

No:

In The
Supreme Court of the United States

MONEESHA KAMANI, PETITIONER,

v.

MICHAEL A. STONE, DVM, AND HIS MARITAL
COMMUNITY/DOMESTIC PARTNERSHIP;
NVAAETC VETERINARY MANAGEMENT, LLC
DBA ANIMAL EMERGENCY AND SPECIALTY
CENTER, A FOREIGN LIMITED LIABILITY
COMPANY, RESPONDENTS.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether threats of criminal prosecution and civil liability made to suppress protected speech on social media platforms may be discounted as a matter of law, notwithstanding the First Amendment and state anti-SLAPP laws protecting public expression.
2. Whether a court may grant summary judgment by disregarding record evidence and imposing novel, unrecognized legal burdens under state or federal law.

PARTIES TO THE PROCEEDING

Moneesha Kamani is the Petitioner here and the Plaintiff-Appellant below.

Michael A. Stone, DVM and NVA AETC Veterinary Management, LLC dba Animal Emergency and Specialty Center, a Foreign Limited Liability Company are Respondents here and Defendants-Appellees below.

RELATED PROCEEDINGS

Kamani v. Stone, No. 104542-5, 2026 Wash. LEXIS 11 (Wash. Jan. 7, 2026)

Kamani v. Stone, No. 59601-6-II, 2025 Wash. App. LEXIS 831 (Wash. Ct. App. Apr. 22, 2025).

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Petitioner Moneesha Kamani, by and through counsel, DanaMarie K. Pannella, respectfully petitions for a writ of certiorari to review the judgment of the Washington Court of Appeals, Division II.

OPINIONS BELOW

The Washington Court of Appeals entered an order dated August 5, 2025 (*Appendix A*), correcting two factual errors in its opinion and denying the remainder of the motion for reconsideration. The court of appeals previously issued an unpublished opinion on April 22, 2025 (*Appendix B*), available at *Kamani v. Stone*, No. 59601-6-II, 2025 Wash. App. LEXIS 831 (Wash. Ct. App. Apr. 22, 2025).

JURISDICTION

The Supreme Court of Washington denied discretionary review on January 7, 2026 (*Appendix*

C). On March 26, 2026, the Honorable Justice Elena Kagan extended the time to file a petition to May 11, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a). The judgment below is final, and this petition is timely filed within the period prescribed by law, and as extended by this Court. The case invokes federal questions under the Constitution of the United States.

CONSTITUTIONAL 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. 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.

STATEMENT

Embedded within this civil action is a substantial constitutional and federal question, raised at the outset in the pleadings, concerning retaliation against protected speech. At the heart of this Court's review are Revised Code of Washington 9.58.010, an antiquated statute, and statements threatening criminal action for alleged libel, packaged in a cease-and-desist letter that directs the recipient to refrain from posting reviews of her lived experience. In addition, review should be granted to resolve an unnecessary divide created by the appellate ruling in an appeal of right, wherein non-existent legal standards were imposed on the Petitioner at summary judgment.

On December 31, 2022,¹ Petitioner-Plaintiff Moneesha Kamani ("Kamani") brought her dog, Bella Kamani ("Bella"), a Pekingese and longtime companion, to Respondent-Defendant, Animal Emergency and Specialty Center (AESC) in Poulsbo, Washington, owned by National Veterinary Associates (NVA), a California corporation. Bella was in acute respiratory distress (Pet. App-8) and her vitals never improved, yet Bella was discharged three times over an eleven-hour period by Respondent-Defendant, Michael A. Stone, DVM ("Stone"), while payment was collected each of the three times,

¹ The court of appeals' opinion recites the facts incompletely and omits material facts favorable to Petitioner. Accordingly, the Statement is drawn from the Clerk's Papers, and, where consistent with the record, from the opinion below, with appropriate citations.

including advance payment for a twenty-four-hour hospitalization at the third admission. Pet. App-9.

When Kamani paid for the third admission, she requested that a mini statuette of the Hindu God, Shiva, be placed with her dog for the overnight stay. Pet. App-10. Within minutes of this request, AESC weaned Bella from oxygen without Kamani's knowledge or consent. Respondent Stone brought Bella to the parking lot and discharged her while she was visibly cyanotic, disoriented, and struggling to breathe, after Kamani had been told she was successfully weaned. No refund was initiated at discharge, and Kamani was not shown Bella's decompensating vital measurements. When Kamani questioned Stone about Bella's condition, which did not match the description of successful weaning, Stone claimed Bella was merely anxious, that an incident had "stressed" her, and that she would be "sleepy" that night. Pet. App. 12. Video 9 captured the parking lot conversation. Approximately ninety minutes later, Bella died at home, suffocating and gasping for air, to Kamani and Ojus M. Mehta ("Mehta")'s horror.

Immediately following Bella's death, Kamani sought emergency assistance, but AESC did not respond to her calls. Instead, AESC contacted law enforcement and falsely reported that Kamani threatened to harm Stone, compounding her grief and shock with police interventions. In the days that followed, four AESC employees, including Stone, altered Bella's medical records dozens of times. Pet. App-16. Audit trail (system-generated metadata that present a forensic view of data manipulations) evidence later obtained in discovery revealed the

insertion of fabricated communications, fake timings, and the deletion of reference to Bella's critical condition, while the records bore the imprimatur of legitimacy. The altered records shifted responsibility onto Kamani, the foreseeable reader, including claims that she had refused treatment and caused Bella's decline.

While a purported "specialty center", AESC lacked advertised diagnostics, specialty surgeries, and employed no specialists. Pet. App-38. Internally, Stone acknowledged to his staff that Bella required a critical specialty procedure, a pacemaker surgery, which AESC could not provide, yet this information was withheld from Kamani throughout the eleven-hour period, while multiple payments were collected from her. *Id.* At the same time, AESC escalated its response to Kamani, seeking to prevent her from speaking about her experience. AESC contacted law enforcement multiple times over several days, with false reports of threats, disseminated falsified records, issued a criminal trespass notice despite Kamani not having visited the facility since December 31, 2022, deleted Kamani's online reviews, and sent a cease-and-desist letter threatening civil and criminal action to suppress her ability to write reviews. Pet. App-10; 13, 14. The combined effect of the events was severe. Kamani experienced acute emotional distress, to the point that she attempted suicide, overdosing on multiple drugs, required hospitalization, and suffered a loss of income for several months.

Petitioner filed suit asserting, among other claims, intentional infliction of emotional distress and fraud. She presented extensive evidence at summary judgment, including video evidence, audit trail data

that demonstrated nearly thirty post-mortem medical record entry alterations, expert testimony, and witness declarations. The trial court dismissed multiple claims at summary judgment. Pet. App-18. On appeal, the Washington Court of Appeals affirmed, concluding that none of the above conduct could be found outrageous or fraudulent by a reasonable juror at the summary judgment stage, crediting Respondents' version of events and disregarding contrary evidence.

On January 7, 2026, the Washington Supreme Court denied review. This Court's review is necessary to ensure that constitutional protections do not disappear in state court proceedings merely because the dispute arises in a private civil action.

REASONS FOR GRANTING CERTIORARI

The questions presented implicate concerns of exceptional and recurring national importance that extend well beyond the particular facts of this case. As expressive activity has migrated to digital platforms, disputes among private parties concerning public speech have become commonplace. The use of legal threats and similar tools to suppress such expression has likewise increased in the mainstream marketplace, even as the governing legal framework remains underdeveloped and unevenly applied across jurisdictions. Coextensively, proper application of summary judgment standards is essential to the administration of justice. This case presents an appropriate and compelling vehicle to address these issues.

The decision below respectfully errs in four independent respects: First, it safeguards freedom of

expression only when triggered in the context of litigation, thereby undermining the salutary purposes of free speech protections in everyday life. Second, it fails to consider facts relevant to suppression of speech using false criminal threats in a tortious context. Third, it contravenes settled summary judgment standards by treating a genuinely disputed record as evidentially barren. Fourth, it engrafts new, unrecognized legal requirements in its analyses and discounts material evidence of independently actionable conduct.

A. The Decision Below Enables The Suppression Of Protected Speech Through Threats Of Criminal And Civil Liability, Undercutting First Amendment And State Anti-SLAPP Protections.

A recurring and important question permeates this case: whether constitutional protections for speech may be circumvented through pre-litigation threats of criminal action, solely because no lawsuit has been filed, and despite robust state-sponsored anti-SLAPP protections.

Early American law criminalized criticism of the government, inheriting the English doctrine of seditious libel, under which even truthful statements could be punished. For centuries, English law treated dissent as a punishable offense, expanding treason and seditious libel to encompass mere criticism of authority and permitting conviction based largely on publication alone (*De Libellis Famosis*, 77 Eng. Rep. 250 (Star Chamber 1606); *The King v. Harris*, 7 Cobbett's State Trials 925 (K.B. 1680)). Against this

backdrop, the First Amendment was adopted in 1791, yet prosecutions under the Sedition Act of 1798, continued despite ratification. Over time, however, courts moved away from this approach, and by the twentieth century, the Supreme Court transformed First Amendment doctrine by shifting from permitting punishment of dissent (*Debs v. United States*, 249 U.S. 211 (1919)) to protecting almost all speech except such that intended and likely to produce imminent lawless action (*Brandenburg v. Ohio*, 395 U.S. 444 (1969)). Recently, this Court held that custom wedding websites constitute protected expressive activity, reflecting the designers own views and beliefs. *303 Creative LLC v. Elenis*, 600 U.S. 570, 580 (2023). This Court further recognized that “[w]hen the government polices the content of professional speech, it can fail to ‘preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.’” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 757 (2018) (quoting *McCullen v. Coakley*, 573 U.S. 476 (2014)). These decisions make clear that such protections for expressive speech remain fully viable and operative in the present day.

While these protections apply at both the federal and at state levels through state constitution, the States further exercised their sovereign authority to safeguard their citizens’ expressive conduct within their jurisdictions. In 1989, Washington State became the frontrunner, enacting anti-SLAPP (Strategic Lawsuit Against Public Participation) legislation, codified at RCW 4.24.500 through .520. The initial statute provided immunity for communications directed to governmental entities on pertinent

matters. RCW 4.24.510. While groundbreaking, this law was limited in scope: it applied only to communications with government bodies and offered no mechanism for early dismissal of frivolous claims. Tom Wyrwich, *A Cure for a “Public Concern”:* *Washington’s New Anti-SLAPP Law*, 86 Wash. L. Rev. 663, 666–68 (2011); *Davis v. Cox*, 183 Wn.2d 269 (2015). This changed in 2010, when Washington broadened protection for individuals engaging in speech or petition on matters of public concern by introducing a procedural mechanism enabling parties to seek prompt dismissal of lawsuits intended to suppress public participation. *Id.* at 276–77. Later, in *Davis*, the Washington Supreme Court held that RCW 4.24.525(4)(b) violated the right to a jury trial under Article I, Section 21 of the Washington Constitution by authorizing a judge to resolve disputed factual issues and dismiss nonfrivolous claims before trial. By allowing early judicial determination of claims involving protected public petitioning, the statute, the court recognized, impermissibly usurped the jury’s constitutional role and undermined fundamental trial rights. *Id.* at 294. Concluding that RCW 4.24.525(4)(b) was not severable from the rest of the statute, the court ruled the entire statute unconstitutional. *Id.*

In 2021, Washington once again became the first state to adopt the Uniform Public Expression Protection Act (UPEPA), with other states, including Utah, Hawaii, Maine, and Kentucky following suit. *Thurman v. Cowles Co.*, 4 Wn.3d 291, 298 (2025). “The purpose of the UPEPA is to safeguard First Amendment rights and to deter and prevent nonmeritorious lawsuits targeted at discouraging

individuals from speaking publicly or petitioning the government.” *Id.* at 298. Thus, UPEPA and *Thurman* reflect a legislative intent that intimidation used to silence expression undermines public discourse and should not benefit the wielding party.

At the inception of the case, Petitioner, through her complaint and motions, identified speech-suppressing coercion as part of Respondents’ conduct. UPEPA, however, is triggered only by the filing of a lawsuit. The typical recipient of a cease-and-desist letter threatening litigation over a written review would have no reason to know of UPEPA’s existence. Here, the letter itself contained multiple false statements, including allegations that Kamani made threatening and harassing telephone calls and emails. Contemporaneous notes from a call just days earlier reflect that Kamani was polite and requested compassion in light of the circumstances surrounding her dog’s condition.

On four separate occasions, the letter referenced Kamani’s social media, threatened her expressive conduct, and sought to enjoin her from sharing her experience by invoking criminal liability under Washington’s criminal code, Wash. Rev. Code tit. 9 (2026). Under a criminal libel statute, NVA claimed: “Furthermore, you have threatened to post false and malicious statements on social media about AESC and its employees, which would constitute libel under Section 9.58.010 of the WRC.” Putting aside that no such law exists in Washington, the letter stated in no uncertain terms that NVA would: “pursu[e] a criminal action against you [(Kamani)] for violating Washington’s harassment and defamation laws commencing a civil action against you to recover

monetary damages to the fullest extent permitted by law.” Later, Respondents would remove Kamani’s online reviews. This combination of false assertions and threats of criminal and civil liability created a coercive environment impinging on Kamani’s rights to petition the government and voice her opinion.

An individual pet owner already suffering emotional distress from the loss of their animal cannot reasonably be expected to recognize and discern the scope or applicability of UPEPA without first consulting counsel, which could vary according to their circumstance. Yet, First Amendment protections flowing through UPEPA, or otherwise, should be guaranteed to *all* Americans, regardless of whether an individual has the resources, emotional and financial capacity, or foresight to obtain legal advice. For the average person who has expressed their opinion to the chagrin of a business, receiving a cease-and-desist letter threatening legal action is more likely to be intimidating than the actual filing of a civil action, particularly because the latter would trigger the likely involvement of counsel, involve a decider of fact, and other attendant protections that follow.

UPEPA was enacted to be construed broadly to protect the exercise of freedom of speech and of the press. *Thurman v. Cowles Co.*, 4 Wn.3d 291, 293 (2025). This sentiment was echoed by Washington Court of Appeals Division I in a false light case, noting that liability did not attach to statements of opinion. *Jha v. Khan*, 24 Wn. App. 2d 377, 396–97 (2022) (explaining that a plaintiff cannot establish a prima facie false light claim based on opinion because the First Amendment recognizes that “there is no such

thing as a false idea” (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974))). In *Jha*, a developer’s lawsuit against a political candidate over campaign statements was dismissed under UPEPA because they were protected under the First Amendment. *Id.* at 383.

Similarly, Washington courts have properly applied UPEPA to safeguard exercise of free speech by private individuals, including on Instagram, regardless of the degree of provocation or controversy in the speech. *M.G. v. Bainbridge Island Sch. Dist. #303*, 34 Wn. App. 2d 51 (2025) (affirming dismissal of plaintiff’s claims, including defamation, civil conspiracy, and fraud in response to defendants’ call to action to women to share their stories on sexual assault and her use of colorful language on social media posts). While UPEPA provides robust protections once an offending party files civil suit, including expedited dismissal and statutory fee recovery, those protections disappear completely when the offender engages in the same coercive conduct but stops short of filing a lawsuit.

Here, the threat of civil litigation, particularly following the dissemination of false clinical records and the involvement of law enforcement, would itself exacerbate emotional distress. Imposing such threats on an individual who witnessed the abrupt discharge and inhumane death of her animal compounds the harm and doubles down in the extreme. The specter of criminal prosecution is categorically more coercive.

Conduct that wields the same practical force as a lawsuit, but is executed through a cheaper and more accessible device such as a cease-and-desist letter threatening extreme penalties, raises identical

constitutional concerns and, in practice, exerts greater pressure to achieve the same result through a functional equivalent. There is no more effective means of suppressing an ordinary individual unfamiliar with the law from sharing their lived experience than an ominous letter threatening criminal liability. This is intentional behavior that exacerbates emotional distress, and predictably did so in this case.

Here, Kamani was exercising her right to express her views on Yelp that expressly invited such speech. Given that private actors lack direct remedies for constitutional violations, the opinion's failure to address, analyze, or even acknowledge Respondents' *criminal* threats in a tortious context, given that criminal action was not threatened in response to any so-called fear for safety, but for libel, undermines both, First Amendment protections and the legislative guarantees underlying modern anti-SLAPP regimes. In doing so, decision below exposes a critical gap: identical coercive conduct, when deployed through pre-litigation threats escapes review entirely. If such conduct may be disregarded as a matter of law, then free speech protections turn not whether speech was suppressed, but on the manner chosen to accomplish it. *See also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (holding that Evers' organization of a boycott and his passionate plea for racial solidarity in which he allegedly referenced breaking necks for nonparticipation, was protected speech). *Id.* at 926.

First Amendment protections should not only be activated in narrow doctrinal enclaves, triggered only in constitutional litigation or in the wake of

government action. They run ubiquitously and should be enforceable whenever relevant and justice so requires. In *Snyder v. Phelps*, 562 U.S. 443 (2011), this Court upheld First Amendment protections, even when speech was deeply offensive. No such thing occurred here. A threat of criminal liability for expression of an opinion on social media would regress free speech doctrines back a century.

This Court's intervention is warranted to resolve the federal question presented. If left undisturbed, the decision below would furnish a blueprint for permissive conduct: defendants may suppress speech through threats of criminal liability, secure in the knowledge that such conduct would be deemed legally immaterial. Review is warranted to clarify that constitutional safeguards for expression do not depend on the mechanism of the suppression, and to ensure that UPEPA's (or other anti-SLAPP) protections are not rendered illusory for ordinary Washingtonians.

B. The Opinion Disregarded Decades of Precedent Under Fed. R. Civ. P. 56 And Wash. Super. Ct. Civ. R. 56, And Imposed Nonexistent Legal Burdens, Causing An Intractable Split Between State And Federal Courts.

The opinion independently warrants review because it departs from this Court's settled summary judgment jurisprudence. In *Tolan*, this Court held that, at summary judgment, courts must view the evidence in the light most favorable to the non-movant and may not itself resolve genuine disputes of material fact. *Tolan v. Cotton*, 572 U.S. 650 (2014);

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The court of appeals' opinion contravenes these undisturbed principles.

This Court has summarily reversed similar departures from summary judgment standards. In *Tolan v. Cotton*, 572 U.S. 650 (2014), the Court intervened where the lower court credited the evidence of the party seeking summary judgment and failed to acknowledge key evidence offered in opposition. The Court held that the Fifth Circuit had impermissibly resolved disputed issues of fact by crediting one party's version of events over the other's. *Id.* In *Tolan*, it explained that the court erred in concluding that the porch was dimly lit despite contrary testimony in the record, *Tolan*, 572 U.S. at 657, and in accepting only Cotton's assertion that Tolan's mother failed to comply with instructions to remain quiet, notwithstanding her testimony that she was calm, *Id.* at 658, noting such weighing of competing accounts and elevation of one version of disputed facts over another exceeded the proper scope of summary judgment review. Both sides, this Court observed, predictably brought their own perspectives, recollections, and potential biases, which is why genuine factual disputes were typically resolved by a jury: "It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system." *Id.* at 660. The same error occurred here, albeit more extensively.

I. The Opinion Catalogued Numerous Factual Contradictions And Then Resolved Those In The Movant's Favor, Fracturing Summary-Judgment Doctrine.

Properly construed, Rule 56(c) requires entry of summary judgment after sufficient opportunity for discovery, where the nonmoving party fails to produce any evidence establishing an essential element of its claim or defense. *Celotex Corp. v. Catrett*, 477 U.S. 317, 319 (1986). In such circumstances, no genuine issue of material fact can exist because the absence of proof on a dispositive element renders ancillary factual disputes immaterial. The movant is therefore entitled to judgment as a matter of law, given the nonmovant's failure to make an evidentiary showing. *Id.*

Wash. Super. Ct. R. 56 is likened to the federal rule, Fed. R. Civ. P. 56. *Am. Linen Supply Co. v. Nursing Home Bldg. Corp.*, 15 Wash. App. 758 (1976). The federal rule was later amended to expressly permit consideration of answers to interrogatories in summary judgment. *Id.* A fact is material if it bears on the resolution of the case in any respect. *Morris v. McNicol*, 83 Wn.2d 491, 494 (1974). *See also Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 216 (2022). Under these established standards, a declaration or affidavit from Kamani alone would have sufficed to create a genuine dispute of material fact and preclude summary judgment. She provided much more.

The trial court certified its ruling on dismissal of intentional torts at summary judgment as final under CR 54(b). A bird's-eye view of the opinion shows correct citation of governing case laws but a selective recitation of facts exclusively favoring Respondents, coupled with little, if any, substantive analysis of the claims. Its disposition affirming dismissal rests largely on perfunctory characterizations that the facts

are “undisputed” (on twelve occasions) and that there is “no evidence” (on sixteen occasions) thereby conveying seemingly to the reader the complete absence of factual dispute. In doing so, the opinion created a striking disconnect between itself and other jurisdictions in the United States.

A closer examination of the opinion reveals internally inconsistent statements of fact, straining its reliability. For example, the opinion adopts Respondents’ assertion that Bella was “pink” at final discharge (Pet. App-11) while later acknowledges Kamani’s testimony that Bella was “grey” at discharge (Pet. App-12), yet omits any engagement with such obvious material conflict. Similarly, recounting the facts of December 31, 2022, the opinion states, “nor is there any evidence that AESC represented to Kamani that they had someone on site to interpret an echocardiogram” (Pet. App-38), in tension with its earlier statement: “[w]hen Kamani looked up AESC and saw they offered oxygen and echocardiograms, she decided to drive to AESC.” (Pet. App-7). These contradictions are emblematic of broader inconsistencies throughout the opinion.

Further, venturing into the domain of the trial court’s decision that favored Kamani, including aspects not on appeal, the court continued to award Kamani a negative result, packaging conduct into negligence. The opinion noted, “[t]here is no evidence to show that Bella medically required oxygen at the time she was removed from oxygen” (Pet. App-26), a conclusion it independently made, by disregarding nearly thirty pages of testimony from Petitioner’s expert, Danielle M. Babski, DVM, DACVECC, who testified that oxygen support would be indicated

under any diagnostic differential, absent competing expert testimony from the Respondents.

The opinion contained no reference to Kamani's suicide attempts, ideation, and medical records, effectively treating such evidence as nonexistent, and omitted testimony regarding Respondents' conduct preceding the suicide. The significance of Bella's clinical record falsifications was diminished, except insofar as selectively invoking it in the fraud analysis to favor Respondents, while omitting it in the outrage analysis. To that end, the decision improperly inferred, contrary to summary judgment principles, that Kamani had anticipated all thirty forged entries, missing the central point that there *were* thirty fabrications. Respondents' cease-and-desist letter, which expressly prohibited Kamani from posting reviews, was omitted from consideration. Instead, the decision referenced it solely to suggest staff safety concerns, while disregarding testimony from staff who stated they had no personal safety concerns, as well as Kamani's testimony that she made no threats.

Rather than engaging the actual record, the decision rested on *ipse dixit* statements drawn from a one-sided presentation of the facts. In other places, the opinion emphasized a purported total absence of evidence from the 635-page record, concluding that there was no evidence Stone and AESC were aware of Kamani's emotional state thus "claim fails as a matter of law" (Pet. App-28), despite Respondents' own admissions repeatedly attesting to Kamani's superlative ("highly, highly," "very") emotional state.

While summary judgment does not permit the weighing of evidence, Respondent's record included

nine items of imaging evidence, including numerous videos depicting her dog at AESC and that of the final discharge, none of which the court of appeals addressed. The record included forensic evidence of clinical record manipulation, including the deletion of entries, and adding of new fake entries and timings reflecting Kamani's purported elections. It further included testimonial declarations and deposition testimony from Kamani, Mehta, who personally witnessed many of the events, Kamani's healthcare provider, and the expert criticalist veterinarian viewing the video and medical records (testifying, "[t]his video is distressing to watch – it is clearly a dog in severe respiratory distress, gasping for breath, not an anxious dog"). In addition, it contained time-stamped electronic records corroborating Petitioner's account. Notwithstanding this extensive evidentiary showing, the appeals court concluded that *not a single genuine dispute of material fact* existed.

In its analysis of the fraud claim, the court of appeals appropriately recognized the heightened evidentiary burden articulated in *Stiley v. Block*, 130 Wn.2d 486 (1996). However, it relied on inaccurate factual premises and discounted the legal significance of silence where a duty to disclose exists. The opinion thus concluded: "Kamani fails in her burden because the record is devoid of any evidence that Stone's statements were false, that he knew his statements were false, or that he fraudulently conveyed something different to AESC staff." (Pet. App-35). Here, the court appeared to have relied on Stone's changing narratives, inconsistent with the narrative he gave Kamani on the day of, as proof of dilution of the clear and convincing standard, instead of evidence

of the contrary, supporting scienter. These, and similar conclusory statements were offered without analysis, resting instead on the unsupported theory that the record was devoid of evidence.

The court of appeals purported to draw all reasonable inferences in favor of the movant, according to 56(c), yet in substance it did the opposite. Emotional distress includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. *Sutton v. Tacoma School District No. 10*, 180 Wn. App. 859, 862 (2014). The court peremptorily read anger and fear out of the concept of emotional distress as applied to Kamani, disregarding the fear an individual would reasonably experience when confronted with the prospect of criminal action for speaking out aloud, and recharacterized her anger, arising from the deception surrounding her dog's inhumane death, as a "safety concern," notwithstanding a sharply contested record. In so doing, the court departed from its own precedent.

In *Doe v. Finch*, the appeals court recognized that emotions such as anger, hurt, and bitterness may constitute legally cognizable emotional distress. *Doe v. Finch*, 81 Wash. App. 342 (1996). When Doe learned that the psychotherapist treating him was having a sexual relationship with his wife, his reaction to the intentional concealment was to send Finch a highly charged letter expressing profound emotional distress. *Id.*

Doe's letter read, in part:

The hurt, anger, and bitterness
that I feel because of the divorce by [my

wife] is choking me to death. Blame for breakdown of the marriage relationship has always been laid on me--BY BOTH YOU AND HER!! AND THAT is bullshit. Both you and her are also RESPONSIBLE! AND I HOLD YOU RESPONSIBLE!! YOU ARE NOT A HEALER--YOU ARE A BREAKER. YOUR CHRISTIAN PSYCHOLOGY SHOWS ME NO EVIDENCE OF BEING HEALING! . . . I DO--WITH GREAT PAIN--HOW COULD I HAVE BEEN SO DUMB? MY INTENSIVE FOR FREE! BIG [expletive] DEAL--NOTHING BUT A SALVE FOR YOUR CONCIENCE [sic]-... WHAT HOME? YOU HAD ALREADY STOLEN IT!! YOU DIRTY, YELLOW ROTTEN HYPOCRITE!!! . . .

Id.

This reaction is neither aberrant nor legally insignificant. It is the natural and foreseeable emotional response of a patient or client who has entrusted a fiduciary with matters of life, death, private matters, and profound confidence, only to discover a breach of that trust. Such recognition was afforded to Doe but not to Kamani.

Although the decision below acknowledged Kamani's relationship with her dog, any assumption that such a bond could, in itself, give rise to a threat call or suicidal ideation, is untethered to the record and deviates from summary judgment doctrine. While such theories may be posited in the abstract, they are suppositive. Kamani's relationship with her dog could

be viewed as comparable to another loving pet owner, and her heightened emotional state arose from the exigent circumstances she faced and, subsequently, from witnessing her animal's death under distressing circumstances.

These departures creates a stark disconnect between the opinion and established summary judgment standards in any other jurisdiction in the United States, and raises unnecessary constitutional complications under 42 U.S.C. § 1983. Review should therefore be granted.

II. The Decision Below Imposed Novel And Unrecognized Legal Standards In Outrage Analysis.

The decision conflicts with Washington and Federal precedent and the Restatement (Second) of Torts by unduly narrowing the tort of outrage (or the intentional infliction of emotional distress) by citing non-existent legal burdens. In evaluating Petitioner's claim, most notably, the court of appeals introduced a de facto "prior relationship" requirement, concluding that the absence of previous acquaintance between the parties negated the intent element *as a matter of law*.

No such requirement exists. Liability for outrageous conduct turns on whether the defendant acted intentionally or recklessly in engaging in extreme and outrageous conduct, not on whether the parties were familiar. By conditioning liability on previous acquaintance, the court of appeals created an unqualified barrier that would eliminate claims arising from first-time encounters. A claim for intentional infliction of emotional distress requires proof that the defendant, acting intentionally or

recklessly, engaged in conduct so extreme and outrageous as to cause severe emotional harm. See *Harris v. Jones*, 281 Md. 560, 565–66 (1977); see also *Snyder v. Phelps*, 562 U.S. 443 (2011). While states permit recovery for intentional infliction of emotional distress, they diverge with respect to the requisite degree of intent and the threshold showing of injury needed to sustain liability. See *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557 (1987). Consistent with these principles, § 46(1) of the Restatement (Second) of Torts adopts an “intentionally or recklessly” standard, a formulation widely applied in state courts. See e.g., *Watts v. Golden Age Nursing Home*, 127 Ariz. 255 (1980); *Davidson v. City of Westminster*, 32 Cal. 3d 197 (1982); *Freihofer v. Hearst Corp.*, 65 N.Y.2d 135 (1985). Other courts have articulated the standard in slightly different terms, emphasizing willful or wanton conduct, and inferred intent from outrageous behavior. *M.B.M. Co. v. Counce*, 268 Ark. 269 (1980); *Hall v. May Dep’t Stores Co.*, 292 Or. 131 (1981); *Atchison*, 480 U.S. at 568 n.17.

Washington law has long adhered to the Restatement formulation. Liability arises where one, “by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another.” *Grimsby v. Samson*, 85 Wn.2d 52 (1975). Courts may consider several factors to determine whether *conduct* rises to the level of extreme and outrageous: (1) the position occupied by the defendant; (2) whether plaintiff was peculiarly susceptible to emotional distress, and if defendant knew this fact; (3) whether defendant's conduct may have been privileged under the circumstances; (4) the

degree of emotional distress caused by a party must be severe as opposed to constituting mere annoyance, inconvenience or the embarrassment which normally occur in a confrontation of the parties; and, (5) the actor must be aware that there is a high probability that his conduct will cause severe emotional distress and he must proceed in a conscious disregard of it. *Birklid v. Boeing Co.*, 127 Wn.2d 853 (1995).

Here, the decision set up cattywampus legal standards: The opinion recited the five factors, spread over the two defendants. It addressed factor(s) (1) in evaluating Stone' outrageous conduct, (2) concerning the plaintiff's susceptibility to emotional distress, in the context of Stone and AESC, and swiftly concluded that the "intent element [was] absent" as *a matter of law* because the parties had only just met. This holding imposes a prior relationship requirement that appears nowhere in Washington or federal law. Intent is not itself an enumerated factor in the evaluation of conduct, and the only factor bearing on intent, factor (5), contains no reference to familiarity or any preexisting relationship between the parties.

The opinion ostensibly supported its novel burden by referring to incorrect reasoning in counsel's *brief*² versus the law in *Womack v. Von Rardon*, 133

² Petitioner's previous counsel loosely stated in a reply *brief* that "defendants never even knew Womack," but that characterization finds no support in *Womack v. Von Rardon*, 133 Wn. App. 254 (2006). There, the absence of actionable intent did not turn on lack of acquaintance; rather, it rested on the dispositive fact that the juveniles' conduct, however cruel toward Womack's cat, was not directed at Womack herself. Separately, defendants did not owe a duty to her, and the court found the resulting emotional distress non-severe. *Id.* at 261.

Wn. App. 254 (2006), stating, “that reasoning applies here as well because Stone did not know Kamani.” (Pet. App-28). There is no law in *Womack*, or outside of it, that supports this theory.

This new legal burden sows confusion among trial courts who may rely on this novel requirement, and runs the risk of insulating egregious conduct from liability in first encounters. Forebodingly, such a rule would eliminate all outrage claims in first-time encounters, including civil remedies for rape and assault victims, medical personnel rendering emergency services, and travel and transportation-related encounters.

Moreover, unlike *Womack*, where Division III of the Court of Appeals recognized a new cause of action, Division II did not accord Petitioner comparable relief. Instead, the decision in *Kamani* further narrowed the tort by imposing a *second*, unrecognized legal rule, that Petitioner demonstrate a heightened susceptibility relative to other pet owners at the emergency facility (concluding “Kamani fails to demonstrate she was any more susceptible to emotional distress than any other pet owner who seeks emergency veterinary care.”). Pet App-27.

This is a near-impossible showing. Whether a reasonable juror may find the conduct sufficiently outrageous turns on the nature of the defendant’s

By contrast, the post-mortem conduct at issue here was directed squarely at Kamani, the human being, and therefore falls within the ambit of intentional conduct under Washington law. In *Womack*, Division III recognized a new claim for malicious injury to a pet, and in other disposition, the offenders were ordered to pay restitution to an animal care organization in juvenile court. *Id.* at 257.

conduct, not on a comparative ranking of plaintiffs' emotional resilience. Under this new legal standard, expert testimony would be required to assess plaintiffs' emotional reserves in extenuating circumstances before suit may be filed. In *Grimmsby v. Samson*, 85 Wn.2d 52 (1975), the plaintiff's susceptibility arose from the circumstances themselves, of being forced to witness a spouse's preventable death, and from the defendants' awareness of that circumstance. The court did not require proof that the plaintiff demonstrate he was more emotionally fragile than other spouses who witnessed their spouses' deaths; rather, the circumstances themselves supplied the vulnerability. Here, Kamani watched her dog suffocate, squeak, and die, while she attempted CPR and chest compressions. She contacted AESC for emergency assistance immediately upon Bella's death, making them fully aware of her heightened condition, in addition to their ante-mortem admissions.

In *Drejza v. Vaccaro*, 650 A.2d 1308 (D.C. 1994), the court of appeals rejected the trial court's analysis for employing an improper benchmark of "peculiar susceptibility." The trial court erroneously framed the inquiry as whether the plaintiff was more emotionally vulnerable than other rape or crime victims, a formulation the appellate court held was legally incorrect. It explained that the proper inquiry is not comparative within a category of victims, but rather whether the defendant knew the plaintiff was unusually susceptible to emotional distress as compared to an ordinary person. This would have made otherwise non-outrageous conduct rise to the level of actionable extremity. Plaintiff's brief

referenced *Rockhill v. Pollard*, 259 Or. 54 (1971), also cited in *Drejza*, explaining that conduct which would ordinarily amount to mere discourtesy like ordering someone out of the office, would rise to sufficiently outrageous in *Rockhill*, wherein the plaintiff was “a distraught mother with an unconscious baby who was totally dependent on [the defendant physician] to diagnose the baby’s condition...” *Drejza*, 650 A.2d at 1313.

The record reflects, without dispute, that Bella experienced syncopal episodes both before and during her visit to AESC, and Kamani’s desperation. As a fiduciary and professional, Stone’s failure to recommend euthanasia at any time in eleven hours, coupled with his unilateral decision to “turn systems off” in a literal sense while Bella was decompensating from him having done nothing in the hours prior, his days-later false attribution of that decision to Kamani across multiple fictitious entries, while his pretense of minimizing Bella’s condition as merely “anxious” at discharge, *is conduct that shocks the conscience*.

Recklessness was likewise excluded from the court’s analysis, a consequential omission, given that Washington law recognizes liability arising from conscious disregard of causing harm. *See Sutton v. Tacoma School District No. 10*, 180 Wn. App. 859, 871 (2014) (identifying the factual dispute from the parties’ opposing accounts, and noting that, the defendant may have acted with reckless disregard of causing emotional distress when he assaulted plaintiff); *see also* Restatement (Second) of Torts § 46 cmt. c (Am. L. Inst. 1965). Risk is evaluated objectively; what a reasonable person would recognize in the same situation, not by the defendant’s

subjective admissions. Instead, the decision here narrowed the inquiry by focusing on inapposite animal-treatment-only cases in diminution of post-mortem actions directed at the Petitioner herself, essentially treating Kamani as property.

III. In Evaluating Outrageous Conduct, The Appellate Court Ignored Multiple Instances Of Independently Actionable Conduct.

The decision below also rests on the court of appeals' failure to consider multiple categories of conduct that, under established law, are independently relevant to claims of intentional wrongdoing.

In human and animal medicine, an audit trail constitutes a comprehensive, time-sequenced log documenting all activity associated with a patient's electronic health record (EHR). It records granular metadata for each instance of record access, including the identity of the user, the changes, and the precise time. As a result, every access event is permanently memorialized, precluding any ability to tamper with or conceal activity involving the medical record. *Gilbert v. Highland Hosp.*, 31 N.Y.S.3d 397, 399 (N.Y. Sup. Ct. 2016) (referencing Alice G. Gosfield, *Health Law Handbook* § 10:9 (2011 ed.) ("The Positive Effect of EHRs on Reducing Health Care Provider Liability—The Audit Trail").³

Confronted with a novel factual posture in Washington involving post-malpractice falsification of medical records at summary judgment, the appeals

³ In human medicine, federal law requires preservation of audit trails. *Id.*

court was uniquely positioned to assess the evidentiary and legal significance of that conduct and to render a reasoned determination thereon. Instead, it reframed multiple instances of demonstrable falsity by relying upon a single, impeached assertion by Respondents, that delayed notifications in records were routine, and failed to acknowledge evidence of obvious material falsity.

In *Napue v. Illinois*, 360 U.S. 264 (1959), this Court emphasized that the use of false testimony, or the failure of a state to correct known falsehoods, violates due process and undermines the fairness of the trial guaranteed by the Fourteenth Amendment. The taint of false evidence does not diminish in state courts, or for that matter, in civil affairs with private actors. In *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, the Oklahoma Supreme Court held that allegations of spoliation of evidence, deceit, and perjury occurring during litigation do not constitute independent torts actionable for civil damages, but that adequate remedies were available to the plaintiff, including vacating the judgment, seeking discovery sanctions, and reporting attorney misconduct. *Id.* at 47.

Instances of post-malpractice but pre-litigation conduct, particularly fabrication of medical records, are housed under punitive damages in some states, and under outrageous conduct in others. Ohio qualified such behavior as “actual malice,” awarding punitive damages to deter conduct, noting that such post-mortem conduct impairs the “rights of others.” *Moskovitz v. Mt. Sinai Medical Ctr.*, 69 Ohio St.3d 638 (1994). In advocating a separate avenue of relief in a tort for spoliation, the dissent in *Moskovitz* echoed a “conscious disregard for the rights and safety of other

persons that has a great probability of causing substantial harm,” explaining that the gravamen of the harm is the substantial risk that a plaintiff’s otherwise meritorious negligence claim will be defeated by the defendant’s tortious conduct. *Id.* at 646.

Similarly, in *Gomez v. Cabatic*, 159 A.D.3d 62 (N.Y. App. Div. 2018), the court explained that “an act is malicious when it is done deliberately, with knowledge of the plaintiff’s rights and with the intent to interfere with those rights.” *Id.* at 73. The act in question was discarding hand-written notes and retyping notes, and discrepancies in the appointment schedule given to the patient, a factor significant in the care of a diabetic child. *Id.* at 64.

In jurisdictions that recognize post-malpractice misconduct as outrageous conduct, such as *Thomas v. Hosp. Bd. of Dirs.*, 41 So. 3d 246 (Fla. 1st DCA 2010), the court held that Florida’s statute which ordinarily barred recovery of non-economic damages arising from medical malpractice would not foreclose a claim for intentional misrepresentation. The alleged wrongful acts occurred after the patient’s death rather than as part of medical malpractice. *Thomas* relied on *Szymanski v. Hartford Hosp.*, 1990 Conn. Super. LEXIS 2081, in which the court held that claims for intentional infliction of emotional distress and intentional misrepresentation were legally sufficient where they were predicated on conduct separate from malpractice.

In post-treatment settings, in *So v. Shin*, 212 Cal. App. 4th 652 (2013), a plaintiff who suffered miscarriage and underwent a dilation and curettage confronted her anesthesiologist about alleged

insufficient anesthesia. The anesthesiologist displayed a container of blood to prove to the patient that she could not have felt pain because the suction involved only fluid, touched her arms, and later offered the procedure for free. *Id.* at 671–72. The defendants argued that a claim that the physician was angry was too vague to satisfy the outrageousness standard, and that the holding of the patient’s arms was intended to soothe her. Recounting facts that favored the patient, including that the patient may have reasonably believed the fluid may have contained products of conception (POC), the court rejected this argument, remarking that, while no bright-line rule defines outrageous conduct, whether behavior rises to that level is inherently fact-specific for the finder of fact. *Id.*

In a veterinary context, the Idaho Supreme Court in *Schrivver v. Raptosh*, 174 Idaho 503 (2024), declined to impose a duty on veterinarians to shield pet owners from emotional harm, but distinguished intentional infliction of emotional distress based on post-mortem conduct, here an allegedly unauthorized necropsy, while acquiescing heavily contested facts.

Washington stands among a small subset of jurisdictions that do not permit punitive damages. *McKee v. AT&T Corp.*, 164 Wn.2d 372, 378 (2007). However, it does recognize causes of action for fraudulent misrepresentation and outrage. Here, Kamani testified Stone pressed her shoulder while she was faced away from him, which made her uncomfortable. It is further undisputed that the medical records were significantly altered as established through audit-trail authentication, conduct that would have impaired Kamani’s rights to

petition the government and access to a fair judicial process. Respondents testified that AESC, while representing itself as a “specialty center,” employed zero specialists. Stone further informed staff that Bella required specialized surgery beyond the facility’s capabilities, a material fact that was never disclosed to Kamani. The record further shows that despite the above, Stone sent a selective email, post-mortem, to law enforcement, misleadingly asserting that Kamani was responsible for Bella’s decline claiming she allegedly maladministered a drug. Yet, based on this theory, he took no action to preserve Bella’s life while she was alive, and instead affirmatively represented the contrary. Nor did he record these observations in the original or altered records. All of the foregoing evidence was properly before the court, nevertheless, it resolved material factual disputes itself, and only favoring the movant.

In sum, post-malpractice conduct, particularly when the actor tampers with the affected party’s legal rights, where conduct signals evading liability, or where it interferes with the grieving process, courts recognize these as distinct from malpractice and carve out separate bases for liability. Such conduct strikes at the integrity of the judicial process, and its characterization as extreme or outrageous is properly entrusted to the jury as the finder of fact. As history, policy, and societal expectations evolve, the question of what conduct shocks the conscience must remain with the community, and thus with the jury, which is best positioned to assess such behavior in its contemporary context.

CONCLUSION

A litigant in state court is entitled to the same governing legal standards as another proceeding under Rule 56. Petitioner developed a substantial evidentiary record at significant personal expense, only to have it disregarded through a departure from settled law that implicates constitutional protections and uniformity in the administration of justice. This case also brings to light an important constitutional question in an era marked by rapidly waning tolerance for differing viewpoint expression. Freedom of expression is not confined to constitutional silos, far removed from the everyday citizen who does not read law journals. Free speech, doctrinal coherence, and meaningful judicial review are not the exclusive province of well-resourced litigants or large institutional firms; they are the fabric of *vox populi*, secured for the public at large, and vindicated through the courts' faithful adherence to governing legal standards. The petition for writ of certiorari should be granted.

Respectfully submitted,

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MAY 2026