev. 937, 938 (1992). To describe such lawsuits, Professors Pring and Canan coined the term "Strategic Lawsuits Against Public Participation," or "SLAPP."

Seeking to deter SLAPP suits, thirty states and the District of Columbia have enacted anti-SLAPP statutes, "to give more breathing space for free speech about contentious public issues." Abbas v. Foreign Policy Grp., LLC, 783 F.3d 1328, 1332 (D.C. Cir. 2015).

California, as in nearly every other state that has enacted an anti-SLAPP statute, requires a court to award attorney's fees to a prevailing defendant. California Code of Civil Procedure § 425.16(c)(1).

The decision below held that the California's anti-SLAPP statute's mandatory attorney fee shifting provisions did not unduly burden a substantive federal right when applied to a plaintiffs 42 U.S.C. § 1983 claim, and therefore the statute was not preempted under the Supremacy Clause. The Court of Appeal's holding was incorrect.

Awarding fees to a defendant in a § 1983 claim is determined by the text of 42 U.S.C. § 1988(b), which vests discretion in a court to award such fees but limits

such discretion by this Court's decisions that a prevailing defendant can be awarded fees only when a plaintiffs suit is frivolous, unreasonable, or without foundation. Not only does California's anti-SLAPP statute's mandatory attorney fee shifting provisions conflict with § 1988(b) but also has the effect of standing as an obstacle to the achievement of Congress's objective in enacting § 1983 to encourage plaintiffs in bringing such claims to enforce their civil rights. It also frequently and predictably produces different outcomes in § 1983 defendant fee awards based solely on whether that litigation takes place in state or federal court.

The Court should grant the petition to resolve the important question presented.

STATEMENT OF THE CASE

A. Factual Background and Proceedings Below

After the respondent, a former employee of the petitioners, obtained an award from the California Labor Commissioner against the petitioners, they filed suit in a California superior court against the respondent and the California Labor Commissioner for violations of their federal civil rights under 42 U.S.C. § 1983 and appealed the order and decision of the Labor Commissioner. App. 4-6.

Petitioners civil rights complaint alleged that in obtaining the award, the respondent falsely testified at the Labor Commissioner's hearing on wage claims that he filed against the petitioners, and further claimed that respondent's actions constituted state action as set

forth in this Court's "joint action doctrine" in Lugar v. Edmonson Oil Co., Inc., 457 U.S. 922 (1982), and respondent's conduct also constituted action under color of state law that supported a suit against him under § 1983. App. 6. 15-16. In the state court proceeding, respondent filed an anti- SLAPP motion to dismiss the § 1983 cause of action, arguing that that the causes of action arose solely from his testimony, which is protected conduct, and that therefore, as a matter of state law, petitioners could not show a likelihood of success. App. 6.

The trial court held a hearing on respondent's anti-SLAPP motion. In an order granting the motion, the court held that the § 1983 cause of action in the complaint arose from conduct protected under the anti-SLAPP statute, namely the state's absolute litigation privilege, codified in California Civil Code § 47. App.6-7. Petitioners timely appealed the trial court's order granting the respondent's motion to dismiss the § 1983 cause of action. App. 7.

Subsequently, after granting the respondent's anti-SLAPP motion, the trial court awarded respondent fees under the mandatory fee shifting provisions of the statute.

On appeal, petitioners argued that the § 1983 cause of action was not subject to California's anti-SLAPP statute. App.7. The court of appeal rejected petitioners' argument, and in doing so, first held that prior California appellate cases had applied the anti-SLAPP statute to § 1983 claims, noting that the anti-SLAPP statute was a procedural statute intended to weed out unmeritorius claims at the early stage of the litigation,

and those California courts had found that "[n]othing in section 1983 imposes federal procedural law upon state courts trying civil rights actions." App. 9. The court of appeal then considered whether "the anti-SLAPP statute affect[s] [petitioners] substantive federal rights, and is thus preempted." App. 9. The court noted, citing this Court's decision in Felder v. Casey, 487 U.S. 131, 138 (1988), that "[w]hen a plaintiff chooses to bring a federal claim in state court, state rules of evidence and procedure apply unless application of those rules would affect plaintiffs' substantive federal rights, and thereby stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the underlying federal statute." (internal citations and quotation marks omitted). App. 10.

Turning to the issue of whether the anti-SLAPP statute affected petitioners substantive federal rights, the court rejected the argument that just because an anti-SLAPP motion automatically stays discovery, a plaintiff may not have had the benefit of full discovery when defending the merits of his § 1983 claim under the anti-SLAPP statute's expedited procedures. App. 11-12.

The court then considered "whether the anti-SLAPP statute's mandatory attorney fee shifting provisions (Code Civ. Proc. § 425.16, subd. (c)) – either individually or considered together with discovery restrictions noted above – unduly burden a substantive federal right when applied to section 1983 claims." App. 12

The court concluded that they do not, holding that "[a]lthough the potential for such fee-shifting might discourage some plaintiffs from pursuing section 1983 claims, that possibility does not rise to the level of defeating a plaintiffs ability to vindicate his federal rights through a section 1983 claim, particularly in light of the low bar plaintiffs must meet in order to save such claims and avoid attorney fees under the anti-SLAPP statute." App.13.

The court also noted that the statute's fee shifting provisions were "partially reciprocal" in that under the statute, the plaintiff could recover fees if the motion is frivolous or is solely intended to cause unnecessary delay, such that defendants may be wary from bringing such a motion for the same reasons plaintiffs may be wary from filing lawsuits potentially subject to such motions. App. 13.

The Court of Appeal therefore concluded that the anti-SLAPP statute was correctly applied to petitioners' § 1983 claim and was not preempted.

Subsequent to the Court of Appeal's decision, petitioners filed a timely petition for review with the California Supreme Court. The American Civil Liberties Union also filed a letter brief with the California Supreme Court in support of the petition for review, and an alternative request for an order that the opinion be depublished.

The California Supreme Court denied the petition for review and the request for depublication of the opinion. App. 1.

REASONS FOR GRANTING THE PETITION

A. The anti-SLAPP Statute's Fee Shifting Provisions Directly Conflict with 42 U.S.C. § 1988(b)

The Supremacy Clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. U.S. Const., art. VI, cl. 2; Cipillone v. Ligettt Group, 505 U.S. 504, 516 (1992). With respect to premption analysis, "[t]he categories of preemption are not rigidly distinct." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372, n.6 (2000). This Court has often identified only three species of preemption, express preemption, conflict preemption and obstacle preemption, grouping together conflict and obstacle preemption in a single category. See English v. General Electric Co., 496 U.S. 72, 78-79 (1990). Conflict premption will be found when simultaneous compliance with both state and federal directives is impossible. See Hillsborough County v. Automated Medical Labs, 471 U.S. 707, 713 (1985).

Section 1988(b) requires courts to award fees to prevailing plaintiffs absent unusual circumstances making an award unjust. Hensley v. Eckerhart, 461 U.S. 424 (1983). It prohibits courts from awarding fees to prevailing defendants unless "the plaintiffs action was frivolous, unreasonable, or without foundation." Hughes, 449 U.S. at 15. Federal circuit courts have uniformly held that the "frivolous, unreasonable, or without foundation" standard "is a difficult standard to meet, to the point that rarely will a case be sufficiently frivolous to justify imposing attorney fees on the

plaintiff." Mitchell v. City of Moore, Oklahoma, 218 F.3d 1190, 1203 (10th Cir. 2000); see Karam v. City of Burbank, 352 F.3d 1188, 1195 (9th Cir. 2003) ("A case may be deemed frivolous only where the result is obvious or the arguments of error are wholly without merit."); Sista v. CDC Ixis N. Am., Inc., 445 F.3d 161, 178 (2d Cir. 2006) ("[I]t is very rare that victorious defendants in civil rights cases will recover attorneys' fees.").

A court cannot require a plaintiff to pay fees simply because they lost – that would improperly "discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success." Christianburg Garment Co., 434 U.S. at 422. This is true even if the case was dismissed on the pleadings for failure to state a claim or on summary judgment. See Hughes, 449 U.S. at 15-16 (reversing a fee award to a defendant for claims that it held were properly dismissed because "allegations that, upon careful examination, prove legally insufficient to require a trial are not, for that reason alone, 'groundless' or 'without foundation'" so as to support a fee award); id. at 15 (even if the law or the facts are somewhat questionable or unfavorable at the outset of the litigation, a party may have an entirely reasonable ground for bringing suit") (quoting Christianburg, 434 U.S. at 422). Fees are not appropriate when the case turns on a legal issue. See Int'l Bhd. of Teamster v. Silver State Disposal Serv., Inc., 109 F.3d 1409, 1412 (9th Cir. 1997) (A case "is less likely to be considered frivolous when there is 'very little case law directly apposite.'" (internal citation omitted). A plaintiff may avoid fee liability by abandoning a claim that turns out to be

unsupported. Verri v. Nanna, 3 F.Supp. 2d 439, 442 (S.D.N.Y. 1998).

Even if a court determines that the claim is frivolous, it nevertheless has the discretion to refuse to award fees to the prevailing defendant. See Thomas v. City of Tacoma, 410 F.3d 644, 651 (9th Cir. 2005) (upholding district court decision that had denied fees on the grounds that "[t]he lofty goals of the Civil Rights act and fee shifting mechanism contained in it would be undermined, not advanced, by an award of fees against the plaintiffs in this case."). A court's discretion to award reasonable fees under § 1988(b) finds its authority directly in the text of the statute. 42 U.S.C. § 1988(b) ("In any action or proceeding to enforce a provision of section ... 1983 ... **the court in its discretion,** may allow the prevailing party ... a reasonable attorney's fee ...") (emphasis added). A court's discretion in awarding fees is limited by this Court's decisions interpreting the statute which apply equally in state and federal court. James v. City of Boise, Idaho, 136 S. Ct. 685,686 (2016) (per curiam) (overturning contrary holding from state supreme court); Felder, 487 U.S. at 139-140; Maine, 448 U.S. 1, 11.

The fee provisions in California's anti-SLAPP statute are essentially the opposite of § 1988's. Under the statute, no discretion is vested in a court to not award fees to a prevailing defendant. The statute requires a court to award fees to a defendant who prevails in an anti-SLAPP motion. See Cabral v. Martins, 177 Cal. App. 4th 471,490 (2009) ("The language of the anti-SLAPP statute is mandatory; it

requires a fee award to a defendant who brings a successful motion to strike."). The court is required to do so even if the suit was entirely reasonable and filed in good faith but ultimately lost on a legal issue of first impression. Id. (rejecting argument that fee "award[] should be reduced to [plaintiff's] good faith in bringing claims under a new statute that has not yet been judicially interpreted."). In fact, a plaintiff must pay fees to a prevailing defendant even if the suit as a whole may have merit but the the plaintiff cannot show that the moving defendant is liable.

In contrast to § 1988, a plaintiff who defeats an anti-SLAPP motion is entitled to fees only if the motion was "frivolous or is solely intended to cause unnecessary delay." California Code of Civil Procedure § 425.16(c)(1). See App.12-13.

The fee shifting provisions of 42 U.S.C. § 1988(b) and California's anti-SLAPP statute are irreconcilable and a court cannot simultaneously comply with both statutes directives.

B. The anti-SLAPP Statute's Fee Shifting Provisions also Stand as an Obstacle to the Execution of the Full Purposes and Objectives of Congress in enacting 42 U.S.C. § 1983 and also leads to frequent and predictable different outcomes in a Defendant's Fee Award based solely on whether the claim is asserted in a state or federal court

In Felder, this Court explained in holding that state notice-of claim-provisions cannot be applied to § 1983 cases, that the question was whether "the application

of the [State law] to § 1983 actions brought in state courts consistent with the goals of the federal civil rights laws, or does the enforcement of does the enforcement of such a requirement instead stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Felder, 487 U.S. at 138. "Any assessment of the applicability of a state law in federal civil rights litigation ... must be made in light of the purpose and nature of the federal right. This is so whether the question of state-law applicability arises in § 1983 litigation brought in state courts, which possess concurrent jurisdiction over such actions, or in federal- court ...." Id., 487 U.S. at 138-140.

The Court explained that § 1983 serves "to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages to secure injunctive relief." Felder, 487 U.S. at 130. The Court held that state notice-of-claim laws cannot be applied to § 1983 cases in state courts, because doing so would "thwart the congressional remedy" and be "inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law." Id. at 139, 153.

Congress enacted § 1988 as an integral part of the remedy necessary to achieve compliance with Congress's statutory policies of encouraging private enforcement of federal civil rights laws. See Robertson v. Wegmann, 436 U.S. 584, 590-591 (1978) ("The policies underlying § 1983 include compensation of persons injured by deprivation of federal civil rights and provisions of abuses of power by those acting under color of state law."); see City of Riverside v. Rivera, 477

U.S. 561, 574-577 (1986) (explaining that the statute is designed to deter civil rights violations and encourage access to the courts to redress often economically unviable injuries to fundamental right); see also Coates v. Bechtel, 811 F.2d 1045, 1049 (7th Cir. 1987) ("If prevailing defendants were routinely awarded attorney's fees under § 1988, civil rights plaintiffs would be extremely reluctant to initiate litigation for fear of being charged with a fee award vastly exceeding the expected recovery, and in some cases their ability to pay, thereby vitiating the underlying purpose of § 1988.").

In order to ensure that § 1983 plaintiffs are not deterred from bringing suits even where the outcome cannot be assured, § 1988 prohibits courts from awarding fees to defendants except in frivolous cases. And the court has the discretion to excuse the plaintiff from paying fees if justice so requires. In contrast, the anti-SLAPP statute in requiring a fee award in every case where a defendant prevails in the motion, even if the case is decided on a novel question of law, is not only in conflict with § 1988 but also has the effect of standing as an obstacle to achievement of Congress's objective in enacting § 1983 in protecting plaintiffs in bringing § 1983 claims to enforce their federal civil rights.

The conflicting standards in a court's awarding fees under § 1988(b) or California's anti-SLAPP mandatory fee provisions also will frequently and predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in a California

or federal court, an outcome Congress surely never intended in enacting § 1983.

In Felder, this Court held that "[b]ecause the notice of claim statutes here conflicts in both its purposes and effects with the remedial objectives of § 1983, and because its enforcement in such actions will frequently and predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court, we conclude that the state law is preempted when the § 1983 action is brought in state court." Id., 487 U.S. at 138.

While there is a wide circuit split as to whether a state's anti-SLAPP statute applies in diversity jurisdiction cases,[1] a federal court will not apply an

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[1] See, Adelson v. Harris, 774 F.3d 803, 809 (2d Cir. 2014) (finding application of Nevada's anti-SLAPP provisions in federal court "unproblematic"); Liberty Synergistics Inc. v. Microflo Ltd., 718 F.3d 138, 144 (2d Cir. 2013) (applying California's anti-SLAPP law in federal court); Godin v. Schencks, 629 F.3d 79, 81 (1st Cir. 2010) (finding that Maine's anti-SLAPP law applied in federal court); United States ex rel. Newsham v. Lockheed Missiles & Space Co., 190 F.3d 963, 973 (9th Cir. 1999) (applying certain provisions of the California anti-SLAPP law in federal court).

But other federal appellate courts, particularly in recent years, have disagreed. See, Klocke v. Watson, 936 F.3d 240, 245 (5th Cir. 2019), as revised (Aug. 29, 2019) (finding that Texas anti-SLAPP law's burden-shifting framework could not apply in federal court because it imposed additional requirements beyond those found in the Federal Rules of Civil Procedure); Carbone v. Cable News Network., Inc., 910 F.3d 1345, 1351 (11th Cir. 2018) (finding that motion-to-strike procedure in Georgia anti-SLAPP law conflicted with federal rules and could not apply in federal court); Los Lobos Renewable Power, LLC v. Americulture, Inc., 885 F.3d 659,662 (10th Cir. 2018), cert. denied, 139 S. Ct. 591 (2018) (finding that

anti-SLAPP statute to a federal claim, let alone to a § 1983 claim. See Hilton v. Hallmark Cards, 599 F.3d 894, 901 (9th Cir. 2010) (anti-SLAPP motion only applies to the pendent state law claims set out in complaint).

The anti-SLAPP statute's mandatory fee shifting provisions will frequently and predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court. In Felder, the Court held that the "determination that notice of claim statutes are inapplicable to federal court section 1983 litigation informs our analysis in two crucial respects. First, it demonstrates that the application of of the notice requirement burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with the requirement that is entirely absent from civil rights litigation in federal courts....Second, it reveals that the enforcement of such statutes in 1983 actions brought in state court will frequently and predictably produce different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court." Id. 487 U.S. at 141.

While defendant fee awards are rare in federal court § 1983 litigation, they are regularly granted in § 1983 cases that fall within the scope of the anti-SLAPP statute. See Bradbury v. Superior Court, 49 Cal.App.4th 1108, 1119 (1996); see also Levy v. City of Santa Monica, 114 Cal.App. 4th 1252, 1269-1260 (2004)

New Mexico's anti-SLAPP law does not apply in federal court); Abbas, 783 F.3d at 1332 (finding that D.C. anti-SLAPP law does not apply in federal court).

(mootness of § 1983 claim merited granting of anti-SLAPP motion). California may not apply such an "outcome-determinative law when entertaining substantive federal rights in their courts." Felder, 487 U.S. at 141.

The Court of Appeal's reasoning that while some § 1983 plaintiffs may be discouraged to bring their suits in a state court because of the the anti-SLAPP statute's mandatory fee provisions that does not rise to the level of defeating a plaintiff's ability to vindicate his federal rights through a § 1983 claim, particularly, as the Court of Appeal held, in light of the low bar a plaintiff must meet in order to save such claims and avoid attorney fees under the anti-SLAPP statute fails to take into account that as to a plaintiff who cannot meet the bar, he will rarely be required to pay a defendant's fees in a federal court as opposed to a mandatory award under the anti-SLAPP statute for a defendant who prevails in a California court.

California's anti-SLAPP statute mandatory fee provisions as applied to § 1983 cases stands as an obstacle to accomplishment of the execution of the full purposes and objectives of Congress of Congress in enacting § 1983 and will frequently and predictably produce different outcomes as to a prevailing defendant's fee award solely on whether that litigation takes place in state or federal court.

C. The Court of Appeal's Decision Raises an Important Federal Question

The issue presented in this case would merit serious concern even if California were alone in applying its

anti-SLAPP statute mandatory fee shifting provisions in favor of prevailing defendants to § 1983 cases.

But the issue presented here does not only concern California. Nearly every jurisdiction which has enacted an anti-SLAPP statute has provided for an award of attorney's fees to a prevailing defendant.[2]

42 U.S.C. § 1988(b) is not limited to only § 1983; its text includes a large class of other federal civil rights statutes. See Christianburg, 434 U.S. at 422-423 (applying § 1988(b) to Title VII). The Court of Appeal's decision does not only impact § 1983 cases but may impact a wide variety of other federal civil rights litigation.

The prevalence of nationwide anti-SLAPP laws with mandatory fee shifting provisions in favor of prevailing defendants, and the important federal interests involved further warrants this Court's intervention.

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[2] See Ariz. Rev. Stat. Ann. § 12-752(D); Ark. Code Ann. § 16-63-506(b)(1); Cal. Civ. Proc. Code § 425.16(c)(1); Conn. Gen. Stat. § 52-196a(f); Del. Code Ann. tit. 10, § 8138(a)(1); D.C. Code § 16-5504(a); Fla. Stat. § 768.295(4); Ga. Code Ann. § 9-11-11.1(b.1); Haw. Rev. Stat. § 634F-2(8)(B); 735 Ill. Comp. Stat. 110/25; Ind. Code § 34-7-7-7; Kan. Stat. Ann. § 60-5329(g); La. Code Civ. Proc. Ann. art. 971(b); Me. Rev. Stat. Ann. tit. 14, § 556; Mass. Gen. Laws ch. 231 § 59(H); Minn. Stat. § 554.04(1); Mo. Rev. Stat. § 537.528; Neb. Rev. Stat. § 25-21,243(1); Nev. Rev. Stat. § 41.670(1)(a); N.M. Stat. Ann. § 38-2-9.1(B); N.Y. Civ. Rights Law § 70-a(1)(a); Okla. Stat. tit. 12, § 1438(A)(1); Or. Rev. Stat. § 31.152(3); 27 Pa. Cons. Stat. § 7707; R.I. Gen. Laws § 9-33-2(d); Tenn. Code Ann. § 4-21-1003(c); Tex. Civ. Prac. & Rem. Code § 27.009(a)(1); Utah Code Ann. § 78B-6-1405(1)(a); Vt. Stat. Ann. tit. 12, § 1041(f)(1); Va. Code Ann. § 8.01-223.2(B).

This case presents the Court with an excellent vehicle to consider the applicability of a state's mandatory fee shifting provisions to § 1983 cases. Providing much needed guidance to the state courts will enable those courts to address similar disputes about their anti-SLAPP statutes mandatory fee shifting provisions to § 1983.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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