

**No. 25-1165**

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IN THE  
**Supreme Court of the United States**

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GARRETT M. ZIEGLER and ICU, LLC  
(d/b/a “Marco Polo”)

*Petitioners,*

v.

P. KEVIN MORRIS,

*Respondent.*

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

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**REPLY BRIEF FOR PETITIONERS**

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## **I. Introduction**

In their Brief in Opposition, Respondent concedes that the special motion to strike under the anti-SLAPP statute was filed on June 20, 2023, yet the trial court did not rule until October 13, 2023. The California Supreme Court denied review on November 12, 2025 – more than two years after the motion was filed. Respondent then attempted to voluntarily dismiss the entire Complaint less than a month later. The parties never reached trial, yet incurred hundreds of thousands of dollars in litigation costs over nearly three years. The anti-SLAPP statute is designed to prevent this type of protracted, burdensome litigation involving protected speech. Its failure here raises important First Amendment questions that warrant this Court’s review.

The speech at issue was core political reporting and commentary on matters of substantial public concern involving individuals closely connected to the most powerful levels of government – speech that occupies the highest rung of First Amendment protection and falls within no recognized exception to that protection. Nevertheless, California courts permitted civil claims predicated on criminal statutes lacking any private right of action to proceed, while imposing years of litigation burdens, compelled affidavits, and massive costs on out-of-state speakers. Respondent concedes the speech was protected, and the trial court struck one such claim but allowed another materially similar claim to survive. This is difficult to logically reconcile, particularly given the fact that all parties, and the courts, conceded that

Petitioners met their burden on Prong I of the anti-SLAPP analysis to show protected activity, shifting the burden to Respondent who has explained in his Brief in Opposition that he met his evidentiary burden to show minimal merit.

Respondent is silent, however, on whether he met his burden to show his claims had *legal sufficiency*. He did not, and the California courts misallocated the burden of proof to Petitioner. This is at the core of the error and where the application of anti-SLAPP statute can fail, and has failed, when a criminal cause of action that lacks a private right of action is the cornerstone of the action. Blaming Petitioner for “procedural missteps,” and suggesting Petitioner was at fault for not bringing a motion for sanctions to test the legal sufficiency of the Complaint, only further compounds the constitutional injury.

On appeal, however, the trial court affirmed the trial court’s ruling striking one criminal cause of action but allowing the other to proceed, finding that Petitioner had “forfeited” the argument that the criminal impersonation statute lacked a private right of action despite the fact that the anti-SLAPP statute places the burden of proof on the plaintiff to show legal sufficiency of a claim. This decision chills speech. Absent this Court’s review, this case provides a blueprint for using state civil procedure to burden, punish, and chill disfavored political speech by out-of-state defendants without the constitutional safeguards that ordinarily restrain the government. Respondent’s Opposition does not resolve that constitutional problem. It confirms it.

## II. Jurisdiction Is Proper Under 28 U.S.C. § 1257

Respondent incorrectly suggests that this Court lacks jurisdiction because of subsequent proceedings occurring after the California Supreme Court denied review. That is incorrect. The constitutional questions presented in the Petition were fully litigated during the anti-SLAPP proceedings, conclusively resolved by the California Court of Appeal, and became final when the California Supreme Court denied review on November 12, 2025.

The issues properly before the Court include whether California's anti-SLAPP framework, as applied here, imposed unconstitutional burdens on protected political speech; whether claims predicated upon criminal statutes lacking an express private right of action were improperly permitted to proceed in a case involving protected speech and newsgathering; and whether the California courts' application of the anti-SLAPP burden-shifting framework comported with the First and Fourteenth Amendments.

Respondent's reliance on *Adams v. Robertson*, 520 U.S. 83 (1997) to object to jurisdiction is misplaced because Petitioners repeatedly presented the federal constitutional dimensions of the injury to the California courts, including arguments grounded in the First Amendment, *Counterman v. Colorado*, protections for political speech and newsgathering, and due process. This afforded the state courts a full and fair opportunity to address the federal issues.

Subsequent post-remittitur proceedings do not alter this Court's jurisdiction. The constitutional injuries arose during the anti-SLAPP proceedings. Additional matters following remand, including a partial award of attorney's fees and the entry of final judgment, neither moot nor alter the constitutional questions presented.

### **III. The Petition Warrants Review Under Supreme Court Rule 10(c)**

This case warrants review under Supreme Court Rule 10(c) because it presents an important and recurring federal question of national importance concerning the constitutional limits on the use of anti-SLAPP procedures when they fail to protect – and instead burden – core political speech and newsgathering by out-of-state defendants.

The constitutional concern presented is not the facial validity of California's anti-SLAPP statute, but its application in this case. The speech at issue in the Complaint involved no recognized First Amendment exception. It was quintessentially protected activity of matters of national public concern. Once Petitioners established that fact, the statute shifted the burden to Respondent to demonstrate his claims had minimal merit. Respondent never carried that burden for the *central* claim in the litigation – “criminal impersonation” – a claim predicated on a criminal statute lacking an express private right of action. Respondent never demonstrated legal sufficiency, and while Respondent claims to have carried his evidentiary burden, Respondent never even produced the telephone number that sent the

text messages he claims Petitioners sent him. Yet the claims were nevertheless permitted to proceed, imposing years of litigation, compelled sworn affidavits under Cal. Code Civ. Proc. § 425.16(b)(2), and hundreds of thousands of dollars in costs.

This anomalous result directly implicates the principles reaffirmed in this Court’s unanimous decision in *National Rifle Ass’n of Am. V. Vullo*, 602 U.S. 175 (2024). In *Vullo*, this Court reaffirmed that “[a] government entity’s ‘threat of invoking legal sanctions and other means of coercion’ against a third party ‘to achieve the suppression’ of disfavored speech violates the First Amendment.” *Id.* quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

The same concern arises when state courts, through procedural machinery, allow baseless criminal-statute claims to burden speakers on core political subjects. By permitting such claims to survive the anti-SLAPP stage despite the absence of any express private right of action or recognized First Amendment exception, the courts below enabled the very suppression the First Amendment prohibits.

Speakers engaged in political reporting should not be forced to endure multiple layers of expensive litigation simply because a plaintiff invokes a criminal statute the legislature never made actionable in civil court. Respondent’s insistence that Petitioners’ “procedural missteps” justify the prolonged proceedings only highlights the constitutional defect: the First Amendment does not

condition protection for core political speech on procedural perfection or financial resources.

Respondent thus takes the peculiar position that the anti-SLAPP statute is unreliable, and a party engaging in protected speech must be financially prepared to litigate not only an anti-SLAPP motion but also additional motions and appellate review. That is not the kind of freedom of speech and of the press the Constitution guarantees.

This case also presents an issue of continuing national importance within the meaning of Rule 10, particularly given the recent proliferation of anti-SLAPP legislation across the country. Some States have adopted the Uniform Public Expression Protection Act or similar legislation; others employ materially different anti-SLAPP frameworks; and some rely exclusively upon ordinary procedural rules. The resulting divergence carries substantial national implications for interstate political speech, newsgathering, and public commentary.

Respondent largely frames the issues as disputes concerning California procedural law rather than engaging with the constitutional questions presented here. But the Petition does not ask this Court to resolve an ordinary dispute concerning California civil procedure. It asks whether California's anti-SLAPP framework, as applied in this case, comported with the First and Fourteenth Amendments where criminal causes of action lacking an express private right of action were permitted to proceed against speakers engaged in protected political expression.

#### **IV. Respondent Identifies No Material Misstatement**

Supreme Court Rule 15 provides that a brief in opposition “should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted.” Sup. Ct. R. 15. Respondent identifies no factual or legal misstatement material to the constitutional questions presented.

Respondent’s “Statement of the Case” does not identify any perceived factual misstatements in the Petition. It instead recounts Respondent’s own characterization of events and attempts to relitigate issues the courts resolved in Petitioners’ favor. For example, while the Petition states that “Petitioners reporting and commentary addressed issues of national political significance and were published online and in print,” [PET 2] Respondent claims Petitioners “focused on exposing supposed information from what he claims was a laptop allegedly belonging to Hunter Biden, the son of former President Joe Biden, and publishing on MarcoPolo’s <sic> website a self-described ‘report.’” [BIO 2] This partially admits Petitioners’ account of the facts, but it attempts to discredit Petitioners’ reporting and impliedly disputes that the report appeared in print. This is immaterial. Further, in the related civil case brought by Hunter Biden against Petitioners in the Central District, the same counsel alleged violations of the Computer Fraud and Abuse Act. Respondent’s counsel thus disputes the authenticity of the source material in this case while simultaneously admitting the authenticity in a

related case. Any implied factual disputes are manufactured by Respondent's team and do not affect the clean record in this case.

Respondent also attempts to disavow the final judgment issued on April 27, 2026 as to Respondent's claim for civil harassment entered in favor of Petitioners and relitigate the fully adjudicated claim ("Petitioners commenced a campaign of harassment directed at Morris, his family, and friends.") [Id.]. Notably, Morris also did not prevail in the motion for a preliminary injunction to which he alludes. [Id.]. Again, these are not factual or legal misstatements affecting reviewability.

Respondent correctly identifies that the Trial Court found that all causes of action implicated the First Amendment. [BIO 3]. Respondent thus concedes Petitioners met their burden under the first prong of the analysis, shifting the burden to Respondent. Respondent further explains that Morris "submitted sufficient evidence meeting the "requisite 'minimal merit' standard on the second prong of the Anti-SLAPP analysis." [BIO 3]. Respondent studiously avoids conceding that Respondent did not make the requisite showing of legal sufficiency and does not concede that the trial court expressly found that the conduct Respondent characterizes as "harassment" constituted "newsgathering" as detailed in the Petition. [PET 2]

Ultimately, Respondent attempts to manufacture collateral factual disputes to suggest that this case does not present a sufficiently clean vehicle for review. It does.

Petitioners accurately described the procedural posture concerning the Penal Code section 529 claim for “criminal impersonation.” Petitioners expressly raised the legal sufficiency issue before the California appellate courts, and the Court of Appeal acknowledged that Petitioners could litigate that issue further on remand. Respondent later voluntarily dismissed the claim without prejudice.

Petitioners likewise accurately described the post-remittitur proceedings. Any subsequent procedural disputes concerning dismissal or implementation of the Remittitur do not affect this Court’s jurisdiction because the constitutional questions presented here became final when the California Supreme Court denied review.

There are no misrepresentations, and no perceived factual or legal misstatements affecting the issues properly before the Court were certiorari granted.

## **V. Conclusion**

The speech at issue in this case involved reporting and commentary concerning individuals closely connected to government and matters of substantial public concern. Such speech occupies the highest rung of First Amendment protection, and the constitutional injury extends beyond the parties themselves because the First Amendment protects not only the right to speak, but also the public’s right to receive information concerning matters of public concern.

The Petition should be granted.

Respectfully submitted,

*/s/ Jennifer L. Holliday*

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