NO. _____

In the Supreme Court of the United States

CENTERLINE LOGISTICS CORPORATION, ET AL.,

Petitioners,

v.

INLANDBOATMEN'S UNION OF THE PACIFIC, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court, in *New Yorks Times Co. v. Sullivan*[1], constitutionalized an actual malice standard for public-official defamation plaintiffs.[2] This Court, in *Linn v. Plant Guard Workers*,[3] extended this innovation to false and defamatory statements made during a labor dispute. The Court then balanced the plaintiff's right under the Petition's clause with the actual malice standard.[4]

Compelled by this Court's constitutional decisions in *Sullivan* and *Linn*, states, like California, have incorporated the actual malice standard into their anti-SLAPP statutes. State courts are split over the application of the actual malice standard's clear and convincing evidence burden to plaintiffs in anti-SLAPP cases and whether it violates a plaintiff's right to a civil jury trial. These are the questions presented:

1. Whether this Court should overturn *Sullivan*'s actual malice standard.

2. Whether the Seventh Amendment's right to a jury trial is incorporated against the States, and, if yes, whether the application of the clear and convincing actual malice standard at the early anti-SLAPP stage of litigation violates a plaintiff's right to a civil jury trial.

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1 376 U.S. 254 (1964).

2 *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 766 (1985) (White, J., concurring in judgment).

3 383 U.S. 53 (1966).

4 *McDonald v. Smith*, 472 U.S. 479 (1985).

3. Does an interpretation of the anti-SLAPP statute that allows for the dismissal of a defamation claim without evaluating whether the plaintiff has met the actual malice standard violate the plaintiff's First Amendment right to petition the government through access to the courts?

4. Whether a state court violates a party's Fourteenth Amendment right to due process under the United States Constitution when the state court summarily extinguishes that party's lawsuit without considering that party's evidence.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Centerline Logistics Corporation
- Westoil Marine Services, Inc.

Respondents and Defendants-Respondents below

- Inlandboatmen's Union of the Pacific, a labor organization
- Cris Sogliuzzo, an individual and the marital community thereof

Interested Party per Sup. Ct. R. 29.4

- Attorney General of California

CORPORATE DISCLOSURE STATEMENT

Westoil Marine Services, Inc. is wholly owned by Petitioner Centerline Logistics Corporation, which in turn is wholly owned by Alimpik Tug & Barge Holdco 1, LLC. No public company owns 10% or more of either Petitioner.

LIST OF PROCEEDINGS

Supreme Court of California

No. S289158

Centerline Logistics Corporation et al., *Plaintiffs and Appellants,* v. Inlandboatmen's Union of the Pacific et al., *Defendants and Respondents.*

Order Denying Review: March 26, 2025

Court of Appeal of the State of California,
Second Appellate District

No. B325276

Centerline Logistics Corporation Et Al., *Plaintiffs and Appellants,* v. Inlandboatmen's Union of the Pacific Et Al., *Defendants and Respondents.*

Opinion: December 26, 2024

Rehearing Denial: January 14, 2025

Superior Court for the State of California
County of Los Angeles

Case No. 21LBCV00633

Centerline Logistics Corporation, a Delaware corporation, and Westoil Marine Services, Inc., a California corporation, *Plaintiffs,* v. Inlandboatmen's Union of the Pacific, a labor organization, and Cris Sogliuzzo, individually, and the marital community composed thereof, *Defendants.*

Judgment: July 1, 2022

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PETITION FOR A WRIT OF CERTIORARI

Centerline Logistics Corporation and Westoil Marine Services, Inc. respectfully pray that this Court grant a writ of certiorari to review the judgment of the California Supreme Court which denied review on March 26, 2025.

OPINIONS BELOW

This case arises from the following proceedings:

- *Centerline Logistics Corp. a Delaware corporation, and Westoil Marine Services, Inc., a California corporation, v. Inlandboatmen's Union of the Pacific, a labor organization, and Cris Sogliuzzo, individually, and the marital community composed thereof,* Superior Court No. 21LBCV00633 (Cal. Sup. Ct.) (order granting Defendants anti-SLAPP motion to dismiss, filed on July 1, 2022). 2022 Cal. Super. LEXIS 52025. App.30a. Order Granting Anti-SLAPP Motion and Awarding Attorney Fees dated June 10, 2022. App.36a.
- *Centerline Logistics Corporation et al., v. Inland-boatmen's Union of the Pacific et al.*, Appellate Court No. B325276 (Cal. App. Ct.) (order affirming trial court's anti-SLAPP motion to dismiss, filed on December 26, 2024). 2024 Cal. App. Unpub. LEXIS 8212; 2024 LX 38518; 2024 WL 5231304. App.2a.

- *Centerline Logistics Corporation et al., v. Inland-boatmen's Union of the Pacific et al.*, Appellate Court No. B325276 (Cal. App. Ct.) (January 14, 2025 order denying petition for a rehearing). App.38a.
- *Centerline Logistics Corporation et al., v. Inland-boatmen's Union of the Pacific et al.*, California Supreme Court No. S289158 (Cal.) The review was summarily denied on March 26, 2025. 2025 Cal. LEXIS 1563; 2025 LX 30575. App.1a.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

JURISDICTION

The California Court of Appeals issued an unpublished decision on December 26, 2024. App.2a. It denied rehearing on January 14, 2025. App.38a. The California Supreme Court denied review on March 26, 2025. App.1a. A presumption arises that the California Supreme Court reviewed the merits of the case before summarily denying the petition for review. *Bianchi v. Rylaarsdam*, 334 F.3d 895, 904-905 (9th Cir. 2003) (Fletcher, J., concurring). This Petition was filed less than 90 days after the California Supreme Court's denial of review.

No request for an extension of time to petition this Court was made nor required. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., amend. VII

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. Const., amend. XIV § 1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CCP § 425.16, California Anti-SLAPP Code is reproduced at App.39a.

Petitioners contend that the First Amendment to the United States Constitution, the Seventh Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, and California Code of Civil Procedure section 425.16 govern this dispute.

> Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question. Thus, in cases involving religious freedom, free speech or assembly, this Court has often held that a valid statute was unconstitutionally applied in particular circumstances because it interfered with an individual's exercise of those rights.

Boddie v. Connecticut, 401 U.S. 371, 379 (1971).

Petitioners do not contend that the statute is facially unconstitutional. The statute, California Code of Civil Procedure section 425.16, was applied to Petitioners in an unconstitutional manner by the California judiciary. Petitioners have accordingly served notice of this Petition on the California Attorney General.

STATEMENT OF THE CASE

I. Summary

The actual-malice standard is a relatively new feature of libel law. It arose from *New York Times Co. v. Sullivan* and was extended to labor disputes in *Linn v. Plant Guard Workers Local 113*, 383 U.S. 53 (1966).

But as Justice White explained, *Sullivan*'s actual malice standard "overturn[ed] 200 years of libel law," not because that law was wrong but because this Court concluded the common law was inadequate. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 766 (1985) (White, J., concurring in the judgment).

Sullivan encourages individuals to libel first and question never, promising them near-absolute immunity should they do so. *See Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from the denial of certiorari) (explaining that the *Sullivan* standard "has evolved . . . into an effective immunity from liability," creating a perverse incentive where "publishing without investigation, fact-checking, or editing has become the optimal legal strategy" (emphasis in original)).

The Court is not bound to keep repeating the same mistakes. There comes a time when this Court must correct its past mistakes. *Cf. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) ("The Court has jettisoned many precedents that Congress likewise could have legislatively overruled."); *see also* 1 J. Kent, COMMENTARIES ON AMERICAN LAW 443 (1826) ("If . . .

any solemnly adjudged case can be shown to be founded in error, it is no doubt the right and the duty of the judges who have a similar case before them, to correct the error."). "Judicial humility" requires the Court to "admit[] and in certain cases correct[] [its] mistakes, especially when those mistakes are serious." *Loper Bright Enters.*, 603 U.S. at 411 (internal citations omitted).

Indeed, several Justices have called for this Court to revisit *Sullivan* or have otherwise identified its flaws. Justice Thomas has said, "*New York Times* and the Court's opinions extending it were policy-driven decisions masquerading as constitutional law," and charged that this Court "should reconsider [its] jurisprudence in this area." *McKee v. Cosby*, 139 S. Ct. 675, 676, 682 (2019) (Thomas, J., concurring in the denial of certiorari). Justice Gorsuch has agreed, noting that the actual-malice doctrine "evolved into a subsidy for published falsehoods on a scale no one could have foreseen" that "leave[s] far more people without redress than anyone could have predicted," and he called for this Court to "return[] its attention" to *Sullivan*. *Berisha*, 141 S. Ct. 2424, 2429-30 (2021) (Gorsuch, J., dissenting from the denial of certiorari). And Justice Kagan has described "[t]he obvious dark side of the *Sullivan* standard": it "allows grievous reputational injury to occur without monetary compensation or any other effective remedy." *A Libel Story: Sullivan Then and Now*, 18 LAW & SOC'Y INQUIRY 197, 205 (1993).

It is time for *Sullivan* and *Linn* to be overruled.

Even so, should this Court leave *Sullivan* and *Linn* undisturbed, it still should resolve the second question; whether state anti-SLAPP statutes violate plaintiff's Seventh Amendment right to a civil jury

trial. The Seventh Amendment's right to a civil jury trial remains one of three rights not yet incorporated against the States. This Court should incorporate it and hold that the Seventh Amendment's right to a civil jury trial applies to the States, and recognize that their application of the clear- and-convincing-evidence standard at the pleading stages of a defamation claim through anti-SLAPP statutes violates the Seventh Amendment.

This case is an ideal vehicle to resolve the question(s) presented. California, itself, only applies the "actual malice" standard because of this Court's decision about federal, not state, law. *See Reader's Digest Assn v. Superior Court*, 37 Cal. 3d 244, 256-257 (Cal. 1984); *Morales v. Coastside Scavenger Co.*, 167 Cal. App. 3d 731, 734-735 (Cal. App. Ct. 1985) (utilizing the *Linn* standard for public disputes during a labor dispute). There is no independent state law actual malice standard.

Sullivan and *Linn* are not equipped to handle the world as it is today—media is no longer controlled by companies that employ legions of fact-checkers before publishing an article. Instead, everyone in the world has the ability to publish any statement with a few keystrokes. And in this age of clickbait journalism, even those members of the legacy media have resorted to libelous headlines and false reports to generate views. This Court need not further this golden era of lies.

Further, this case presents the important question of whether disfavored speakers' rights to speech and petition may be extinguished through procedural devices which effectively weigh the value of the speech's content prior to a meaningful opportunity to be heard.

Accordingly, a writ of certiorari should be granted.

II. Respondents Made and Published Maliciously Defamatory Statements as Part of a Labor Dispute.

Westoil Marine Services, Inc. ("Westoil") and Centerline Logistics Corporation ("Centerline") (collectively referred to as the "Petitioners") brought suit in this matter. App.140a. (Petitioners' Appellate Brief). Westoil operates in the maritime petroleum industry from a berth owned by the Port of Los Angeles. Westoil is a subsidiary of Centerline. Westoil and Centerline sought to protect themselves against an array of maliciously false and defamatory accusations levied against them by the Inlandboatmen's Union of the Pacific ("IBU") and Cris Sogliuzzo ("Sogliuzzo") (collectively referred to as "Respondents"). App.140a. The false statements were made at a closed session of a municipal Harbor Commission and separately through handbills purporting to support the ongoing, broader, labor dispute. App.142a.

The IBU is a labor union representing maritime employees along the West Coast. Sogliuzzo, a former employee of Westoil, was an IBU shop steward, and a member of the IBU Regional Executive Committee.

This case arose from patently false and malicious statements which Sogliuzzo and an IBU officer made, as IBU agents, to damage Petitioners as severely as possible due to a longstanding private dispute. Respondents' actual malice and seething hatred of Petitioners is present in Sogliuzzo's own words, in the trial court record. The vast majority of the evidence underlying Petitioners' appeal is undisputed or unrebutted, yet was disregarded at every stage of the California litigation.

This case is unique in several ways. Most of the challenged statements were transcribed, along with the statements of two government representatives who informed Sogliuzzo that his topics were unrelated to the pending meeting in which they were spoken. App.149a-151a. That Respondent, and his principal IBU, introduced evidence in the trial court admitting to actual malice. Respondents desired to shut down Petitioners' real estate lease to "make the wallet pay" as leverage in a dispute over union pensions and other topics. These topics were entirely unrelated to the proprietary government meeting in which they were spoken. App.159a-161a, 175a-183a.

After Centerline and Westoil filed suit, as is their First Amendment right, the state courts extinguished the suit without assigning even the slightest weight to Petitioners' evidence.

A. The Lawsuit.

Westoil operated out of Berth LA301 located in the Port of Los Angeles under a lease with the City of Los Angeles, by and through the Harbor Commission ("Board"). Under the terms of the permit, Centerline (formerly known as Harley Marine Services, Inc. ("HMS")) was a guarantor of the permit. The Board was reviewing whether to extend the terms of the permit. The Port was in regular contact with Centerline, providing feedback regarding the extension. The only point of issue during the extension discussions was negotiating the rental rate of the lease. It was understood that the extension would be approved as a matter of course.

The Port of Los Angeles has limited statutory authority. It is a propriety department of the City of

Los Angeles and governed by the Los Angeles Board of Harbor Commissioners. The Harbor Commission, on behalf of the Port, generates revenue through leasing and shipping service fees from the Harbor District area. The Harbor Commission operates, in essence, like a landlord. Los Angeles City Charter Article VI.

The Harbor Commission does not have authority to regulate, investigate, or adjudicate safety issues regarding vessels, employees or equipment. It does not have the authority to regulate, investigate, or adjudicate matters involving insurance in the petroleum industry or otherwise. It does not have the authority to regulate, investigate, or adjudicate labor issues between employers and unions, nor safety and the environment. As it relates to the issue at hand, the Harbor Commission was tasked with negotiating the price rates for a lease. Nothing more. App.146a-147a.

During relevant periods, Sogliuzzo was a Westoil employee, a member of the IBU, a member of the IBU Regional Executive Committee, and the IBU shop steward for Westoil. The IBU Constitution recognizes all such Committee members as officers.

Below are examples of the maliciously false, transcribed, statements Sogliuzzo made on or about October 5, 2021, and later repeated on October 21, 2021:

> We [The IBU believes] there are also Cal/OSHA violations as it relates to employee health monitoring and site safety.
>
> * * *
>
> [The IBU also believes] that the insurance coverages, as you are aware of them, are not

> adequate to the operations this company conducts.
>
> * * *
>
> While accidents and injuries need to be reported, so should near misses and other hazardous conditions the company creates, as an indicator of potential liabilities and measurable scale of genuine concern for consequences to its workforce and surrounding businesses that could be harmed.
>
> * * *
>
> [The IBU questions] if this company has been entirely honest with you, as to the name changes and shell games that have taken place over the last year . . .
>
> * * *
>
> Centerline Logistics has demonstrated that it will continue to be a bad actor. . . . [The IBU believes] Centerline Logistics has not been honest about its business practices . . .
>
> * * *
>
> Centerline Logistics has taken several measures to free itself of labor agreements here in L.A., Long Beach, and continues to do so, causing grave injury to local workers.

App.149a-151a.

These statements were unrelated to the Harbor Commission's meeting, and were intended to interfere with Petitioners' lease. The evidence introduced in the trial court conclusively proved the falsity of the statements. Petitioners also introduced evidence of

actual and presumed damages, including "holdover rent" which the landlord Commission imposed following this defamation. App.190a. (Brief containing citations to Petitioners' declarations proving damages)

Petitioners brought suit against IBU and Sogliuzzo, alleging that the statements were made in handbills, outside of the Board meetings and at the Board meeting with actual malice, and caused damages. The California courts refused to permit the matter to go to a jury, dismissing based upon the anti-SLAPP statute. In doing so, the California courts extended the application of the anti-SLAPP statute to invade upon a plaintiff's constitutionally-protected rights.

B. Petitioners Raised These Federal Questions at Each Available Stage.

Petitioners' right to a jury trial and their right to petition the courts for redress of grievances was violated by the July 1, 2022 decision of the trial court. Petitioners raised this issue at the California Court of Appeals and the California Supreme Court. The California Supreme Court's denial of the petition for review was cursory. App.1a. However, it was presumed to have reviewed the merits of Petitioners' claims including the federal questions.

> There is no doubt that Bianchi presented the substance of his federal due process claim regarding the Court of Appeal's disposition of his appeal to the state Supreme Court when he petitioned for a writ of mandate. Despite the state Supreme Court's summary dismissal of that petition, we assume that the state court considered the merits of Bianchi's federal claim since Bianchi presented no affirmative

> evidence to the contrary. *Cf. Michigan v. Long*, 463 U.S. 1032, 77 L. Ed. 2d 1201, 103 S. Ct. 3469 (1983) (Supreme Court assumes that a state court decision does not rest on an adequate, independent state ground absent a clear statement to the contrary); *but cf. Ylst v. Nunnemaker*, 501 U.S. 797 (1991) (federal court on habeas review looks through unreasoned state court decisions to the last reasoned decision to determine whether state courts ruled on federal or state grounds).

Bianchi v. Rylaarsdam, 334 F.3d 895, 904-905 (9th Cir. 2003) (Fletcher, J., concurring). This rule supports this Court's jurisdiction to review state court decisions.

Petitioners set forth their federal arguments in the manner below:

> Because section 425.16 prohibits a party from petitioning the courts for its own redress, it is Constitutionally circumscribed. *See generally City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 533-34, fn. 4. *Vargas v. City of Salinas* (2011) 200 Cal.App.4th 1331, 1346.

App.164a-165a. Petitioners' Opening Appellate Brief, p.33, fn. 7.

> Further, not only does an individual not have a constitutionally-protected right to make defamatory statements with actual malice, the Petitioners have a right to petition the courts. "The right to petition is guaranteed, the right to commit libel without impunity is not." *McDonald*, 472 U.S. at 485; AOB, p. 32-33. After all, the Right to Petition under the First Amendment long precedes even the

> constitution. *Id.*, at 482. The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government. *Bill Johnson's Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731, 741 ("("It has . . . repeatedly been held that an employer has the right to seek local judicial protection from tortious conduct during a labor dispute"); *see BE&K Constr. Co. v. NLRB* (2002) 536 U.S. 516, 525, 122 S. Ct. 2390; *Glacier NW v. Int'l Bhd. Of Teamsters Loc. Un. 174* (2023) 598 U.S. 771, 788-89; Benjamin Plener Cover, *The First Amendment Right to a Remedy*, 50 U. C. DAVIS L. REV. 1741 (2017); *see also* AOB, pp. 32-33; ARB, pp. 13-15. The Decision, by extending the interpretation of the anti-SLAPP statute to unprotected defamation committed with actual malice, would violate Petitioners constitutionally-protected right to seek redress through the courts.

App.356a. Petitioners' Petition for Appellate Rehearing, pp.17-18 (continuing through page 23 to highlight manners in which the Court of Appeal violated Petitioners' right to petition) (" . . . Appellants' right to a jury trial [. . . and] right to petition the government for redress [were extinguished by the Appellate Court's Decision]".).

> In ignoring the Petitioners' constitutionally-protected rights – which section 425.16 is powerless to constrain – the Decision usurps the role of a jury and infringes upon the Petitioners' right to petition the courts and present their legal claims to a jury.

App.362a. Petitioners' Petition for Appellate Rehearing, p.26.

Petitioners also presented these issues to the California Supreme Court:

> 6. Do a plaintiff's Constitutional petition and speech rights take precedence over the Decision's analytical approach?
>
> Petitioners indisputably argued this issue in the opening brief: "Because section 425.16 prohibits a party from petitioning the courts for its own redress, it is Constitutionally circumscribed. *See generally City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 533-34, fn. 4. *Vargas v. City of Salinas* (2011) 200 Cal.App. 4th 1331, 1346." AOB at p.33, fn.7.
>
> After all, the Right to Petition under the First Amendment long precedes even the constitution. *Id.* at 482. The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government. *Bill Johnson's Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731, 741 ("It has . . . repeatedly been held that an employer has the right to seek local judicial protection from tortious conduct during a labor dispute"); *see BE&K Constr. Co. v. NLRB* (2002) 536 U.S. 516, 525, 122 S. Ct. 2390; *Glacier NW v. Int'l Bhd. Of Teamsters Loc. Un. 174* (2023) 598 U.S. 771, 788-89; Benjamin Plener Cover, *The First Amendment Right to a Remedy*, 50 U. C. DAVIS L. REV. 1741 (2017); *see also* AOB, pp. 32-33; ARB, pp. 13-15. The Decision, by extending the interpretation of the anti-SLAPP statute

> to unprotected defamation committed with actual malice, would violate Petitioners' constitutionally-protected right to seek redress through the courts.
>
> Despite this proactive briefing, the Decision's nearly universal adoption of the factual arguments made in the Respondents' briefing violates Petitioners' right to a jury trial and extinguished their right to petition the government for redress. The government cannot make value judgments that a defendant's right to speak and petition is preferable to that of a plaintiff, and dismiss the claims prior to discovery, denying plaintiffs of their right to present legal claims to a jury. If the Decision had complied with this Court's binding precedent on this question, no such Constitutional violation would have occurred.

App.62a-63a. Petitioners' Petition for California Supreme Court Review, pp.22-24.

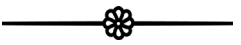
> This Court should expressly rule that is unconstitutional, under both the California and United States Constitutions, to apply section 425.16 and 47(b) in such an extreme manner that the State is making viewpoint and content-based choices that a defendant's speech is more valuable and worthy of protection than a plaintiff's rights to speak, petition the government, and obtain a jury trial.

App.49a. Petitioners' Petition for California Supreme Court Review, p.7.

> Moreover, defamation in a labor dispute is not solely within the jurisdiction of the National

> Labor Relations Act. *Linn*, 383 U.S. at 63 ("The injury that a statement might cause to an individual's reputation – whether he be an employer or union official – has no relevance to the [NLRB's] function."). In those cases, where an employer shows that the defamatory statement was made with actual malice as enunciated in *Sullivan*, 376 U.S. at 280, the case may proceed. *Linn*, 383 U.S. at 63.

App.169a-170a; *see also* 165a; 168a n.8. Petitioners' Opening Appellate Brief, p.38.



REASONS FOR GRANTING THE PETITION

Sullivan is an admittedly ahistorical precedent, divorced from any understanding of the law when the First Amendment was enacted. Not only does it fail to adhere to history and tradition, it is unfit for the modern era where any person or corporation may, with the push of a button, publish defamatory material for the billions of people around the world to see—defamatory material that, like everything else on the internet, will exist forever.

Moreover, California's anti- SLAPP statute—as interpreted and applied by the California Supreme Court—requires judges to engage in improper fact-finding and invade the jury's provenance in violation of the Seventh Amendment's right to a civil jury trial. This Court need not allow the Seventh Amendment to linger, unincorporated.

Further, the anti-SLAPP statute must be interpreted in a manner that does not violate a parties'

First Amendment right to petition the courts under the United States Constitution. To ensure that a party has the right to properly petition the government under this Court's standard enunciated in *McDonald*, the court must analyze the evidence to determine if actual malice standard has been met.

Finally, the failure to review evidence to determine if the actual malice standard has been met is violative of a party's due process rights under the Fourteenth Amendment of the United States Constitution.

I. *Sullivan* Was Wrong from the Start and Ill-Suited to Address Defamation in the Modern Day.

A. The Pre-*Sullivan* Common Law.

Justice White explained that in *Sullivan*, the Court "overturn[ed] 200 years of libel law." *Dun & Bradstreet, Inc.*, 472 U.S. at 766 (White, J., concurring in the judgment).

"The accepted view" was defamation liability did not "abridge[] freedom of speech or freedom of the press, and a majority of jurisdictions made publishers liable civilly for their defamatory publications regardless of their intent." *Herbert v. Lando,* 441 U.S. 153, 158-59 (1979) (emphasis added). Or as Justice Story aptly explained, "the liberty of the press do[es] not authorize malicious and injurious defamation." *Dexter v. Spear*, 7 F. Cas. 624, 624 (CC RI 1825).

This rule long predated the Founding. Blackstone summarized: while "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public," he "must take the consequences of his own temerity" should he publish falsehoods. 4 W. Blackstone,

COMMENTARIES ON THE LAWS OF ENGLAND 151-52 (1769). The Founders took a similar view. As Thomas Jefferson explained, the First Amendment simply provided that "[t]he people shall not be deprived of their right to speak, to write, or otherwise to publish anything but false facts affecting injuriously the life, liberty or reputation of others." F. Mott, JEFFERSON AND THE PRESS 14 (1943).

The Founders understood that the First Amendment merely precluded pre-publishing restraints: it did not abrogate the common-law of defamation. As James Wilson—a soon-to-be justice of this Court—described the First Amendment at the Pennsylvania ratifying convention:

> I presume it was not in the view of the honorable gentleman to say that there is no such a thing as a libel, or that the writers of such ought not to be punished. The idea of the liberty of the press is not carried so far as this in any country. What is meant by the liberty of the press is that there should be no antecedent restraint upon it; but that every author is responsible when he attacks the security or welfare of the government, or the safety, character, and property of the individual.

2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 449 (J. Elliot ed., 1836).

Early American courts recognized as much. For instance, the Pennsylvania Supreme Court explained when interpreting its analogous constitutional provi-

sion, which provided that "the freedom of the press shall not be restrained[5],":

> The true liberty of the press is amply secured by permitting every man to publish his opinion; but it is due to the peace and dignity of society, to inquire into the motive of such publications, and to distinguish between those which are meant for use and reformation, and with an eye solely to the public good, and those which are intended merely to delude and defame. To the latter description, it is impossible that any good government should afford protection and impunity.

Respublica v. Oswald, 1 Dall. 319, 325 (Pa. 1788).

And this Court long recognized the insidious nature of defamatory remarks and that, originally understood, the freedom of press did not protect libel. "[T]he common-law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the protection extended in our constitutions." *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 715 (1931). Indeed, "it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public." *Id.* Thus, libel remained one of the "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problems." *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-72 (1942); *see also Beauharnais v. Illinois*, 343 U.S. 250, 255 (1952) ("In

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5 Pa. Const. of 1776, art. XII, reprinted in 5 THE FEDERAL AND STATE CONSTITUTION, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS 3083 (F. Thorpe ed., 1909).

the first decades after the adoption of the Constitution . . . nowhere was there any suggestion that the crime of libel be abolished.").

In sum, the law before *Sullivan* was clear.

B. *Sullivan* Is Not Fit for the Modern Day.

Sullivan and its progeny (such as *Linn* and *McDonald*) rest primarily on two grounds. First, *Sullivan* decided that the First Amendment demanded breathing space and heightened protection to allow for the full exchange of ideas necessary for citizens to engage in democratic governance. 376 U.S. at 269-71 (collecting cases illustrating, among other things, that "public discussion is a political duty" and that free speech is essential "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people").

Second, the Court concluded the heightened standard on public officials (later extended to labor disputes) did not matter because they allegedly had, through their status, "sufficient access to the means of counterargument" to challenge the false or misleading information. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967). But neither ground has stood the test of time.

The modern media environment, buoyed by *Sullivan*'s standard, corrodes public discourse and weakens our democracy. "Since 1964 . . . our Nation's media landscape has shifted in ways few could have foreseen." *Berisha v. Lawson*, 141 S. Ct. 2424, 2427 (2021) (Gorsuch, J., dissenting from the denial of certiorari). Social media undercuts the central tenets of *Sullivan*. The speed and manner of social media quickly spread lies "sow confusion and erode trust." *Id.* at 804-05 (citing

Paul Horwitz, *The First Amendment's Epistemological Problem*, 87 WASH. L. REV. 445, 472 (2012)).

Indeed, "the law of defamation is rooted in our experience that the truth rarely catches up with a lie." *Gertz v. Robert Welch*, 418 U.S. 323, 394 (1974) (White, J. dissenting). And, without judicial vindication, defamation plaintiffs cannot defend themselves against an unrepentant defamer.

Chief Justice Roberts too has recognized the harm that social media and misinformation pose to modern society. Chief Justice John Roberts, *2019 Year-End Report on The Federal Judiciary* (2019) ("In our age, when social medica can instantly spread rumor and false information on a grand scale, the public's need to understand our government, and the protections it provides, is ever more vital.").

Sullivan and *Linn* also encourage rampant falsehoods. Under *Sullivan*, "[i]t seems that publishing without investigation, fact-checking, or editing has become the optimal legal strategy." *Berisha*, 141 S. Ct. at 2428 (Gorsuch, J., dissenting from the denial of certiorari) (emphasis in original).

In the end, "[w]hat started in 1964 with a decision to tolerate the occasional falsehood . . . has evolved into an ironclad subsidy for the publication of falsehoods by means and on a scale previously unimaginable." *Berisha*, 141 S. Ct. at 2428 (Gorsuch, J., dissenting from the denial of certiorari). It has become apparent—*Sullivan* and *Linn* are unsuited for the modern day and harm citizens' debate and faith in this Country. Gabriel R. Sanchez & Keesha Middlemass, *Misinformation is eroding the public's confidence in democracy*, Brookings (July 26, 2022), https://www.brookings.

edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/ (collecting sources documenting that "[o]ne of the drivers of decreased confidence in the political system has been the explosion of misinformation deliberately aimed at disrupting the democratic process."); *see also Berisha*, 141 S. Ct. at 2428 (Gorsuch, J., dissenting from the denial of certiorari) ("If ensuring an informed democratic debate is the goal, how well do we serve that interest with rules that no longer merely tolerate but encourage falsehoods in quantities no one could have envisioned almost 60 years ago?").

II. Anti-SLAPP Statutes Violate the Seventh Amendment.

A. The Seventh Amendment, Which Protects a Right to a Civil Jury Trial on Defamation Claims, Should Be Incorporated.

Through selective incorporation, the Bill of Rights only applies to States to the extent a specific right has been incorporated through the Fourteenth Amendment. *See McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 758-59 (2010). This Court incorporates a right only if it "is fundamental to our scheme of ordered liberty" or is "'deeply rooted in this Nation's history and tradition.'" *Id.* at 767 (internal citations omitted) (emphasis in original) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721(1997)).

Over time, this Court has "eventually incorporated almost all of the provisions of the Bill of Rights." *Id.* at 764, even those it previously concluded did not apply to the States, *see id.* at 766 (collecting cases) ("Employing this approach, the Court overruled earlier decisions in which it had held that particular Bill of

Rights guarantees or remedies did not apply to the States.").

Now only three rights remain unincorporated: (1) "the Third Amendment's protection against quartering of solders; (2) the Fifth Amendment's grand jury indictment requirement; [and] (3) the Seventh Amendment's right to a jury trial in civil cases."[6] *Id.* at 765 n.13.

The Seventh Amendment's Right to a Civil Jury Trial is fundamental to our scheme of ordered liberty and deeply rooted in this Nation's history and tradition. This Court has recognized that

> [t]he right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the courts.

Jacob v. City of New York, 315 U.S. 752, 752-53 (1942) (emphasis added); *cf. Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 565 (1990) ("Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the

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[6] Subsequent to *McDonald*, this Court incorporated the rights under the Sixth and Eighth Amendments. *See Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) (incorporating the Sixth Amendment's unanimity jury verdict requirement); *Timbs v. Indiana*, 586 U.S. 146, 150 (2019) (incorporating the Eighth Amendment's Excessive Fines Clause).

right to a jury trial should be scrutinized with the utmost care.").

The right to a civil jury trial strongly influenced the adoption and ratification of the Constitution. The anti-Federalists challenged the Constitution for its failure to include a right to a civil jury trial. For example, Richard Henry Lee charged:

> The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature, are those fortunate inventions which have procured for them, in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community. Their situation, as jurors and representatives, enables them to acquire information and knowledge in the affairs and government of society; and to come forward, in turn, as the centinels and guardians of each other.

See Richard Henry Lee, *Letters of the Federal Farmer* in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES, 277, 315-16 (Paul L. Ford ed., 1888).

The Federalists recognized the potency of this argument. Alexander Hamilton responded, "[t]he objection to the plan of the convention, which has met with most success in this State, and perhaps in several of the other States, is <u>that relative to the want of a constitutional provision</u> for the trial by jury in civil cases." THE FEDERALIST NO. 83 (Alexander Hamilton) (emphasis in original). Ultimately, even the Federalists agreed on the importance of the right to a civil jury trial. Hamilton continued, "[t]he friends and adversaries of the plan of the convention, if they agree on nothing

else, concur at least in the value they set upon the trial by jury." *Id.* And when the Constitution was finally ratified, several States explicitly noted the importance of the right to a civil jury trial. *See*, *e.g.*, ratification of the Constitution by the State of North Carolina § 11 (Nov. 21, 1789) ("Resolved. . . . That in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.").

A right so fundamental to our ordered scheme of liberty, and deeply rooted in our Nation's history and tradition, that its omission nearly scuttled the adoption of the Constitution should not linger unincorporated.[7]

B. There Is a Split Among the State Supreme Courts Regarding Whether the Application of the Clear and Convincing Evidence Standard in Anti-SLAPP Cases Violates the Right to a Civil Jury Trial.

California courts apply the rule that the clear and convincing evidence standard applied to anti-SLAPP motions—often without any discovery—does not violate a right to a civil jury trial. *See Klem v. Access Ins. Co.*, 17 Cal App. 5th 595, 608 n. 6 (Cal. App. Ct. 2017) (citing *Equilon Enterprises v. Consumer Cause, Inc.*,

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[7] Even though this Court previously concluded the Seventh Amendment's civil jury requirement is not incorporated against the States, those decisions "long predate the era of selective incorporation," and this Court has consistently reversed those old lines of cases when applying the selective incorporation doctrine. *McDonald*, 561 U.S. at 765-66, n. 13.

29 Cal. 4th 53, 63 (Cal. 2002)); *Edward v. Ellis*, 72 Cal. App. 5th 780, 791 (2021).

There is a split in the state court decisions on this issue. *Cf. Wynn v. AP*, 542 P.3d 751, 757-758 (Nev. 2024)(no jury trial violation), *with Davis v. Cox,* 351 P.3d 862, 874 (Wash. 2015) (jury trial violation), *abrogated in part on other grounds by Maytown Sand & Gavel, LLC v. Thurston Cnty.*, 423 P.3d 223 (Wash. 2018) and *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 636 (Minn. 2017) (jury trial violation).

The Washinton Supreme Court has reasoned that the application of the clear-and-convincing-evidence standard "invades the jury's essential role of deciding debatable questions of fact," and thus violates the right to a jury trial.[8] *Davis*, 351 P.3d at 874.

The Minnesota Supreme Court agrees with Washington. It has explained that the application of the clear-and-convincing-evidence standard violates the right to a civil jury trial by invading the jury's fact-finding role. *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 636 (Minn. 2017).

Such a split over a fundamental right must be resolved. Currently, 38 States and the District of Columbia have anti-SLAPP statutes. *Anti-SLAPP Legal Guide*, Reporters Committee for Freedom of the Press, http://www.rcfp.org/anti-slapp-legal-guide (last visited June 20, 2025). And while the States have differing

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[8] While *Davis* focused on the Washington constitution's right to a jury trial, that right is similar to that under the Seventh Amendment. *Compare* Wash. Const. art. 1, § 21 ("The right of trial by jury shall remain inviolate), *with* U.S. Const. amend. VII ("In suites at common law, . . . , the right of trial by jury shall be preserved . . . ").

statutes, the actual malice standard (and its associated burden of proof) must be applied consistently across the Nation.

Accordingly, this Court should resolve the split among State courts and clarify that applying the clear and convincing evidence standard at the anti-SLAPP stage—with or without discovery—violates the Seventh Amendment right to a civil jury trial. This Court should not allow States to infringe on this fundamental right.

III. California's Extension of the Litigation Privilege to Labor Disputes and Other Matters Outside of a Judicial Proceeding Infringes Upon Litigants' First Amendment Right to Petition the Courts.

In *Centerline*, the court extended California's litigation privilege to a labor dispute and matters outside of a legal proceeding. In doing so, the court refused to review whether the statements were made with actual malice. The California judiciary has applied California Civil Code section 425.16 in a manner which directly violates this Court's directives protecting the First Amendment's right to Petition the courts under the United States Constitution. The statute itself allows no such treatment. Absent intervention by this Court, state courts will remain free to detach their analysis from the constraints of the Founders' wisdom as set forth in the United States Constitution.

"'The right to petition is one of "the most precious of the liberties safeguarded by the Bill of Rights" and is made applicable to the states by the Fourteenth Amendment.'" *Nader v. Me. Democratic Party*, 41 A.3d 551, 558 (Maine 2012) (citing *United Mine Workers v.*

Illinois Bar Ass'n, 389 U.S. 217, 222 (1967); *Virginia v. Black*, 538 U.S. 343, 358 (2003)).

Under the First Amendment, one has the right to petition the government to redress grievances. In contrast to the right to free speech, which "fosters the public exchange of ideas that is integral to deliberative democracy," the right to petition "allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011). Putting a finer point on it, "[a] petition conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns." *Id.* at 388-89; *accord McDonald v. Smith*, 472 U.S. 479, 486 (1985) (Brennan, J., concurring) ("The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." (quoting *United States v. Cruikshank*, 92 U.S. 542, 552 (1876))).

"Just as false statements are not immunized by the First Amendment right to freedom of speech, baseless litigation is not immunized by the First Amendment right to petition." *Bill Johnson's Rests., Inc. v. NLRB*, 461 U.S. 731, 743 (1983). "The right to petition is guaranteed; the right to commit libel with impunity is not." *McDonald*, 472 U.S. at 485.

Whether commercial or non-commercial, petitioning a court for redress or speaking extrajudicially, every branch of government is forbidden from favoring one viewpoint over another in nearly every circumstance.

A. Prior to Prohibiting a Party's Right to Petition the Courts, the California Courts Must Review Whether the Actual Malice Standard Has Been Met.

In *Bill Johnson's*, this Court held that no state court lawsuit for libel, even in the midst of a labor dispute, may be extinguished unless "utmost care" is taken in first evaluating whether the suit has any reasonable basis. 461 U.S. at 744. In *McDonald*, this Court reviewed the right to Petition enunciated in *Bill Johnson's* with a defamation claim in letters to the President of the United States under *Sullivan*. 472 U.S. at 1480, 485. In doing so, this Court determined that defamation cases—even in dealing with issues of privilege—may proceed if there is actual malice.[9] *Id.* There is no absolute immunity to commit libel. This Court found that there can be no "greater constitutional protection to statements made in a petition to the President than other First Amendment expressions." *Id.* The contours of the First Amendment did not apply to situations of actual malice.[10]

In *Centerline*, however, the Courts failed to even review evidence as to whether the actual malice standard was met. Instead, the Courts, by fiat, determined that all communications related to a labor

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[9] In a slightly different context, this Court held that the right to petition protects employers' access to the courts from serving as a predicate for liability even after the state court proceedings have concluded. *BE&K Constr. Co. v. NLRB*, 536 U.S. 516 (2002).

[10] The *Centerline* ruling provides a labor organization issuing maliciously defamatory statements that have no connection with ongoing litigation to have greater protection than any other type of speech, including political speech.

dispute, which involved some litigation, created an absolute privilege. This ruling ignores the Constitutional precedent of *McDonald, Linn and Bill Johnson's*.

B. In Reviewing a Party's Right to Petition, the California Courts Improperly Made a Value-Based Decision.

No state government is allowed to summarily extinguish a party's federal First Amendment rights simply because the state made a value judgment that a defendant's speech is always superior to the petition rights of an employer plaintiff. Such viewpoint-based analysis runs afoul of longstanding federal precedent. "The problem with the Eighth Circuit's analysis as applied to the present case is that it improperly makes a value judgment on the speech itself, something that is not part of the *Tinker* analysis. As the plaintiffs here correctly point out, viewpoint discrimination is simply not tolerated under *Tinker*." *Lowery v. Euverard*, 497 F.3d 584, 605 (6th Cir. 2007) (Gilman, J., concurring).

In *Carey v. Brown*, 447 U.S. 455, 461-462 (1980), this Court held that government restrictions which favored labor picketing[11] over other messages violated the First Amendment. Citing the nearly identical ordinance in *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972), the Court held that the government may not deny the use of a public forum to those whose views it finds unacceptable while allowing it to those

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11 "'At issue in this case is the constitutionality under the First and Fourteenth Amendments of a state statute that generally bars picketing of residences or dwellings, but exempts from its prohibition "the peaceful picketing of a place of employment involved in a labor dispute."' *Carey*, at 457.

whose views it favors. *Id.* at 463, citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

In another California case, the challenged ordinance favored commercial speech over non-commercial speech by banning all non-commercial signage of a certain format. "'[The City of] Gilbert has not offered any such explanation, and I doubt it could come up with one if it tried. What we are left with, then, is Gilbert's apparent determination that "ideological" and "political" speech is categorically more valuable, and therefore entitled to greater protection from regulation, than speech promoting events sponsored by non-profit organizations. That is precisely the value judgment that the First and Fourteenth Amendments forbid Gilbert to make.'" *Reed v. Town of Gilbert,* 707 F.3d 1057, 1080 (9th Cir. 2013)(Watford, J., dissenting) (citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514 (1981);[12] *Carey v. Brown*, 447 U.S. 455, 466 (1980); *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)).

This dissent was effectively vindicated by this Court's reversal: "'Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination."' *Reed v. Town of Gilbert*, 576 U.S. 155, 168-169 (2015) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 819, 829 (1995).

This Court has also stricken censorship which places a greater value on commercial versus non-

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[12] Even in the commercial speech sector, viewpoint discrimination violates the First Amendment when it fails strict scrutiny analysis.

commercial speech: "Insofar as the city tolerates billboards at all, it cannot choose to limit their content to commercial messages; the city may not conclude that the communication of commercial information concerning goods and services connected with a particular site is of greater value than the communication of noncommercial messages." *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 513-514 (1981).

The overriding principle is that Constitutional rights may not be denied simply because of hostility to their assertion or exercise. *Cox v. La.*, 379 U.S. 536, 551 (1965) (citing *Watson v. Memphis*, 373 U.S. 526, 535 (1963)). Although *Cox* was a criminal case, it was heard by this Court after unconstitutional judicial application of facially-neutral state statutes, as here. It is axiomatic that a state cannot censor unfavored speech by a disfavored speaker through its judiciary rather than its executive or legislative branch. All are public officials. "It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute." *Cox* at 557-558.

Justice Black's concurrence in *Cox* is particularly relevant to the present case: "By specifically permitting picketing for the publication of labor union views [but prohibiting other sorts of picketing], Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest

people whom it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments." *Mosley*, *supra*, 408 U.S. at 97-98 (brackets in original) (quoting the "thrust of" Justice Black's concurrence in *Cox* at 581).

Petitioners' case presents an opportunity for this Court to clarify whether the same First Amendment right to petition prevents state courts from taking the same actions which the NLRB took in *Bill Johnson's*, *supra*, and *BE&K Constr. Co. v. NLRB*, 536 U.S. 516 (2002).

C. California's Interpretation That It May Dismiss a Party's Right to Petition the Court, Alleging Actual Malice, Without Reviewing the Plaintiff's Evidence, Creates a Split Among the State Courts.

Other state courts have recognized the constitutional constraints applicable to anti-SLAPP statutes.

Upon challenge to the constitutionality of Maine's anti-SLAPP statute, the *Nader* court recognized that the prior judicial analysis, not the statute, had effected a violation of the plaintiff's right to petition:

> To avoid an unconstitutional application of the law, as our rules of statutory interpretation require us to do, [the anti-SLAPP statute] must be construed, consistent with usual motion-to-dismiss practice, to permit courts to infer that the allegations in a plaintiff's complaint and factual statements in any affidavits responding to a special motion to dismiss are true. . . .

Nader, 41 A.3d at 562.

Had this same approach been applied to Petitioners' case, it would have readily survived the anti-SLAPP motion and proceeded to discovery. This result is not only fair considering the early stage of the lawsuit where it occurs, but because Petitioners' constitutional rights require it. The concurrence in *Nader* emphasized this consideration: "I write separately because Maine's anti-SLAPP statute raises serious concerns regarding the right to equal protection under the law, to petition the government for redress of grievances, and to open courts." *Id.*, at 564.

The Massachusetts Supreme Judicial Court also recognized the "constitutional problem" presented by the potential interpretation of its state's anti-SLAPP statute which favored defendants as a class:

> Despite the apparent purpose of the anti-SLAPP statute to dispose expeditiously of merit less lawsuits that may chill petitioning activity, the statutory language fails to track and implement such an objective. By protecting one party's exercise of its right of petition, unless it can be shown to be sham petitioning, the statute impinges on the adverse party's exercise of its right to petition, even when it is not engaged in sham petitioning. This conundrum is what has troubled judges and bedeviled the statute's application.

Duracraft Corp. v. Holmes Prods. Corp., 691 N.E.2d 935, 943 (Mass. 1998) (emphasis added).

California's interpretation has failed to take this approach. Thereby creating a situation where Petitioners' rights to petition were rapidly extinguished without

any weight given to their evidence or reasoning. There is no justification for the unconstitutional analysis which was conducted to extinguish Petitioners' claims. Entire arguments and unrebutted evidence submitted by Petitioners was disregarded without comment.

D. Petitioner's Right to Free Speech Was Violated by Favoring One Group of Speakers Over Another.

The California courts' application of a strict burden on Petitioners was not content neutral. "As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015). By effectively favoring Respondents' speech over Petitioners' based upon the nature of the content, the analysis below runs afoul of the Constitution. The rush to summarily approve protected status for Respondents' favored speech while ignoring Petitioners' countervailing rights was constitutionally forbidden.

The decision's appeals to public policy goals do not insulate its operation's effective abridgement of employer speech. In an effort to protect the Constitutional rights of one group, pro-union speakers here, even the judiciary cannot apply value judgments that pro-employer speech is inferior and suppress it prior to any fact-finding. The analyses below omitted any consideration for Petitioners' rights, and must be reversed.

> Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United v. Federal Election Comm'n*, 558 U.S.

> 310, 340 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," *Turner Broad Sys.*, 512 U.S. 622, 658 (1994).

Reed v. Town of Gilbert, 576 U.S. 155, 170 (2015).

The decisions below recite well-recognized public policies favoring the underlying speech and ostensibly preventing only sham lawsuits. The solution to one Constitutional problem cannot lie in the violation of other Constitutional rights. "For even the most legitimate goal may not be advanced in a constitutionally impermissible manner." *Carey* at 465-466.

IV. The California Courts Violated the Petitioner's Fourteenth Amendment Rights to Due Process Under the United States Constitution.

Not only was the analysis below invalid because it considered Petitioners' viewpoint deserving of less protection than Respondents' viewpoint; it was accomplished in a manner which failed to recognize Petitioners' rights to have their evidence and reasoning heard in any fair-minded forum. This Court has enforced the federal Due Process standard against state courts which have failed to give a plaintiff's case any meaningful consideration:

> Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance, . . . or who, without justifiable excuse, violates a procedural rule

> requiring the production of evidence necessary for orderly adjudication, [] What the Constitution does require is "an opportunity . . . granted at a meaningful time and in a meaningful manner," [], "for [a] hearing appropriate to the nature of the case," [].

Boddie v. Connecticut, 401 U.S. 371 (1971) (internal citations omitted).

Even when Petitioners' briefing highlighted evidence, unrebutted on key points, it was never truly considered. Written proof of actual malice, falsity, and damages was never considered. Petitioners were denied the opportunity to pursue discovery and receive a summary judgment hearing. Fundamental arguments, based upon unrebutted evidence of record, were never mentioned by the Court of Appeal. The California Supreme Court declined to grant review despite these clear errors and violations of Petitioners' rights under the federal Constitution.

CONCLUSION

For all of the aforementioned reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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