

No. _____

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

WEALTHY, INC., AND DALE BUCZKOWSKI,
Petitioners,

v.

SPENCER CORNELIA, CORNELIA MEDIA LLC,
CORNELIA EDUCATION LLC, JOHN MULVEHILL,
AND JOHN ANTHONY LIFESTYLE, LLC
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Many States have enacted anti-SLAPP statutes that authorize a special motion to dismiss, impose a heightened burden on the plaintiff, and mandate fee-shifting to a prevailing defendant. The courts of appeals are divided three ways on whether and how such statutes operate in federal court under *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010). The D.C., Second, Fifth, and Eleventh Circuits hold they are displaced by Federal Rules of Civil Procedure 12(b)(6) and 56. The First Circuit applies them as enacted. The Ninth Circuit—in the decision below—applies a hybrid approach that substitutes the Federal Rules’ merits standards while preserving mandatory fee-shifting. The court below granted Nevada’s anti-SLAPP special motion to dismiss after designating Petitioners as limited-purpose public figures and finding no actual malice under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

The Questions Presented are:

1. Whether such an anti-SLAPP statute is displaced by Rules 12(b)(6) and 56, applies as enacted, or applies only in the hybrid form described above.
2. Whether the Ninth Circuit erred by designating Petitioners as limited-purpose public figures without finding a pre-existing public controversy, voluntary injection into it, and germaneness, as required by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), *Wolston v. Reader’s Digest Ass’n*, 443 U.S. 157 (1979), and *Hutchinson v. Proxmire*, 443 U.S. 111 (1979).

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants / Cross-Appellees below

- Wealthy, Inc.
- Dale Buczkowski

Respondents and Defendants-Appellees / Cross-Appellants below

- Spencer Cornelia
- Cornelia Media LLC
- Cornelia Education LLC

Respondents and Defendants-Appellees below

- John Mulvehill
- John Anthony Lifestyle, LLC

CORPORATE DISCLOSURE STATEMENT

Wealthy, Inc. has no corporate parent, and there is no publicly held company owning ten percent or more of its stock. Wealthy, Inc. is not publicly traded and has no stock ticker symbol. Petitioner Dale Buczkowski is an individual and is not subject to Rule 29.6.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit
Nos. 23-3227, 23-3390, 23-16132, 24-159
Wealthy Inc., et al. v. Spencer Cornelia, et al.
Superseding Opinion: February 25, 2026
Rehearing Denial: March 16, 2026

U.S. District Court for the District of Nevada
Nos. 2:22-cv-00740-JCM-EJY
2:21-cv-01173-JCM-EJY
Wealthy Inc., et al. v. Cornelia, et al.
Final Order: September 29, 2023

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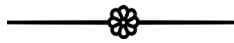
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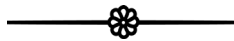
OPINIONS BELOW

The Ninth Circuit's superseding opinion, App.1a–12a, is unpublished. The initial opinion of the Ninth Circuit, App.13a–22a, is unpublished. The opinion of the district court, App.23a–38a, is unpublished.



JURISDICTION

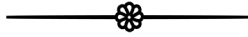
The Ninth Circuit issued its superseding opinion on February 25, 2026. The Ninth Circuit denied Petitioners' motion for leave to file a petition for rehearing en banc on March 16, 2026. This petition is timely filed within 90 days of the February 25, 2026, superseding opinion. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Nevada anti-SLAPP statute, Nev. Rev. Stat. §§ 41.660, .665, .670, is found in the appendix at App.53a–57a. The Rules of Decision Act, 28 U.S.C. § 1652, is found in the appendix at App.50a. The Rules Enabling Act, 28 U.S.C. § 2072, is found in the appendix at App.51a. The relevant subsections of Fed. R. Civ. P. 8, 12, and 56 are found in the appendix at App.51a–53a. The First Amendment to the U.S. Constitution is

found in the appendix at App.49a. The Lanham Act false advertising provision, 15 U.S.C. § 1125(a)(1)(B), App.50a, and its jurisdictional provision, 15 U.S.C. § 1121(a), App.49a.



INTRODUCTION

This petition presents a mature, entrenched three-way conflict among six circuits over whether and how state anti-SLAPP burden-shifting special motions apply in federal court. Below, the Ninth Circuit applied its judicially reconstructed regime to revive Respondents' Nevada special motion and remanded for the mandatory fee award it triggered—producing a \$600,000 bond demand no other circuit would have permitted. *See infra* Statement, Part C.

Four circuits—the D.C., Second, Fifth, and Eleventh—would have foreclosed both the motion and the linked fee award, holding under *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010), and *Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941), that anti-SLAPP burden-shifting motions answer the same question as Federal Rules 12(b)(6) and 56 and may not be judicially rewritten to avoid that conflict. *See, e.g., Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328 (D.C. Cir. 2015). The First Circuit disagrees and applies state anti-SLAPP statutes as written, following Justice Stevens's *Shady Grove* concurrence to conclude that Federal Rules 12(b)(6) and 56 do not answer the same question and thus apply in Federal Court under *Erie R.R. Co. v. Tompkins*, 304 U.S.

64 (1938). See *Godin v. Schencks*, 629 F.3d 79, 87–88 (1st Cir. 2010).

Only the Ninth Circuit has charted a third path. Through successive decisions since it first reached the question of anti-SLAPP applicability in *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), it has replaced each procedural component of the anti-SLAPP special motion found to conflict with a Federal Rule—merits standard, 60-day filing deadline, discovery stay, and interlocutory appeal—while preserving the fee-shifting and other remedial consequences the legislature tied to the unmodified motion. The result is a “hybrid mess that now resembles neither the Federal Rules nor the original state statute.” *Gopher Media v. Melone*, 154 F.4th 696, 713 (9th Cir. 2025) (Bress, J., concurring) (citation omitted).

This case is the ideal vehicle. The panel applied the Ninth Circuit’s reconstructed regime to grant a special motion the statute as enacted would not have permitted—filed more than a year after Nevada’s 60-day window closed and after discovery the automatic stay would have prevented—and remanded for the mandatory fee award. The conditions making this posture uniquely dispositive across all three branches of the split are developed in Part I.C below.

The conflict is entrenched and recurring. The question implicates at least thirty-two anti-SLAPP regimes, and the Ninth Circuit—which adjudicates more anti-SLAPP cases than any other circuit—recently declined to revisit *Newsham* en banc, with four judges urging overruling in *Gopher Media*. 154 F.4th at 700 n.2. This Court’s recent unanimous decision in *Berk v. Choy*, 607 U.S. 187 (2026), displaced a state pleading-burden requirement under *Sibbach* while

rejecting selective harmonization—yet the Ninth Circuit denied Petitioners’ motion for leave to seek rehearing en banc in light of *Berk*, App.46a–48a, confirming that only this Court can resolve the conflict.

The petition independently presents a second question reflecting a glaring departure from this Court’s settled framework. In a single sentence untethered from the particularized findings required by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), and *Wolston v. Reader’s Digest Ass’n*, 443 U.S. 157 (1979), the decision below designated Petitioners as limited-purpose public figures. That designation is independently certworthy: it triggered the *New York Times Co. v. Sullivan* actual-malice standard supporting the Rule 56 affirmance and supplied the antecedent First Amendment predicate for the panel’s reversal of the anti-SLAPP denial. The Court should grant plenary review on both Questions Presented. At a minimum, the public-figure ruling should be vacated and remanded for the particularized analysis *Gertz* and *Wolston* require—relief warranted regardless of the disposition of Question 1, because the unexamined *Gertz* designation is the sole ground on which the Rule 56 affirmance rests.



STATEMENT OF THE CASE

A. Statutory Background

The state anti-SLAPP statutes at issue share a common architecture. Each creates a special motion to dismiss triggered by a showing that the challenged claim arises from protected speech or petition activity, then shifts the burden to the plaintiff to demonstrate the merit of the claim under a heightened standard. The Nevada, D.C., Georgia, Texas, California, and Maine statutes involved in the circuit split each provide this structure, plus a stay of discovery upon filing and a fee award tied to the outcome of the motion. App.53a–70a. Forty-one U.S. jurisdictions have enacted anti-SLAPP legislation, and thirty-two have adopted statutes employing this burden-shifting special-motion architecture.¹ This shared architecture is what makes the circuit split a true conflict: the four circuits that hold the special motion inapplicable in federal court necessarily foreclose all remedies linked to it, while

¹ See David Keating, Helen Knowles-Gardner & Dan Greenberg, *Anti-SLAPP Statutes: A Report Card*, Inst. for Free Speech, at 25 tbl. (Sept. 2025), <https://www.ifs.org> [<https://perma.cc/3KZ4-55YW>] (identifying thirty jurisdictions whose statutes shift the burden to the plaintiff to establish a probability of prevailing or a prima facie case as to each essential element of the claim); Keating et al., Updates to the 2025 Anti-SLAPP Report Card, <https://www.ifs.org> [<https://perma.cc/H3BY-FZAM>] (documenting enactment of Michigan H.B. 4045 (signed Dec. 23, 2025) and South Dakota S.B. 137 (signed Mar. 16, 2026), each employing the same burden-shifting architecture, bringing the total to thirty-two of forty-one anti-SLAPP jurisdictions).

the First and Ninth Circuits preserve those remedies along with the motion.

Nevada's anti-SLAPP statute provides that a person who engages in a "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" may file a special motion to dismiss. NRS § 41.660(1)(a). As amended in 2013, the statute employs a two-prong framework: the defendant must first make that good-faith showing, NRS § 41.660(3)(a); the burden then shifts to the plaintiff to demonstrate with "prima facie evidence a probability of prevailing on the claim." NRS § 41.660(3)(b). The Nevada legislature expressly adopted California's "probability of prevailing" anti-SLAPP standard. NRS § 41.665(2).

The special motion "must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown." NRS § 41.660(2). Upon filing, the court is to "stay discovery," § 41.660(3)(e). If denied, "an interlocutory appeal lies to the [Nevada] Supreme Court." § 41.670(4). If granted, "the dismissal operates as an adjudication on the merits," § 41.660(5), and "[t]he court shall award reasonable costs and attorney's fees," § 41.670(1)(a). The court may also award up to \$10,000 in additional damages, § 41.670(1)(b), and the defendant may bring a separate action to recover additional fee awards. § 41.670(1)(c). These remedies are not available under Federal Rules 12(b)(6) or 56.

The Rules of Decision Act, 28 U.S.C. § 1652, requires federal courts to apply "[t]he laws of the several states, except where . . . Acts of Congress otherwise require or provide. . . ." App.50a. The Rules Enabling Act, 28 U.S.C. § 2072(a), authorizes this Court

to “prescribe general rules of practice and procedure” for the federal courts; those rules “shall not abridge, enlarge or modify any substantive right,” and “[a]ll laws in conflict with such rules shall be of no further force or effect.” 28 U.S.C. § 2072(b). App.51a. Rule 8(a) governs the requirements for filing a federal action, App.51a, and Rules 12(b)(6) and 56 govern motions to dismiss and summary judgment, establishing the federal standards for evaluating the sufficiency of claims and the allocation of pretrial burdens of proof. App.52a–53a.

B. Factual Background

Petitioners Wealthy, Inc. and Dale Buczkowski (“Petitioners”) operate an entrepreneurship, finance, business, real-estate, and self-improvement company under a federally registered trademark, Derek Moneyberg App.24a–25a. At the time of the complaint, Petitioners had 23,700 YouTube subscribers and over 1.2 million video views. *Id.*; Compl. ¶¶ 10–25, ECF No. 1 (D. Nev. June 21, 2021). Respondents Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (collectively, the “Cornelia Defendants”) produce and monetize content on their YouTube channel, where they have offered coaching programs, including Cornelia’s “house hack expert book” and a “first 1,000 subscribers” mentoring program. App.25a, 31a–32a. Their YouTube channel had approximately 150,000 subscribers and over 13.8 million views when the complaint was filed. App.24a; Compl. ¶¶ 26–40.

Between December 2020 and February 2021, the Cornelia Defendants produced multiple video interviews with a guest, John Mulvehill, and launched them on their YouTube channel. App.24a. Petitioners alleged that the Cornelia Defendants promoted their competing

products and services on their YouTube channel, App.31a, and published five assertions in the videos that Buczkowski: (1) lied about his educational achievement, (2) laundered money, (3) manufactured and/or sold illegal drugs, (4) framed a co-defendant for a 2013 arrest leading to four felony and four misdemeanor charges, and (5) was involved in the death of a 28-year-old woman. App.24a–25a; Compl. ¶¶ 58–75.

C. Proceedings Below

Petitioners brought suit in the United States District Court for the District of Nevada, asserting claims for defamation, intentional infliction of emotional distress, and business disparagement under state law, as well as false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). App.25a, 31a, 50a. The District Court had federal-question jurisdiction over the Lanham Act claim under 15 U.S.C. § 1121(a) (App.49a), 28 U.S.C. §§ 1331 and 1338(a), and supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367(a). Petitioners pointed to the five statements above to support their claims for false advertising under the Lanham Act and defamation under Nevada law. App.24a–25a; Compl. ¶¶ 58–75, 111–129.

On September 30, 2022—after the close of discovery and 465 days² after service of the complaint—the Cornelia Defendants moved for summary judgment on all claims and separately filed a Special Motion to Dismiss under NRS § 41.660. App.23a–24a. The District

² See Compl., ECF No. 1 (D. Nev. June 21, 2021); Summons Returned Executed, ECF No. 5 (D. Nev. June 25, 2021) (Spencer Cornelia served June 22, 2021); Defs.’ Mot. to Dismiss, ECF No. 61 (D. Nev. Sept. 30, 2022) (filed 465 days after service).

Court granted summary judgment on all claims. App.37a–38a. On the Lanham Act claim, the court held that none of the challenged videos themselves contained an express reference to Cornelia’s competing mentorship programs, and that the presence of those programs elsewhere on Cornelia’s YouTube platform was legally insufficient to render the video statements “commercial speech” under the Lanham Act. App.31a–32a. As to defamation, the court held that “plaintiffs are, at the very least, limited-purpose public figures,” relying on the Complaint’s description of Buczkowski as the owner of a “leading” company with 23,700 YouTube subscribers and over 1.2 million views, and reasoning that Plaintiffs “cannot ‘have it both ways.’” App.32a–35a. The court rejected Plaintiffs’ objection that defendants relied only on post-publication evidence as “irrelevant.” *Id.* The court separately denied the anti-SLAPP special motion, finding that the Cornelia Defendants failed to satisfy the first-prong good-faith requirement. App.29a–31a.

On appeal, the Ninth Circuit initially affirmed the summary judgment rulings and dismissed the anti-SLAPP denial as moot. App.21a. The decision addressed Petitioners’ public-figure status in a single sentence: “Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs’ coaching services, which evidence in the record suggests existed at least before December 2020.” App.20a–21a. Neither court below identified any specific record evidence supporting that conclusion or made findings on the existence of a discrete pre-existing public controversy, Petitioners’ voluntary

injection into it, or any purpose to influence its resolution. App.20a–21a, 32a–35a.

Petitioners requested reconsideration of the panel’s limited-purpose public figure determination, which the court summarily denied. Pet. for Panel Reh’g, No. 23-3227 (9th Cir. Jan. 12, 2026), Dkt. No. 76, App.41a. The Cornelia Defendants requested panel reconsideration of the mootness determination. While formally denying their petition for rehearing, the court withdrew the original disposition and issued a superseding decision on February 25, 2026, that (1) maintained its earlier summary judgment rulings, and (2) reversed the district court’s denial of the anti-SLAPP motion. App.1a–12a. The panel reversed its mootness determination because “[w]hen a movant prevails on a Nevada anti-SLAPP motion, they have the right to mandatory fee shifting, additional discretionary awards, and filing of a separate action for compensatory and punitive damages,” which is “relief beyond what grant of summary judgment under Fed. R. Civ. P. 56 provides.” App.5a n.1. On the first prong, the panel noted that Nevada’s good-faith element is “‘essentially the same’ standard as that for actual malice ‘only differing in the party with whom the burden of proof lies.’” App.10a (citing *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019)). It concluded that Cornelia had “reasonably researched and corroborated the statements” and met that burden. App.10a. On the second prong, the panel “collapsed” the anti-SLAPP analysis into the Rule 56 standard to conclude that the Nevada “probability of prevailing” standard was also met. App.11a.

The superseding decision noted that “[n]o future petitions for rehearing or rehearing en banc will be

entertained.” App.45a. Petitioners moved for leave to file a petition for rehearing en banc on the anti-SLAPP ruling in light of this Court’s decision in *Berk*, Mot. for Leave to File Pet. for Reh’g En Banc, No. 23-3227 (9th Cir. Mar. 11, 2026), Dkt. No. 86, which the panel denied on March 16, 2026, App.46a–48a. The Cornelia Defendants thereafter demanded a \$600,000 bond, which they claimed was “the amount of attorneys’ fees to which Appellees will likely be entitled when the mandate issues.” Appellees’ Resp. to Mot. to Stay Mandate, No. 23-3227 (9th Cir. Mar. 5, 2026), Dkt. No. 85.



REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari to Resolve the Three-Way Circuit Conflict Over the Federal Court Applicability of State Anti-SLAPP Statutes.

Certiorari is warranted under this Court’s Rule 10(a) and (c). The courts of appeals are openly and intractably divided over whether, and how, state anti-SLAPP special motions that impose heightened, burden-shifting merits standards and mandatory fee-shifting apply in federal court. Four circuits hold such statutes categorically displaced by Rules 12(b)(6) and 56; the First Circuit applies them in federal court as enacted; and the Ninth Circuit has evolved a unique, judicially reconstructed hybrid that strips conflicted state-law preconditions while preserving mandatory fee consequences. The same Nevada statute thus pro-

duces materially different outcomes across circuits on identical claims.

A. The Circuits Are Openly and Intractably Divided on the Federal Applicability of State Anti-SLAPP Statutes.

The three-way circuit split is recognized,³ mature, and beyond self-correction. Six circuits have squarely addressed the question, with considered, precedential rulings on each side that subsequent panels are bound to follow. Each circuit acted with full awareness of the contrary authority, and the Ninth Circuit recently declined to reconsider its longstanding *Newsham* precedent and denied Petitioners’ motion for rehearing en banc in this very case, confirming that its position is entrenched.

1. Four Circuits Hold That Anti-SLAPP Burden-Shifting Special Motions to Dismiss Conflict with the Federal Rules and Do Not Apply in Federal Court

Each of these circuits, after considering and rejecting the Ninth Circuit’s reasoning, has held that state anti-SLAPP special motions imposing burdens

³ See Nicholas Rinehart, Comment, *Three Ways to Sit Under a Shady Grove: The Uncertain Future of the Oklahoma Citizens Participation Act in Federal Court*, 75 OKLA. L. REV. 861, 877–85 (2023) (identifying the same three-way framework, with the D.C., Second, Fifth, and Eleventh Circuits holding anti-SLAPP statutes inapplicable in federal court, the First Circuit holding them applicable as enacted, and the Ninth Circuit adopting a “fractured” approach involving “complex severing” of state-law provisions that produces a regime the state legislature did not enact).

beyond the Federal Rules conflict with Rules 12(b)(6) and 56 and are inapplicable in federal court. Because each holding is categorical, all linked remedies—including fee-shifting—are necessarily foreclosed.

The D.C. Circuit led the way in *Abbas*, 783 F.3d 1328, in a decision authored by then-Judge Kavanaugh. Applying the D.C. Anti-SLAPP Act, D.C. Code §§ 16-5501 *et seq.*, App.57a–59a, described *supra*, the court held that the Act’s special motion procedure, under which the plaintiff must demonstrate that “the claim is likely to succeed on the merits” to avoid dismissal, conflicts with Federal Rules 12(b)(6) and 56. *Id.* at 1334–35 (quoting D.C. Code § 16-5502(b)). The *Abbas* court applied *Shady Grove*’s two-step framework. At step one, it held that “Federal Rules 12 and 56 answer the same question as the D.C. Anti-SLAPP Act,” namely, “the circumstances under which a court must dismiss a case before trial.” *Id.* at 1334–37. At step two, applying *Sibbach*, the court readily concluded that Rules 12 and 56 are valid because they “really regulat[e] procedure.” *Id.* at 1336–37.

The court then dismissed *Abbas*’s defamation complaint on alternative grounds under Rule 12(b)(6) but explicitly held that the Act’s fee-shifting provision, D.C. Code § 16-5504(a), does not independently survive: “The Act does not purport to make attorney’s fees available to parties who obtain dismissal by other means, such as under Federal Rule 12(b)(6).” *Id.* at 1338 n.5. The defendants thus won on the merits yet received no fees—the opposite of the Ninth Circuit’s approach, where prevailing on a Rule 12(b)(6) or 56 motion satisfies the second prong and, with a first-prong showing of protected speech, triggers fee-shifting.

The Eleventh, Fifth, and Second Circuits each followed *Abbas*'s reasoning.

Following *Abbas*, the Eleventh and Fifth Circuits foreclosed anti-SLAPP motions and their associated fee remedies in federal court. In *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345 (11th Cir. 2018), the Eleventh Circuit held that the Georgia Anti-SLAPP statute, O.C.G.A. § 9-11-11.1, App.59a–62a, conflicts with Rules 12 and 56 because requiring a plaintiff to establish “a probability of prevailing” imposes burdens “over and above the requirements contemplated by the Federal Rules that control the same issue.” *Id.* at 1354 (citing O.C.G.A. § 9-11-11.1(b)(1)). The court rejected *Godin* and *Newsham* as unpersuasive. *Id.* at 1355–56. The Fifth Circuit reached the same conclusion in *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019), holding that the Texas Citizens Participation Act (“TCPA”), Tex. Civ. Prac. & Rem. Code §§ 27.001–.011, App.62a–65a, in effect at that time,⁴ does not apply in federal court because Rules 12 and 56 “answer the same question.” *Id.* at 245 (citing TCPA § 27.005(c)). The court reversed the district court’s awards of attorney’s fees and sanctions in their entirety, holding that those provisions are “not applicable apart from the burden-shifting early dismissal framework.” *Id.* at 247 n.6.

⁴ In 2019, the TCPA was amended but district courts in the Fifth Circuit have continued to find it inapplicable under *Klocke*. See *Parker v. Spotify USA, Inc.*, 569 F.Supp.3d 519, 539 (W.D. Tex. 2021) (“Based on this Court’s reading of the *Klocke* reasoning, the Texas Legislature did not amend the chapter in a way that cured the issues with the overlap between 12(b)(6) dismissals and TCPA dismissals.”).

The Second Circuit held in *La Liberté v. Reid* that the California Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16, App.65a–68a, does not apply in federal court. 966 F.3d 79, 88–89 (2d Cir. 2020). Following *Abbas* and *Carbone*, the court held that the special motion requiring a plaintiff to demonstrate a “probability of prevailing” answers the same question as Rules 12 and 56, and because those Federal Rules are valid under the Rules Enabling Act, the state procedures must yield. *Id.* at 88. The court further held that California’s anti-SLAPP statute “does not purport to make attorney’s fees available to parties who obtain dismissal by other means,” and that a prevailing defendant may never recover anti-SLAPP fees in federal court—even if the plaintiff ultimately loses the case. *Id.* at 88–89. This categorical bar directly contrasts with the Ninth Circuit’s approach in the decision below.

Particularly significant here, *La Liberté* distinguished its earlier decision in *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014), which had applied a Nevada anti-SLAPP statute in federal court. 966 F.3d at 88 n.3. *Adelson* dealt with a pre-2013 version of Nevada’s anti-SLAPP statute which “does not establish a ‘reasonable probability of success’ standard that must be met without discovery, like the California Anti-SLAPP law.” *Id.* The former NRS § 41.660(3)(a) (1997), instead, simply required the court to “[t]reat the motion as a motion for summary judgment.” App.70a. In 2013, the Nevada legislature amended its anti-SLAPP statute to add the “probability of prevailing” and burden-shifting mechanism to § 41.660(3)(b) for the express purpose under § 41.665(2), of conforming Nevada’s anti-SLAPP statute to that of California—the same California law that the Second Circuit in *La Liberté*

held conflicts with the Federal Rules. App.55a–56a. The amended Nevada statute at issue in the present case is thus materially different from the pre-amendment statute that the Second Circuit applied in *Adelson*, and falls squarely within the class of anti-SLAPP statutes that four circuits have held are displaced by the Federal Rules.

Petitioners exclude the Tenth Circuit from the identified split because, in *Los Lobos Renewable Power, LLC v. AmeriCulture, Inc.*, 885 F.3d 659, 670–73 (10th Cir. 2018), the court construed the New Mexico Anti-SLAPP statute, N.M. Stat. § 38-2-9.1, App.71a–72a, as “purely procedural” and resolved the case on the threshold *Erie* procedure/substance step without resting its holding on a conflict with Federal Rules 12(b)(6) and 56. The Tenth Circuit also explained that Justice Stevens’s concurrence in *Shady Grove* supplies the controlling approach in that circuit but emphasized that New Mexico’s statute—unlike most anti-SLAPP laws—does not shift burdens or alter merits standards and thus does not affect the outcome on the merits. 885 F.3d at 668 n.3; *id.* at 670–71. Because Nevada’s post-2013 statute NRS § 41.660(3)(b), App.54a, incorporates a California-style “probability of prevailing” burden-shifting mechanism, NRS § 41.665(2), App.56a, *Los Lobos* does not address the question presented here.

2. The First Circuit Applies Anti-SLAPP Statutes Exactly as Enacted by the State Legislature

The First Circuit stands as the only one to permit state anti-SLAPP special motions in federal court while applying the state statute exactly as the legislature enacted it. Like the Ninth Circuit, the First Circuit concludes that the special motion is available in fed-

eral court; unlike the Ninth Circuit, it preserves the statute’s merits standard, filing deadline, discovery stay, and interlocutory appeal right intact.

The First Circuit held that Maine’s anti-SLAPP statute applies in federal court in *Godin*, 629 F.3d 79, 92. That decision involved the Maine anti-SLAPP statute then in effect, Me. Rev. Stat. tit. 14, § 556, App.68a–70a, which provided the special motion to dismiss procedure described *supra*. Once a defendant demonstrates “that the claims in question are based on the defendant’s petitioning activity,” the court shall grant the special motion “unless the party against whom the special motion is made shows that the moving party’s exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party’s acts caused actual injury to the responding party.” *Id.* at 82 (quoting § 556). Maine’s statute also links fees to the special motion: “[i]f the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney’s fees.”⁵

The *Godin* court applied this Court’s *Shady Grove* framework and concluded that Federal Rules 12(b)(6) and 56 “are not so broad as to cover the issue within the scope of [Maine’s anti-SLAPP law].” *Id.* at

⁵ In 2024, Maine’s legislature repealed the former anti-SLAPP statute (14 M.R.S. § 556) and replaced it with the Maine Uniform Public Expression Protection Act, codified at 14 M.R.S. §§ 731–742 (P.L. 2023, ch. 626, eff. Jan. 1, 2025) [<https://perma.cc/U5FA-JU2U>]. The new law provides for a “special motion for expedited relief” under § 734 that, like its predecessor, must generally be filed within 60 days of service (or later upon a showing of good cause) and places the burden on the plaintiff to establish a *prima facie* case. *See* 14 M.R.S. §§ 734, 737.

88. The court followed Justice Stevens’s *Shady Grove* concurrence rather than the plurality, finding it binding because, together with the four dissenting Justices, it formed a functional majority that “whether a Federal Rule is valid under the Rules Enabling Act depends not on the Federal Rule alone, but also on the nature of the state rule it seeks to displace.” *Id.* at 87. Under that framework, the court concluded that Rules 12(b)(6) and 56 were not “meant to control the particular issues under [Maine’s anti-SLAPP statute]” and that the twin aims of *Erie* favored application of the state law. *Id.* at 86.

Critically, the First Circuit applies Maine’s prima facie standard exactly as the legislature enacted it, treating the state burden of proof and the heightened showing required to defeat the motion as substantive features that travel with the claim into federal court. *Godin*, 629 F.3d at 82, 88–89. The First Circuit also enforces the statute’s procedural architecture as written: it applies the timing requirements as enacted and permits interlocutory appeals from denials under the collateral order doctrine. *Franchini v. Investor’s Bus. Daily, Inc.*, 981 F.3d 1, 6–7 (1st Cir. 2020); *Godin*, 629 F.3d at 83–84. Because the First Circuit views Rules 12(b)(6) and 56 as addressed to “entirely different” questions than § 556, no judicial reconstruction of the merits standard, filing deadline, discovery stay, or interlocutory appeal right is needed. *Id.* at 89. The state statute thus operates in federal court as the integrated legislative scheme the legislature designed.

3. The Ninth Circuit Applies a Judicially Reconstructed Regime That Substitutes Federal Rules Standards While Preserving State-Law Remedies

The Ninth Circuit occupies a third position no other circuit has adopted. In a line of decisions stretching back to *Newsham* in 1999, it has held that state anti-SLAPP special motions are available in federal court. As procedural-compliance questions have arisen case by case, the court has stripped each precondition found to conflict with federal procedure while preserving the mandatory fee-shifting and other state-law remedial consequences the legislature tied to the unmodified motion. The result is a judicially reconstructed regime that no legislature enacted—and one that lower-court panels, including the panel below, are bound to apply without revisiting.

The Ninth Circuit was the first federal appellate court to consider whether a state anti-SLAPP special motion applies in federal court in *Newsham*, 190 F.3d 963, involving California’s anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, App.65a–68a.⁶ The court held that the Federal Rules and the anti-SLAPP statute share the goal of “expeditious weeding out of meritless claims before trial” but that this overlap was not a “direct collision” because the Federal Rules were not intended to “occupy the field” of pretrial dismissal. 190 F.3d at

⁶ California’s anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, has remained materially unchanged in its relevant provisions since *Newsham*, 190 F.3d 963 (9th Cir. 1999). Although the Legislature has made limited amendments since then, the core burden-shifting framework, 60-day filing deadline, discovery stay, and fee-shifting provisions at issue have remained substantially the same.

972 (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 556 (1949)). Emphasizing the statute’s substantive purpose of protecting First Amendment rights, the court concluded that *Erie*’s twin aims favored application in federal court. *Id.* at 972–73. Critically, however, *Newsham* did not grapple with how the “probability” standard deviates from the Rule 12(b)(6) and Rule 56 standards—the precise question that would later divide the circuits in light of *Shady Grove*.

Nearly two decades after it first began applying state anti-SLAPP statutes in federal court, the Ninth Circuit was directly confronted with the *Shady Grove* question that its earlier decision in *Newsham* had left open. In *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828 (9th Cir. 2018), the court acknowledged that California’s “probability of prevailing” standard would create a “stark collision” with Federal Rules 12(b)(6) and 56 if applied according to its terms. *Id.* at 834. Rather than follow the D.C. Circuit’s approach in *Abbas* and displace the special motion entirely, the Ninth Circuit instead adopted a conflict-avoidance construction: it directed federal courts to apply Rule 12(b)(6) when the motion challenges the legal sufficiency of a claim and Rule 56 when it challenges the factual sufficiency. *Id.* at 833–34. In doing so, the Ninth Circuit accepted *Abbas*’s core premise—that the state-law merits standard “answers the same question” as the Federal Rules—yet declined to draw the same conclusion regarding displacement under the Rules Enabling Act.

The Ninth Circuit has used this conflict-avoidance approach to selectively strip each anti-SLAPP provision found to conflict with federal procedure while preserving the special motion and its mandatory remedial conse-

quences. The discovery-limiting aspects do not apply, *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001); the sixty-day filing deadline does not apply, *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016) (allowing motions up to thirty days after the close of discovery under Rule 56(b)); and interlocutory appeal from denial does not apply, *Gopher Media*, 154 F.4th at 699 (overruling *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003)). The anti-SLAPP special motion has thus been converted into a post-discovery motion that applies federal merits standards but triggers the full panoply of state-law remedial consequences—a regime no legislature enacted.

B. The Question Is Important, Recurring, and Warrants Urgent Resolution.

In circuits where they are applicable, anti-SLAPP statutes are now the principal procedural vehicle through which federal courts resolve threshold First Amendment determinations on often-truncated records, and the constitutional stakes make the procedural divide all the more consequential. Several Members of this Court have flagged the unchecked expansion of public-figure doctrine for reconsideration. *See infra* Part II. Media organizations have noted the “exceptional importance” of anti-SLAPP applicability in federal court, observing that “a media company would have to think about the threat of retaliatory litigation before deciding whether to locate and maintain substantial operations in Georgia—as opposed to, say, California, whose anti-SLAPP statute does apply in federal court”⁷ for cases brought in the Ninth Circuit.

⁷ Amici Curiae Brief of 25 Media Organizations in Support of Rehearing En Banc in *Carbone v. Cable News Network, Inc.*, No.

The split creates intolerable uncertainty as states increasingly adopt special-motion frameworks modeled on the Uniform Public Expression Protection Act (UPEPA),⁸ which provides a special motion for expedited relief (§ 3) that shifts the burden to the plaintiff (§ 7(a)(3)), suspends proceedings upon filing (§ 3), permits immediate interlocutory appeal from denial (§ 9), and mandates fees if granted (§ 10). Even the proponents of broad anti-SLAPP applicability acknowledge that the holdings of the Second Circuit and by logical extension the D.C., Fifth, and Eleventh Circuits “present[] an identical threat to the fee-shifting provisions in the [UPEPA] model statute” in federal cases.⁹ As noted above, thirty-two of forty-one anti-SLAPP jurisdictions have adopted special motions placing the burden of proof on the plaintiff. As states continue to adopt and strengthen these frameworks, the need to resolve federal court applicability grows more pressing.

The Ninth Circuit’s reconstruction approach described *supra* Part I.A.3 has produced consequences far beyond what any legislature contemplated. Defendants who prevail at summary judgment after expensive discovery receive automatic, uncapped fees that the original early-screening mechanism was designed to avoid—the product of more than twenty-five years of

17-10812 (11th Cir.) at 11, [<https://perma.cc/F5M7-7D5E>].

⁸ Unif. Pub. Expression Prot. Act §§ 3–10 (Unif. L. Comm’n 2020), full text available at [<https://perma.cc/VY53-7WCT>].

⁹ Amici Curiae Brief of 33 Media Organizations in Support of Defendant Appellee’s Petition for Panel Rehearing and Rehearing En Banc at 8, *La Liberte v. Reid*, No. 19-3574 (2d Cir.), [<https://perma.cc/6WCX-Z6E2>].

“alter[ing] the state’s anti-SLAPP procedures in various ways to avoid conflicts with the Federal Rules.” *Gopher Media*, 154 F.4th at 709 (Bress, J., concurring). State courts, by contrast, enforce procedural preconditions like the 60-day filing deadline, which together with the discovery stay limits expensive discovery. *See Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 4 Cal. 5th 637, 645–646 (2018); *Mancilla v. Taxfree Shopping, Ltd.*, No. 05-18-00136-CV, 2018 WL 5993318 (Tex. App.—Dallas Nov. 16, 2018, no pet.); *Bradbury v. City of Eastport*, 72 A.3d 512, ¶¶ 10–14 (Me. 2013). Under the Ninth Circuit’s approach allowing post-discovery fee shifting, the same statute produces different outcomes in federal and state court, turning *Erie* on its head.

Without guidance from this Court on the proper application of the *Shady Grove* framework, state legislatures cannot confidently design effective anti-SLAPP remedies. If burden-shifting special motions are inapplicable in federal court, states may be incentivized to abandon attempts to have anti-SLAPP special motions apply in federal court altogether, and instead enact standalone fee-shifting mechanisms untethered from any special procedural vehicle—precisely as Florida and New York have done. *See* Fla. Stat. § 768.295(3) (App.73a–74a); N.Y. Civ. Rights Law § 70-a (App.75a–76a). Yet those statutes do not make fee awards mandatory, as is typical of traditional anti-SLAPP regimes. Resolution by this Court is therefore urgently needed to restore uniformity in federal procedure and to give states the certainty they need to craft remedies that function as intended in both state and federal court.

The stakes of further delay are concrete. Mandatory fee-shifting converts the decision whether to file a

speech-related claim into a decision whether to risk a large fee award if it does not survive a threshold motion, driving forum selection, settlement dynamics, insurance pricing, and willingness to litigate to judgment. The same defamation claim today faces materially different incentive structures depending on the circuit, imposing ongoing costs on both the speech interests anti-SLAPP statutes protect and the reputational interests defamation law vindicates.

The urgency is underscored by the explosion of anti-SLAPP litigation in federal court. As Judge Kozinski observed, such cases have “spread like kudzu through the federal vineyards,” with the Ninth Circuit hearing the overwhelming majority of these cases. *Travelers Cas. Ins. Co. of Am. v. Hirsh*, 831 F.3d 1179, 1182–83 (9th Cir. 2016) (Kozinski, J., concurring). The breadth of amicus interest—from government,¹⁰ media organizations,¹¹ and civil-society¹² groups—confirms

¹⁰ Amicus Curiae Brief of the District of Columbia in Support of the District of Columbia Anti-SLAPP Act’s Applicability in Federal Diversity Cases, *Abbas v. Foreign Policy Group, LLC*, No. 13-7171 (D.C. Cir.) [<https://perma.cc/JW7F-5UDX>].

¹¹ Amici Curiae Brief of 25 Media Organizations in Support of Defendant-Appellant, *Carbone v. Cable News Network, Inc.*, No. 17-10812 (11th Cir.) [<https://perma.cc/N2A2-7P6Q>]; Brief of Amici Curiae Media Organizations in Support of Defendants-Appellees, *Abbas v. Foreign Policy Group, LLC*, No. 13-7171 (D.C. Cir.) [<https://perma.cc/DG7U-L52P>].

¹² Amici Curiae Brief (Corrected) of Members of “Protect the Protest” Task Force (“PTP”) in Support of Defendants-Appellees Seeking Affirmance, *CoreCivic, Inc. v. Candide Group, LLC*, No. 20-17285 (9th Cir.) [<https://perma.cc/84CA-CDVR>]; Amici Curiae Brief of Non-Governmental Organizations Supporting Appellees /Cross-Appellants and Seeking Reversal In Part, *Christiana Tah*

that the question affects the broader administration of justice in federal courts.

This case also presents a clean vehicle for resolving the persistent disagreement over how to read *Shady Grove*—specifically, whether Justice Stevens’s concurrence supplies the controlling Rules Enabling Act analysis or whether courts must instead apply Justice Scalia’s plurality and the “really regulates procedure” test from *Sibbach*. As shown *supra* Part I, the First and Tenth Circuits follow Stevens’s concurrence. See *Godin*, 629 F.3d at 87; *Los Lobos*, 885 F.3d at 668 n.3. *Abbas* squarely rejects that premise with respect to the same 4–1–4 split in *Shady Grove*, holding that “[n]either the 4-Justice view nor the 1-Justice view on its own is binding.” 783 F.3d at 1337. In addition, *Abbas* held Stevens’s concurrence cannot be the narrowest opinion under *Marks v. United States*, 430 U.S. 188 (1977), because “the four Justices in dissent simply did not address the issue.” *Id.* With no common ground between Scalia’s plurality and Stevens’s concurrence on the governing Rules Enabling Act standard, *Abbas* concluded that the answer “is to follow the Supreme Court’s pre-existing precedent in *Sibbach*”—*i.e.*, that any Federal Rule that “really regulates procedure” is valid. *Id.* Resolving this disagreement would do more than settle the anti-SLAPP question: it would fix the governing framework for Federal Rule displacement generally, curb forum-shopping and inequitable administration in mixed federal-question and supplemental-jurisdiction cases, and align lower-court practice with

v. Global Witness Publishing, Inc., No. 19-7132 (D.C. Cir.) [<https://perma.cc/6SHE-6Q2L>].

this Court's recent emphasis on a straightforward *Shady Grove* two-step test in *Berk*, 607 U.S. at 193.

C. This Case Is an Ideal Vehicle for Resolving the Circuit Split.

This petition presents the cleanest vehicle the Court has had, or is likely to have, for resolving every branch of the three-way conflict. To present all three positions as live, outcome-determinative alternatives, a petition must satisfy three conditions: (i) it must arise from a circuit applying the hybrid reconstruction approach—in practice, the Ninth Circuit; (ii) the special motion must have been granted, not denied, so the manner in which the reconstructed regime is applied is squarely engaged; and (iii) the motion must have been granted in a posture the statute as enacted would not have permitted, yielding an opposite outcome under the First Circuit's as-enacted approach. This case satisfies every condition. The Ninth Circuit treated Nevada's 60-day deadline and discovery stay as inapplicable while preserving the statute's mandatory remedial consequences. The 465-day delay between service and the special motion is dispositive across the split: the four opposing circuits would foreclose the motion and its fee award outright; the First Circuit would have required dismissal as untimely; only in the Ninth Circuit does the same merits victory trigger a post-discovery mandatory fee demand—here, the \$600,000 bond demand described above.

This posture distinguishes every prior anti-SLAPP petition this Court has considered. The pending petition in *Gopher Media LLC v. Melone*, No. 25-1067 (U.S. filed Mar. 6, 2026), highlights another facet of the First–Ninth Circuit split: the availability of interlocutory appeals from the merits denial of anti-

SLAPP special motions in federal court. Most state anti-SLAPP statutes, including Nevada’s, expressly authorize interlocutory appeals from denied special motions. *See* NRS § 41.670(4). The First Circuit permits them according to the statute’s terms, but the Ninth Circuit reversed its longstanding practice in *Gopher Media*. Although the broader question of anti-SLAPP applicability may be fairly included, the en banc court expressly declined to reach it and noted that “neither side argue[d] in favor of overruling our precedent holding that the California anti-SLAPP statute applies in federal court under the *Erie* doctrine.” 154 F.4th at 700. By contrast, Petitioners directly challenged the applicability of Nevada’s anti-SLAPP statute after the superseding decision revived it. This difference matters because important legal issues are best resolved through the crucible of true adversarial presentation. *See Poe v. Ullman*, 367 U.S. 497, 503 (1961); *Muskraat v. United States*, 219 U.S. 346, 357 (1911).

Several other petitions in which this Court has called for a response have presented substantial vehicle problems not present here. In *Ctr. for Med. Progress v. Planned Parenthood*, No. 18-696 (U.S. filed Nov. 21, 2018), the plaintiff, having prevailed below, did not contest anti-SLAPP applicability. *Retzlaff v. Van Dyke*, No. 19-1272 (U.S. filed May 4, 2020), and *Clifford v. Trump*, No. 20-602 (U.S. filed Oct. 29, 2020), both involved an earlier, since-amended version of the Texas Citizens Participation Act, raising serious questions about the precedential value of any ruling. *Clifford* also presented additional choice-of-law complications stemming from an inter-circuit transfer. Finally, *AmeriCulture v. Los Lobos Renewable Power*, No. 18-89 (U.S. filed Jul. 16, 2018), arose under New Mexico’s

statute, which the Tenth Circuit treated as “purely procedural” and which lacks the burden-shifting framework central to *Shady Grove* analysis. By contrast, this case arises under Nevada’s current (post-2013) anti-SLAPP statute, on a fully developed record, and involves a grant of the special motion followed by a remand. It presents none of the vehicle defects that have plagued prior petitions.

The federal-question posture is, if anything, an affirmative virtue. Anti-SLAPP fee-shifting is not confined to diversity actions; it routinely distorts federal-question litigation through supplemental jurisdiction over accompanying state-law claims. *See, e.g., Tobinick v. Novella*, 848 F.3d 935 (11th Cir. 2017) (Lanham Act, 15 U.S.C. § 1125(a)(1)(B)); *Godin*, 629 F.3d 79 (42 U.S.C. § 1983); *Newsham*, 190 F.3d 963 (False Claims Act, 31 U.S.C. §§ 3729–3733); *Iqe PLC v. Newport FAB, LLC*, 155 F.4th 1370, 1374–75 (Fed. Cir. 2025) (18 U.S.C. § 1836; 35 U.S.C. § 256).¹³ Where, as here, the federal claim itself carries concurrent state and federal jurisdiction—such as the Lanham Act under 15 U.S.C. § 1121(a), App.49a—the plaintiff’s choice of forum is functionally identical to the diversity-case choice that animates *Erie*’s twin aims. A Nevada Lanham Act plaintiff in state court is subject to anti-SLAPP fees only if the defendant satisfies the statute’s procedural prerequisites; the same plaintiff in federal court, under the Ninth Circuit’s reconstructed regime, faces a mandatory post-discovery fee demand on a motion the legislature would have foreclosed as untimely.

¹³ The Federal Circuit does not independently contribute to the split. On non-jurisdictional issues that are not unique to patent law, it applies the law of the regional circuit from which the case arose. *See Newport FAB*, 155 F.4th at 1378.

That divergence is the inequitable administration of the laws *Erie* was designed to prevent.

Although the decision below is unpublished, this Court has granted certiorari to review unpublished decisions presenting important questions of federal law. *See Berk*, 607 U.S. at 187 (reviewing unpublished *Berk v. Choy*, 2024 WL 3534482 (3d Cir. July 25, 2024)). The question presented is a pure question of law that the panel squarely decided, the Ninth Circuit has recently reaffirmed its anti-SLAPP applicability in the en banc *Gopher Media* decision, and the circuit split is documented across numerous published decisions in six circuits.

D. Under *Shady Grove* and *Berk*, Nevada’s Anti-SLAPP Special Motion Is Displaced by Federal Rules 12(b)(6) and 56.

This Court has recently remarked that “[a]nalyzing whether a Federal Rule displaces state law is straightforward” under the two-step test of *Shady Grove*. *See Berk*, 607 U.S. at 193 (citing *Shady Grove*, 559 U.S. at 398). Under the first step, a court must determine whether a Federal Rule “answers the question in dispute.” *Id.* And “[i]f a Federal Rule answers the disputed question, it governs, unless it ‘exceeds statutory authorization or Congress’s rulemaking power.’” *Id.* As demonstrated *supra* Part I.A.1, four circuits have held that anti-SLAPP burden-shifting requirements like Nevada’s “probability of prevailing” standard answer the same question as Rules 12(b)(6) and 56. The anti-SLAPP statute at issue here, NRS § 41.660 (3)(b), likewise “answers the same question” as Rules 12(b)(6) and 56. The Ninth Circuit’s decision below implicitly confirms this: the panel applied the Rule 56 standard to satisfy the second-prong analysis. App.11a.

Because Rules 12(b)(6) and 56 and NRS § 41.660 (3)(b) answer the same question, Rules 12(b)(6) and 56 “govern[] so long as [they are] valid under the Rules Enabling Act, which requires that Federal Rules be procedural rather than substantive.” *Id.* at 198 (citing 28 U.S.C. § 2072(b)). Under *Berk*, validity under the Rules Enabling Act is governed by the “modest test” of *Sibbach*: “whether the Federal Rule ‘really regulates procedure.’” *Id.* (quoting *Sibbach*, 312 U.S. at 14). There is no question that Rules 12(b)(6) and 56 regulate procedure. *Berk* rejected an approach to Rules Enabling Act validity that involved “asking . . . whether *the displaced state law* is substantive.” *Id.* at 199. Even if the fee-shifting provision is viewed as having substantive effect, the Court need not concern itself with whether aspects of the anti-SLAPP law are substantive. “Rules which incidentally affect litigants’ substantive rights do not violate [the Rules Enabling Act] if reasonably necessary to maintain the integrity of that system of rules.” *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 5 (1987).

The Ninth Circuit’s approach—developed over nearly three decades of decisions since *Newsham* and applied by the panel below—effectively severs the fee-shifting aspects of the anti-SLAPP law from the procedural preconditions to granting that motion. But the Nevada legislature tied the fee-shifting consequences to the granting of a special motion, including all of its procedural preconditions. *See* NRS § 41.670(1)(a). As the *Abbas* court recognized, severing fee-shifting from those preconditions improperly rewrites the statute in a way no legislature enacted. 783 F.3d at 1334–35 (“The main problem with the defendants’ theory is that it requires the Court to re-write the special motion to

dismiss provision”). This Court’s precedent does not support such judicial rewriting. *See Berk*, 607 U.S. at 196–197 (“Defendants offer a workaround: They rewrite Delaware’s law. . . . That defendants cannot fit the affidavit requirement into the Federal Rules illustrates that it has no place there.”). Justice Stevens’s *Shady Grove* concurrence, often cited to support anti-SLAPP applicability, warned that “simply because a rule should be read in light of federalism concerns, it does not follow that courts may rewrite the rule.” 559 U.S. at 431 (Stevens, J., concurring). The Ninth Circuit’s judicial rewriting of the state anti-SLAPP laws therefore does not prevent displacement.

Accordingly, Nevada’s anti-SLAPP special motion to dismiss and its associated fee award do not apply in federal court, and the anti-SLAPP judgment below must be reversed.

II. The Panel’s Single-Sentence Public-Figure Designation Departs from *Gertz*, *Wolston*, and *Hutchinson*.

The decision below designated Petitioners as limited-purpose public figures—the constitutional determination that drove every dispositive ruling against them—without the particularized analysis this Court’s precedents demand. App.8a–9a. Rather than affirm a developed district-court analysis, the panel supplied a new appellate rationale, compressing the constitutionally required three-part inquiry into a single conclusory sentence. That compression reflects the broader appellate drift Members of this Court have urged it to confront: actual malice has “evolved from a high bar to recovery into an effective immunity from liability,” *Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from denial of certiorari); *see*

also id. at 2424–25 (Thomas, J., dissenting from denial of certiorari), and conclusory public-figure designations are a principal mechanism by which that immunity now operates. At a minimum, the panel’s disposition—no more illuminating than the district court’s, App.32a–34a—warrants vacatur with instructions to apply the controlling framework in the first instance.

This Court has consistently cabined the limited-purpose public figure category. *Gertz* held that an individual qualifies only when he has “voluntarily inject[ed]” himself into a “particular public controversy” to “influenc[e] the resolution of the issues involved.” 418 U.S. at 345, 351–52. *Wolston* confirmed that a plaintiff does not become a public figure merely by being drawn into matters of public attention, 443 U.S. at 166–68, and *Hutchinson v. Proxmire* rejected the view that a person becomes a public figure by receiving federal funds and responding to public criticism, 443 U.S. 111, 134–36 (1979); *see also Time, Inc. v. Firestone*, 424 U.S. 448, 453–55 (1976) (mere notoriety insufficient). Together, those decisions require particularized findings on (1) a discrete public controversy predating the alleged defamation whose outcome “affects the general public or some segment of it in an appreciable way,” *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980); (2) the plaintiff’s voluntary participation in that controversy to influence its resolution, *Gertz*, 418 U.S. at 345; and (3) the germaneness of the challenged statements to that participation, *Wolston*, 443 U.S. at 167–68.

The Ninth Circuit’s own precedent demands the same “fact-specific” inquiry on each element. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022) (citing *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 266 (9th

Cir. 2013), and *Gertz*, 418 U.S. at 351). The inquiry turns on “attention-generating activities” tied to the controversy itself, not on a plaintiff’s general commercial profile or ordinary business advertising and social media presence. *Id.* at 926–28. The defendant must show that the plaintiff “thrust” himself into the debate at issue. *Makaeff*, 715 F.3d at 266–67. In *Planet Aid*, the challenged statements concerned the very fundraising and aid-distribution practices in which the plaintiff had publicly participated. 44 F.4th at 926–28. In *Makaeff*, Trump University had itself injected the disputed subject matter into public debate through an aggressive promotional campaign inviting commentary on the very issues the challenged statements addressed. 715 F.3d at 266–68. Here, the panel identified no comparable nexus between any attention-generating activity by Petitioners and the specific accusations at issue—lying about education, money laundering, drug manufacturing, framing a co-defendant, and involvement in a death.

Neither court below made the required findings. The panel held in a single sentence: “Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs’ coaching services, which evidence in the record suggests existed at least before December 2020.” App.9a, 20a–21a. That formulation fails on every prong. As to controversy, the panel pointed to no record evidence of any discrete public dispute predating the Cornelia Defendants’ December 2020–February 2021 video series—and the “legitimacy and quality of Plaintiffs’ coaching services” is not a pre-existing controversy at all but a description of the very content of the alleged defamation, which

Wolston forbids using to bootstrap public-figure status. 443 U.S. at 167–68. As to voluntary injection, operating a coaching business with 23,700 YouTube subscribers is ordinary commercial activity, not *Makaeff*-style injection into a debate the plaintiff itself made public. 715 F.3d at 266–68. And as to germaneness, the five challenged assertions—that Buczkowski lied about his education, laundered money, manufactured or sold illegal drugs, framed a co-defendant in a 2013 arrest, and was involved in the death of a young woman, App.24a–25a; Compl. ¶¶ 58–75—are accusations of personal misconduct and criminality untethered to any debate about coaching services. *See Gertz*, 418 U.S. at 351–52.

The district court’s antecedent analysis fares no better. Rather than identify record evidence of a discrete pre-existing controversy and Petitioners’ purposeful entry into it, the court treated routine marketing language in the Complaint—descriptions of Wealthy as a “leading” company and references to subscriber counts and view totals—as dispositive under a “cannot have it both ways” rationale. App.33a–34a. Self-promotional puffery satisfies no prong of the constitutional test. *Planet Aid*, 44 F.4th at 926–28; *Makaeff*, 715 F.3d at 266–67. The panel did not confront that flawed reasoning but substituted an equally unexamined rationale—leaving Petitioners with two conclusory dispositions and no reasoned application of *Gertz* at either level.

Nor can unspecified pre-December 2020 material rescue the panel’s holding. To the extent it silently relied on Petitioners’ pre-publication advertising, such generalized commercial promotion cannot, as a matter of law, satisfy *Gertz*’s requirement of voluntary injection

into a discrete public controversy. *Gertz*, 418 U.S. at 351–52; *Planet Aid*, 44 F.4th at 926–28; *Makaeff*, 715 F.3d at 266–67. Ordinary advertising is not an “attention-generating activity” tied to a pre-existing debate over money laundering, drug manufacturing, fabrication of criminal charges, or involvement in a death. Treating it as such would convert every business that promotes its offerings into a limited-purpose public figure as to any reputational attack, however unrelated—precisely the result *Gertz*, *Wolston*, and *Hutchinson* foreclose.

At a minimum, the judgment should be vacated and remanded for the particularized analysis the controlling framework requires. This Court has done exactly that when confronting dispositions too opaque to permit meaningful review. In *Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809, 811 (1986) (per curiam), the Court vacated a Federal Circuit decision that failed to delineate “the degree to which the obviousness determination is one of fact.” *Carter v. Stanton*, 405 U.S. 669, 671 (1972) (per curiam), vacated a disposition “opaque and unilluminating as to either the relevant facts or the law,” and *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 78 (2000) (per curiam), reaffirmed that “ambiguous or obscure adjudications . . . do not stand as barriers” to the determination of federal questions. The limited-purpose public figure inquiry, like the obviousness inquiry in *Dennison*, requires a legal conclusion grounded in specific factual findings; the panel’s single-sentence disposition is at least as opaque as the rulings vacated in those cases, and the constitutional stakes are markedly higher.



CONCLUSION

For the foregoing reasons, the petition should be granted on both Questions Presented. At a minimum, the public-figure ruling should be vacated and remanded for the particularized analysis required by *Gertz*, *Wolston*, and *Hutchinson*.

Respectfully submitted,

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