No. 24-688

In the Supreme Court of the United States

PROPERTY MATTERS USA, LLC,
Petitioner,

v.

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,
Respondent.

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

PETITION FOR REHEARING

ANDREW D. LOCKTON
Counsel of Record
EDWARD F. MCHALE
MCHALE & SLAVIN, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33401
(561) 625-6575
alockton@mchaleslavin.com

March 2025

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner's Statement pursuant to Rule 29.6 was set forth on page ii of the petition for a writ of certiorari, and there are no amendments to that Statement.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Rules:

PETITION FOR REHEARING

Petitioner Property Matters USA, LLC, understands that the Court grants Rule 44.2 rehearing petitions exceedingly rarely. But this petition presents one of those very rare circumstances where rehearing is warranted due to intervening circumstances of a substantial effect.[1] See Rule 44.2. On February 25, 2025, the day after Petitioner's petition was denied, this Court issued its decision in *Lackey* v. *Stinnie*, No. 23-621, Slip Op., 604 U.S. __ (2025).

The *Lackey* opinion addressed whether the plaintiff was a "prevailing party," where the case becomes moot following preliminary injunctive relief. Slip Op., 1, 4. In holding that preliminary injunctive relief did not confer "prevailing party" status on a plaintiff, the Court was required to address and explain its body of caselaw for determining whether a plaintiff was a "prevailing party." In so doing, the Court clarified that the body of caselaw addressing whether a *plaintiff* is a "prevailing party" is distinct from its body of caselaw addressing whether a *defendant* is a "prevailing party." See *Lackey*, Slip Op., 9 and n.*. That clarification highlights the legal error in the Eleventh Circuit's decision below.

Petitioner respectfully requests that this Court grant this petition for rehearing and the underlying petition for a writ of certiorari, vacate the Eleventh Circuit's decision below, and remand ("GVR") to allow the Eleventh Circuit the opportunity to revisit its decision in light of this Court's intervening *Lackey* decision.

---

[1] A similar petition is forthcoming in *WC Realty Group, Inc., dba Century 21 WC Realty* v. *Affordable Aerial Photography, Inc.*, No. 24-825, which followed the decision in this case.

A. The Court's Intervening *Lackey* Decision Clarified That the Body of Caselaw Addressing When a *Defendant* is the "Prevailing Party" is Distinct From the Body of Caselaw Addressing When a *Plaintiff* is the "Prevailing Party."

In *Lackey*, the Court addressed its prevailing-*plaintiff* body of caselaw to explain why a plaintiff does not prevail following a preliminary injunction where the case is ultimately dismissed as moot. Slip Op., 5-9. Explaining that under the Court's prevailing-*plaintiff* precedent, "a plaintiff 'prevails' when a court grants enduring relief that constitutes a 'material alteration of the legal relationship of the parties.'" *Lackey*, Slip Op., 7 (quoting *Texas State Teachers Assn.* v. *Garland Indep. School Dist.*, 489 U.S. 782, 792-93 (1989)). This includes an award of nominal damages, *id.*, 7–8 (citing *Farrar* v. *Hobby*, 506 U.S. 103, 112 (1992)), "or a final victory on a material if not predominant claim," *id.*, 8 (citing *Texas State Teachers Assn.*, 489 U.S. at 791-93).

But a plaintiff does not prevail under the "catalyst theory"—the theory that a plaintiff "prevails" when "he 'achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct.'" *Ibid.* (quoting *Buckhannon Bd. & Care Home, Inc.* v. *W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 601 (2001)). The Court rejected the "catalyst theory" "because there had been no 'judicially sanctioned change in the legal relationship of the parties,'" i.e., "[t]he defendant's voluntary actions 'lack[ed] the necessary judicial *imprimatur*.'" *Ibid.* (quoting *Buckhannon*, 532 U.S. at 605). The Court required "judicial relief" to prevent a plaintiff from "prevailing" on a "potentially meritless lawsuit." *Ibid.*

(citing *Buckhannon*, 532 U.S. at 606) (quoting *Buckhannon*, 532 U.S. at 634 (Ginsburg, J., dissenting))).

The *Lackey* opinion built on these prevailing-*plaintiff* precedents. Slip Op., 9. To prevail, a plaintiff must obtain an "enduring" change in the legal relationship between the parties. *Ibid.* (citing *Sole* v. *Wyner*, 551 U.S. 74, 77 (2007)). Further, "the change must be 'judicially sanctioned.'" *Ibid.* (quoting *Buckhannon*, 532 U.S. at 605). *Lackey* established "that the enduring nature of the change must itself be judicially sanctioned," making the transient nature of a preliminary injunction insufficient for a plaintiff to prevail. *Ibid.* "Rather, a plaintiff 'prevails' under the statute when a court conclusively resolves a claim by granting enduring judicial relief on the merits that materially alters the legal relationship between the parties." *Ibid.*

But in the star footnote, the Court addressed that while this clarifies the test for when a *plaintiff* prevails, "[a] different body of caselaw addresses when a *defendant* is a 'prevailing party' for the purposes of other fee-shifting statutes." *ibid.*, n.* (emphasis in original). "Our decision today should not be read to affect our previous holding that a defendant need not obtain a favorable judgment on the merits to prevail, nor to address the question we left open of whether a defendant must obtain a preclusive judgment in order to prevail." *Ibid.*, n.* (citing *CRST Van Expedited, Inc.* v. *EEOC*, 578 U.S. 419, 431-34 (2016)).

B. The Eleventh Circuit's Decision Imported Requirements From the Prevailing *Plaintiff* Body of Caselaw Into the Test for Determining Whether the *Defendant* Prevailed.

The Eleventh Circuit's decision below imports the requirements of obtaining a "judicially sanctioned"

change in the parties' legal relationship, i.e. the prevailing *plaintiff* requirements from *Buckhannon* and *Texas State Teachers Assn.*, into the test for determining whether a *defendant* has prevailed. Pet. App. 6a-7a. The Eleventh Circuit misread *CRST* as requiring a *defendant* to satisfy the requirements of *Buckhannon* and *Texas Sate Teachers Assn.* Pet. App. 6a-7a. Incorporating those prevailing-*plaintiff* requirements, the Eleventh Circuit held that a defendant which satisfies its litigation goal—preventing a material alteration in the parties' legal relationship—only "prevails" "when the rejection of the plaintiff's challenge is 'marked by "judicial *imprimatur*."'" Pet. App. 7a (citing *CRST*, 578 U.S. at 422 (quoting *Buckhannon*, 532 U.S. at 605)).

While *CRST* addressed the requirement for "judicial *imprimatur*," it did so only in the context of explaining the Court's precedents addressing whether a *plaintiff* prevailed in the action. 578 U.S. at 422. While the Court drew a distinction between those prevailing *plaintiff* cases and its test in *CRST* for whether a *defendant* has prevailed, *id.* at 423, the Eleventh Circuit looked to *CRST*'s other statement from *Buckhannon* that the term "prevailing party" should be interpreted in a consistent manner across various fee-shifting statutes as meaning that the Court's "prevailing party" precedent was a unified body of caselaw. Pet. App. 6a-7a (citing *CRST*, 578 U.S. at 422); see *id.* 10a-11a (requiring judicially sanctioned relief for a *defendant* to prevail)

The Eleventh Circuit's decision below held that Petitioner did not prevail because "some judicial action rejecting or rebuffing a plaintiff's claim is necessary to endow a defendant with prevailing party status." Pet. App. 10a-11a (citing *CRST*, 578 U.S. at 422, 431). In

so doing, the Eleventh Circuit combined the Court's prevailing *defendant* test with the Court's prevailing *plaintiff* analysis. A *defendant* "prevails" "whenever the plaintiff's challenge is rebuffed, irrespective of the reason or the court's decision," even for nonmerits reasons. See *CRST*, 578 U.S. at 431. A *plaintiff*, however, must obtain a judicially sanctioned change in the parties' legal relationship to prevail. See *id.* at 422 (citing *Buckhannon*, 578 U.S. at 604-05). The Eleventh Circuit's holding unified those two bodies of caselaw. Pet. App. 10a-11a (citing *CRST*, 578 U.S. at 422, 431)

The star footnote in *Lackey* rejects that fundamental premise of the Eleventh Circuit's decision, clarifying that there is not a unified body of caselaw for determining whether a party is a "prevailing party." Instead, there is one body of caselaw for determining whether a *plaintiff* is a "prevailing party," and "[a] different body of caselaw" for determining whether a *defendant* is a "prevailing party." *Lackey*, Slip Op., 9 and n.*. The Eleventh Circuit did not have the benefit of the Court's delineation of these two "different" bodies of caselaw when it decided the case below.

C. Rehearing and a "GVR" Should Be Granted to Allow the Eleventh Circuit to Reconsider Its Decision in Light of *Lackey*.

Because the Court's intervening decision in *Lackey* rejects the premise of the Eleventh Circuit's decision below, the Eleventh Circuit should be permitted to correct its precedent and reevaluate this matter with the guidance of this Court in *Lackey*. Because the decision below is precedential, it has the potential to impact a significant number of cases in the district courts within the Eleventh Circuit before an opportunity

arises for the Eleventh Circuit to reevaluate its precedent in light of *Lackey*.

CONCLUSION

This Court should grant this rehearing petition and the petition for a writ of certiorari, vacate the Eleventh Circuit's decision below, and remand ("GVR") in light of *Lackey*.

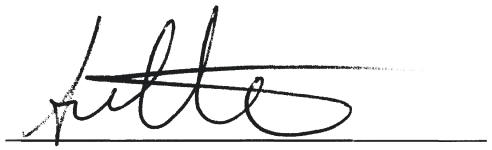
Respectfully submitted,

ANDREW D. LOCKTON
Counsel of Record
EDWARD F. MCHALE
MCHALE & SLAVIN, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33401
(561) 625-6575
alockton@mchaleslavin.com

March 2025

CERTIFICATE OF COUNSEL

As counsel of record for the petitioner, I hereby certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.



ANDREW D. LOCKTON
Counsel of Record

March 2025