

No. 22-245

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In The  
**Supreme Court of the United States**

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ABOLFAZL HOSSEINZADEH,

*Petitioner,*

v.

BELLEVUE PARK HOMEOWNERS  
ASSOCIATION, ET AL.,

*Respondents.*

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

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**BELLEVUE PARK HOMEOWNERS  
ASSOCIATION OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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ANDREW J. KINSTLER  
HELSELL FETTERMAN LLP  
1001 Fourth Avenue  
Suite 4200  
Seattle, WA 98154  
Ph: 206-292-1144  
akinstler@helsell.com  
*Counsel for Bellevue Park  
Homeowners Association*

## **QUESTIONS PRESENTED**

Restated, the questions presented are:

Does a trial court have discretion to allow a party who previously filed a motion for summary judgment to join in a later motion filed by another party which asserts different legal arguments?

Does state law apply to pendent state law claims?

## **CORPORATE DISCLOSURE STATEMENT**

Bellevue Park Homeowners Association (BPHOA) makes the following disclosure:

1. BPHOA is not a subsidiary or affiliate of a publicly-owned corporation.
2. BPHOA is not a joint venture or a limited liability company.
3. BPHOA is not a partnership or limited liability partnership.
4. There is no publicly-owned corporation that has a financial interest in the outcome of this litigation.

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## COUNTERSTATEMENT OF THE CASE

This matter involves the governance of an association of condominium units located in Bellevue, Washington, a suburb of Seattle.

Petitioner, a representative of a condominium owner, brought: 1) claims for defamation and false light against three defendants, Adrian Teague, Jennifer Gonzales and the Bellevue Park Homeowners Association (the “HOA”); and 2) claims under 42 U.S.C. §1982 of the Civil Rights Act, the Fair Housing Act, the Washington Law Against Discrimination and the Washington Consumer Protection Act against only the HOA. App. 4-5. The Petition, however, only raises claims of legal error arising from: 1) summary judgment dismissing Petitioner’s pendent defamation and false light claims; and 2) the trial court’s discretionary ruling allowing Gonzales to join in the HOA’s motion for summary judgment on those claims.

Petitioner misstates several relevant facts. First, he states that on March 29, 2016, he was elected to the Association’s Board of Directors. Pet. at 7. This is not accurate. Petitioner was elected to the Board, but due to the absence of a quorum that election was found to be invalid. The Board then appointed Petitioner to the vacant position. App. 6.

Petitioner then states that on “January 7, 2017, *he* held a special meeting of the Board at which he was elected president.” (italics added.) Petition at 7. Of course, Petitioner could not hold a meeting and make himself president. Rather, the citation relied upon by

Petitioner states that Petitioner represented to the Association's bankers that he was the Board president as he attempted to take control of the Association's funds. App. 3.

Petitioner also states that he never withdrew Association funds from Wells Fargo Bank, relying upon a citation to an Order of the trial court below. Petition at 7. In fact, the Order merely recounts Petitioner's assertion that he decided not to touch the funds. The Order makes no finding on the question of whether funds were diverted. *Id.*



### **REASONS FOR DENYING THE WRIT**

The writ should be denied because it presents no issue for review that meets the standard for granting such a writ. Supreme Court Rule 10 sets forth grounds for review on a writ of certiorari, none of which the Petition meets:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;

has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

**(b)** a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

**(c)** a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

U.S. Sup. Ct. R. 10.

Petitioner fails to explain which ground for review under Rule 10 Petitioner is relying upon, and none apply to his arguments. Petitioner makes no argument that the grounds set forth in Rule 10(a) are met, and fails to identify any conflicting decisions or any

departure from “the accepted and usual course of judicial proceedings.”

The grounds set forth in Rule 10(b) apply only to state court decisions, not at issue here.

The grounds set forth in Rule 10(c) require the identification of an important question of federal law that has not been resolved by this Court. Here, neither issue comes close to meeting this standard. A discretionary ruling regarding allowing one party to join in another party’s motion for summary judgment does not approach that standard, and the application of the “common interest privilege” in a state law defamation or false light claim does not present an important question of federal law, as federal law does not even apply to the analysis. Therefore, the Petition lacks merit.

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## LEGAL ARGUMENT

Hosseinzadeh’s Petition is limited to two issues. First, Petitioner asserts that the trial court abused its discretion in allowing Defendant Gonzales to join in the motions for summary judgement filed by the HOA as to the defamation and false light claims. Second, Petitioner claims that the trial court and the Ninth Circuit improperly applied a state law common interest privilege analysis to the state law defamation and false light claims, rather than applying federal law applicable to the attorney client privilege. The Petitioner’s analysis of each issue is hopelessly flawed.

**A. The district court properly allowed Gonzales to join in the HOA's summary judgment motion as to the state law defamation and false light claims.**

Both the HOA and Teague were targets of the defamation and false light claims. Both the HOA and Teague had the right to bring summary judgment motions on those claims. Petitioner claimed that the individual defendants were acting for the HOA when they made the challenged statements, and claimed that the HOA had vicarious liability for the actions of the individual defendants. The HOA's motion for summary judgment on these claims focused on the common interest privilege, which allows a person or entity to speak with others sharing a common interest without facing liability for statements made within the context of the common interest. Defendant Gonzales had previously moved for summary judgment on the issue of the truth of her statements, without raising the common interest privilege. After that motion was denied, the HOA remained potentially liable for her statements in her capacity as a board member, as well as for Teague's statements, which led to the HOA making its own motion asserting the common interest privilege.

Both Defendant Gonzales and Defendant Teague joined in the motion for summary judgment filed by the HOA on the issue of the common interest privilege. This joinder was perfectly appropriate. Once the trial court granted the HOA's motion, finding Gonzales's and Teague's statements to be covered by the common interest privilege, it would have made no sense for

Gonzales or Teague to go to trial on statements for which no liability could attach. In ruling on the HOA's motion for summary judgment, the trial court had to address the liability of both the HOA and the two individual defendants. The trial court did not abuse its discretion in allowing Gonzales (and Teague) to join in the HOA's motion.

**B. The district court and the Ninth Circuit properly applied state law to the pendent state claims asserting liability for defamation and false light.**

On the issue of whether state or federal law applies to the common interest privilege, Petitioner's argument is fundamentally flawed in that Petitioner fails to recognize the differences between the "common interest privilege" and the attorney-client privilege. While both concepts use the word "privilege," they are very different analytical tools. The common interest privilege provides a substantive framework to assess the legal sufficiency of state law defamation and false light claims. The attorney-client privilege is a rule which leads to the exclusion of potentially relevant evidence. The two doctrines are unrelated.

Petitioner contends that the common interest privilege and the attorney-client privilege present an issue for trial courts if the application of the privileges would cause different outcomes regarding the admissibility of the same evidence. As stated by Petitioner, in "cases involving both state and federal claims, a literal

reading of [Federal Rule of Evidence] 501 appears to require application of the federal common law of privileges to the federal claims and the state law of privileges with respect to the state claims.” Pet. at 15. Petitioner goes on to state that “when the evidence in question is relevant to both the state and federal claim, it would be meaningless to hold the same communication privileged for one set of claims but not for the other.” *Id.* Here, however, the common interest privilege was raised in, and was only relevant to, the state law claims. There was no overlap with the federal claims. The common interest privilege was not an element of, or in any way relevant to, any federal law claim asserted by Petitioner below, and was not a basis of the summary judgment motion dismissal of Petitioner’s claims brought under federal law. Therefore, Petitioner’s own legal argument confirms the lack of merit in his argument.

The courts below applied the common interest privilege as a legal framework for whether the Petitioner could establish the elements of his state law defamation/false light claims. Under Washington law, “[a] defamation action consists of four elements: (1) a false statement, (2) publication, (3) fault, and (4) damages.” *Phoenix Trading, Inc. v. Loops LLC*, 732 F.3d 936, 944 (9th Cir. 2013) (citing *Duc Tan v. Le*, 177 Wash.2d 649, 300 P.3d 356, 363 (2013)). Washington recognizes a common interest privilege in defamation cases. *See Moe v. Wise*, 97 Wash.App. 950, 989 P.2d 1148, 1154 (1999). The privilege arises “when the declarant and the recipient have a common interest in

the subject matter of the communication.” *Id.* (citing *Ward v. Painters’ Local Union No. 300*, 41 Wash.2d 859, 252 P.2d 253, 257 (1953) (members of a union discussing officers and members)). “This privilege generally applies to organizations, partnerships and associations and “arises when parties need to speak freely and openly about subjects of common organizational or pecuniary interest.” *Valdez-Zontek v. Eastmont Sch. Dist.*, 154 Wash.App. 147, 225 P.3d 339, 347 (2010) (citing *Moe*, 989 P.2d at 1155) (additional citations omitted). The privilege is broad enough to cover communications between parties who are not in the same business but still share a common interest. *See Moe*, 989 P.2d at 1155 (citing *Williams v. Blount*, 741 P.2d 595, 596 (Wyo. 1987) (routine business transaction between an officer of a title insurance company and bank officer in which both parties have a pecuniary interest)).

Communications among and between parties having a common interest are privileged and will not support a defamation claim unless they are made with actual malice. *Moe*, 989 P.2d at 1158. The plaintiff bears the burden of proof to show actual malice, which must be established by clear and convincing evidence that the privilege was abused. *See id.* at 1157 (citing *Bender v. City of Seattle*, 99 Wash.2d 582, 664 P.2d 492, 505 (1983)).

Finally, “[w]hen the facts are not in dispute as to the circumstances of the alleged defamatory communication, the determination whether a privilege applies is a matter of law for the court to decide.” *Valdez-Zontek*, 225 P.3d at 347 (citations omitted).

Here, Petitioner did not present evidence to create a question of fact as to whether the common interest privilege applied, and the trial court and the Ninth Circuit properly found that Petitioner's defamation and false light claims failed as a matter of law. These were not rulings on the admissibility of evidence; the courts below simply applied the substantive state law of defamation and false light to the evidence presented by the parties in their summary judgment papers.

Petitioner contends that courts face an unresolved "conundrum" if "the same communications [are] privileged for one set of claims but not the other." Pet. at 15. While that "conundrum" might arise in some other case, it is not present in this case. Applying the common interest privilege analysis to the state law defamation and false light claims had no effect on the resolution of the claims brought under federal law. The courts below analyzed the federal claims on the basis of the evidence presented on those issues without regard to the defamation and false light claims, and without regard to any "common interest privilege." Petitioner has not sought review of the lower court rulings on those claims. No "conundrum" of differing evidentiary rulings based on state or federal law has been presented in this matter, which ends the inquiry based on the very authorities cited by Petitioner.

Petitioner's confusion is further demonstrated by his examination of the scope of the attorney client privilege to communications between an attorney and two or more clients. Pet. at 17. Petitioner argues that

there was no finding that the attorney client privilege applied to the communications at the heart of his defamation and false light claims. Of course not! The defendants below did not assert an attorney-client privilege claim regarding the communications at issue; they asserted that the defendants had the right to communicate with others in the zone of common interest. The common interest privilege did not prevent the communications from being admitted into evidence. The common interest privilege merely provided the framework, under state law, for whether the communications were actionable.

The attorney-client privilege, which prevents evidence from being admitted, is an entirely different concept from the “common interest” at issue in defamation claims. While federal courts sometimes assess whether a “common interest” applies in the context of the attorney-client privilege where several individuals are involved in a communication, the attorney-client privilege has no bearing on the “common interest privilege” as it applies to the elements of a defamation claim. While the two concepts share words, the concepts are entirely separate.

Finally, Petitioner has not preserved this issue on appeal. The Petitioner argued to the trial court and to the Court of Appeals that state law applied to his defamation and false light claims, and to the issues regarding the common interest privilege. *Hosseinzadeh v. Bellevue Park Homeowners Association, et al.*, Case No. 2:18-cv-01385-JCC (W.D. Wash.) (Doc. 162 at

23-25). He cannot now claim error when the courts below applied the law that he asked them to apply.



### CONCLUSION

The Petition does not present a single issue for review that meets the standards for granting such a writ under Supreme Court Rule 10, nor has any issue on review articulated in the Petition been preserved in the proceedings below. Therefore, Bellevue Park Homeowners Association requests that the Court deny the Petition.

Respectfully submitted,

ANDREW J. KINSTLER  
 HELSELL FETTERMAN LLP  
 1001 Fourth Avenue  
 Suite 4200  
 Seattle, WA 98154  
 Ph: 206-292-1144  
 akinstler@helsell.com  
*Counsel for Bellevue Park  
 Homeowners Association*

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