No. 25-1329

In the Supreme Court of the United States

WEALTHY, INC., ET AL.,

Petitioners,

v.

SPENCER CORNELIA, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION OF RESPONDENTS SPENCER CORNELIA, CORNELIA MEDIA LLC, CORNELIA EDUCATION LLC, JOHN MULVEHILL, AND JOHN ANTHONY LIFESTYLE, LLC

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QUESTION PRESENTED FOR REVIEW

Each state's anti-SLAPP statute is different. Some have been held to permissibly apply in diversity cases, while others have not. Because there is no uniform statute, the issues differ from state to state. Whether or not some split exists as to other states' statutes, this case is about Nevada's anti-SLAPP statute. There is no circuit split regarding the Nevada statute's applicability in federal court, nor is there likely to be. Nevada's statute differs from most anti-SLAPP statutes in that it has built-in substantive rights that would be lost if the statute could not be applied in federal court. This case is an especially poor choice for certiorari as Petitioners forfeited the issue of the application of the Nevada anti-SLAPP statute in federal court before the District Court and at the Ninth Circuit, there is no circuit split with respect to the Nevada anti-SLAPP statute, and the Ninth Circuit issued an unpublished opinion on the issue.

The Questions Presented are:

1. Whether the substantive fee-shifting provision of Nevada's anti-SLAPP law applies when a plaintiff's claims are dismissed on a Rule 56 summary judgment motion.

2. Whether the Ninth Circuit misapplied the law when it concluded that Petitioners were limited-purpose public figures.

LIST OF PARTIES

Petitioners and
Plaintiffs-Appellants/Cross-Appellees below:

- Wealthy, Inc.
- Dale Buczkowski

"Cornelia" Respondents and
Defendants-Appellees/Cross-Appellants below:

- Spencer Cornelia
- Cornelia Media, LLC
- Cornelia Education, LLC

"Mulvehill" Respondents and
Defendants-Appellees below:

- John Mulvehill
- John Anthony Lifestyle, LLC

CORPORATE DISCLOSURE STATEMENT

Respondent Spencer Cornelia is a natural person not subject to Rule 29.6. Cornelia Media, LLC, and Cornelia Education, LLC, have no corporate parents and there are no publicly held companies owning ten percent or more of their stock.

Respondent John Mulvehill is a natural person not subject to Rule 29.6. John Anthony Lifestyle, LLC, has no corporate parents and there are no publicly held companies owning ten percent or more of its stock.

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CITATIONS TO THE OPINIONS BELOW

The superseding opinion of the court of appeals (Pet.App.1a) is available at 2026 U.S. App. LEXIS 5589. The original opinion of the court of appeals (Pet.App.13a) is available at 2025 U.S. App. LEXIS 33906. The opinion of the district court (Pet.App.23a)[1] is available at 2023 U.S. Dist. LEXIS 174821.

STATEMENT OF THE CASE

Respondents Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (collectively, the "Cornelia Respondents") and Respondents John Mulvehill and John Anthony Lifestyle, LLC (collectively, the "Mulvehill Respondents" and with the Cornelia Respondents, "Respondents") agree with the procedural chronology laid out in Petitioners' Statement of the Case but not with its characterizations, several of which are addressed below. It is important, however, to draw the Court's attention to the fact that Petitioners did not make any argument as to whether Nevada's anti-SLAPP statute applies in federal court until after the Ninth Circuit affirmed the District Court's grant of summary judgment in the Cornelia Respondents'

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[1] Respondents abbreviate Petitioners' Appendix as "Pet. App." and Petitioners' Petition as "Pet."

favor. *See* Pet. C.A. Br. (nowhere questioning the statute's applicability); Pet. C.A. Reply Br. (same); Pet. Opp'n to Mot. for Summ. J., ECF No. 79 (D. Nev. Oct. 28, 2022) (same). Petitioners forfeited this argument despite NRS 41.660 having been raised in the summary judgment motion and argued by the Cornelia Respondents in the appeal. They raised it for the first time in a motion to stay the mandate, filed after they had already lost on the merits. Pet. Mot. to Stay (Dkt. No. 84, filed Mar. 2, 2026). No court below has ever passed on the question Petitioners now ask this Court to decide in the first instance. The absence of any argument on this issue at the District Court at all, and the decision not to make such argument until after losing at both the trial and appellate levels, makes this case an exceptionally poor vehicle for determining the anti-SLAPP issues mentioned in the Petition.

Nor is there a ripe order to review. The Ninth Circuit reversed the personal jurisdiction dismissal of the claims against Respondents Mulvehill and John Anthony Lifestyle, LLC,[2] and remanded them for further proceedings. Pet.App.8a. It remanded the anti-SLAPP ruling as well. Pet.App.11a. The district court has not entered a fee award, has not determined whether any specific sought billing entries are compensable, and has not determined the amount.[3] The Cornelia

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[2] Optimized Lifestyle, LLC is an additional defendant at the trial court. It was not the subject of the appeal, though it was also dismissed on personal jurisdiction grounds. It is not listed as a party on the caption to the petition. However, to the extent it is a respondent, the arguments in this brief are equally applicable to it.

[3] A motion for fees (ECF No. 293) was filed on April 28, 2026. It is fully briefed and remains pending.

Respondents have also moved for fees under the Lanham Act, 15 U.S.C. § 1117(a), which may supply an independent basis for most of the fees sought. The $600,000 figure Petitioners repeat throughout the petition is a litigation position stated in a brief opposing a stay of the mandate. It is not an anti-SLAPP award of fees, and it may never become one.

Petitioner Dale Buczkowski sells business and "wealth" coaching under the trade name Derek Moneyberg. His complaint describes Petitioner Wealthy, Inc., as a "leading entrepreneurship, finance, business, real-estate and self-improvement company," operating under the federally registered "Derek Moneyberg" trademark and pleads that Buczkowski amassed 23,700 YouTube subscribers and more than 1.2 million views. Pet.App.24a. He charged individual clients coaching fees beginning at $60,000. Pet.App.29a.

Respondent Spencer Cornelia produced a YouTube series called "Authentic or Charlatan," which examines online coaches and self-styled gurus who charge large sums for opaque courses and training sessions. Pet. App.24a, 29a. Between December 2020 and February 2021, Cornelia published interviews with Respondent John Mulvehill concerning Buczkowski. Pet.App.24a. Petitioners sued for defamation, intentional infliction of emotional distress, business disparagement, and false advertising under the Lanham Act. Pet.App.25a.

The Mulvehill Respondents moved to dismiss for lack of personal jurisdiction, which Optimized Lifestyle, LLC joined, and the District Court granted it. Pet.App. 4a. Petitioners appealed that dismissal, and, following the Ninth Circuit Court of Appeals' *en banc* reversal of the panel decision in *Briskin v. Shopify*, it also reversed the dismissal as to the Mulvehill Respondents and remanded for further proceedings. 135 F.4th 739, 749 (9th Cir. 2025) (*en banc*); Pet.App.4a-5a, 11a. The case remains pending before the District Court.

The Cornelia Respondents moved for summary judgment under Rule 56 and invoked their substantive rights under Nev. Rev. Stat. § 41.660. Pet.App.25a. The District Court granted summary judgment on every claim. Pet.App.37a–38a. It held that Petitioners were "at the very least, limited-purpose public figures," that they had not demonstrated actual malice, and that the challenged videos were not commercial speech. Pet.App.31a–35a. It denied the Cornelia Respondents their fees under the anti-SLAPP statute on the first prong, finding insufficient evidence that Respondent Cornelia was unaware that Mulvehill's statements could be false. Pet.App.29a–31a. However, the District Court did not pass on the question of whether the statements were, in fact, false.

On an appeal from a final judgment, the Ninth Circuit affirmed the summary judgment rulings in full and, in a superseding memorandum disposition, reversed the denial of the special motion. Pet.App.1a–12a. Critically, the panel did not apply any state-law merits standard to Petitioners' claims. It applied Rule 56 and held that "[s]ince . . . this panel affirms the district court's grant of summary judgment for the Cornelia Defendants, the second prong [of the Nevada anti-SLAPP law] is satisfied." Pet.App.11a. The disposition is unpublished and "is not precedent except as provided by Ninth Circuit Rule 36-3." Pet.App.1a.* (unnumbered footnote so designated in the opinion below).

ARGUMENT

Petitioners ask this Court to resolve a question that no court below decided, that Petitioners forfeited, that would not change the judgment against them, and that arises from an unpublished disposition in a case that has not reached final judgment. Recently, this Court denied *certiorari* in *Gopher Media LLC v. Melone*, No. 25-1067 (U.S. June 15, 2026), where a similar question came out of the same circuit in a preserved, published, *en banc* posture. Nothing about this case is an improvement on that vehicle. It is worse in every respect that matters.

I. The Case is a Poor Vehicle for the Anti-SLAPP Question

Petitioners offer no compelling reason why the Court should review the decision in *this* case for at least six distinct grounds. First and foremost, Petitioners forfeited any objection to the recovery of fees under the Nevada anti-SLAPP law by failing to raise the issue before the District Court or before the panel decision. Second, the judgment against Petitioners rested on ordinary summary judgment principles; the Nevada anti-SLAPP law did not introduce any change in burdens or the legal framework. Third, there is no operative circuit split regarding the application of substantive rights, like a right to fees, under the Nevada anti-SLAPP statute. Fourth, this case is in an interlocutory posture regarding the fee question as it relates to the Cornelia Respondents—the requested anti-SLAPP fees might not be awarded or they may overlap with Lanham Act fees. It is also interlocutory in nature because the District Court has not adjudicated the merits of the claims against the Mulvehill Respondents. Fifth, the panel decision is unpublished and adds no new principle of law. And sixth, the Court recently considered better cases for review, like *Gopher Media*, which did not suffer from defects like forfeiture or the procedural posture present here, demonstrating this case would be an even less suitable candidate for review that would not result in any likely benefit to Petitioners. *See Gopher Media LLC v. Melone*, 154 F.4th 696 (9th Cir. 2025).

While Petitioners proffer a paradigm for the Court to review state anti-SLAPP laws, there is no one case where they can be decided *en masse* because the various state statutes differ. Contrary to Petitioners' argument (Pet. at 26), there is nothing special about taking a review of a Ninth Circuit decision. The Court can review, in a proper case, any application of any state's anti-SLAPP statute, whether the circuit court applied the statute in whole, in part (what Petitioners call a "hybrid reconstruction approach" (Pet. at 26)), or not at all. This case, however, is a poor vehicle for the review of the Nevada anti-SLAPP statute.

A. Petitioners Forfeited their Argument

The threshold problem with the Petition's question as to the application of Nevada's anti-SLAPP statute in federal court under *Erie* Doctrine is that Petitioners never raised it at the District Court, nor prior to the Ninth Circuit's decision. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). This is a "court of review, not of first view[.]" *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Prior to losing on appeal, Petitioners did not argue that Nevada's anti-SLAPP statute was inapplicable in federal court. Petitioners did not raise it in their opening appeal brief; they did not raise it in their reply; nor did they raise it at oral argument before the Ninth Circuit panel. It was not until *after* the panel issued a decision that they began to argue that the Nevada anti-SLAPP statute could not apply in federal court, first in a motion to stay the mandate and subsequently in a motion for leave to file an untimely *en banc* petition. The Ninth Circuit denied that motion. Pet.App.46a–48a.

It is well-established that a party cannot raise an argument for the first time on appeal. *See, e.g.*, *Singleton v. Wulff*, 428 U.S. 106, 120 (1976)("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."). This rule protects the appellate process by ensuring this Court does not decide issues on an unvetted record or without the benefit of reasoned analysis from the courts below. Petitioners fail to acknowledge that their choice not to raise the issue in prior proceedings amounted to a forfeiture.

In their petition, Petitioners fail to offer any reason why this Court should look beyond their forfeiture below; it does not acknowledge the forfeiture at all. Instead, in the only excuse ever offered, Petitioners claimed in their motion to the Ninth Circuit to stay the mandate that raising it earlier would have been "futile[.]" (Motion to Stay at 22 citing *Carr v. Saul*, 593 U.S. 83 (2021)). It would not have been; the Ninth Circuit was free to revisit its precedent, as recent *en banc* grants show, and Petitioners never asked. Petitioners were not short of opportunities. The Cornelia Respondents' entitlement under the anti-SLAPP statute was itself the subject of a cross-appeal that Petitioners briefed and argued for more than a year; their answering brief defended the district court's anti-SLAPP ruling on its terms without once suggesting the statute could not supply those terms in federal court. Petitioners made no attempt to ask until after losing on the merits, not even to seek *en banc* review where they were not faced with "adjudicators who are powerless to grant the relief requested." 593 U.S. at 93. Nor did Petitioners take any step to preserve the issue before the District Court, such as noting an opposition to application in federal court and reserving the issue for appeal. And every out-of-circuit decision Petitioners now invoke as the "split" could have been raised in the earlier proceedings.

Other anti-SLAPP litigants (arguing about other states' laws) have tried the same tactic of delaying their challenge and failed. *See, e.g.*, *Tobinick v. Novella*, 848 F.3d 935, 943-945 (11th Cir. 2017) (waiver of *Erie* claim where argument raised for first time on appeal), *cert. denied* 583 U.S. 990 (2017); *NCDR, L.L.C. v. Mauze & Bagby, P.L.L.C.*, 745 F.3d 742, 752 (5th Cir. 2014) (Texas litigant could not raise new *Erie* arguments for the first time on appeal); *see also Parekh v. CBS Corp.*, 820 F. App'x 827, 836 (11th Cir. 2020)(Florida litigant "forfeited this argument [*i.e.* application of Florida's anti-SLAPP statute in federal court], however, by not raising it before the district court."). The Ninth Circuit was free to take the case *en banc*, as it had done exactly that twice in the preceding two years, in *Martinez v. Zoominfo Techs., Inc.*, 90 F.4th 1042 (9th Cir. 2024) and *Gopher Media LLC v. Melone*, 154 F.4th 696 (9th Cir. 2025), yet Petitioners never postured the case for such review until after the time to do so had expired. Of particular note, this Court decided *Berk v. Choy*, 607 U.S. 187 (2026), on which Petitioners heavily rely, on January 20, 2026, while their motion for rehearing was pending, yet never brought it to the Ninth Circuit's attention prior to the February 25, 2026 disposition.

Additionally, Petitioners suggest (Pet. at 8 n.2, 26-29) that the timing of the Cornelia Respondents' motion makes this case a three-way laboratory for the split, because the motion was filed more than 60 days after service of the complaint. That argument is forfeited twice over. Petitioners' lengthy opposition to the motion in the district court never mentioned NRS 41.660(2) or timeliness and no court below passed on the question. Petitioners are also wrong; the statute Petitioners invoke answers them. The 60-day period "may be extended by the court for good cause shown." Nev. Rev. Stat. 41.660(2). Whether a Nevada court would have entertained this motion on this record was never litigated, so the premise that state and federal court would have diverged here is speculation built on an objection Petitioners never made.

This Court should not reward *post hoc* legal theories invented after the case was lost. Petitioners do not mention their forfeiture anywhere in the petition. That omission alone justifies denying review.

B. Question 1 is Not Outcome Determinative; Summary Judgment was Properly Granted under Fed. R. Civ. P. 56

Petitioners frame the purported circuit split as a conflict over whether state anti-SLAPP statutes that alter the burden of proof can apply in federal court.[4] Pet. at 10, 13, 22. But Petitioners do not accurately portray what occurred. No "heightened, burden-shifting merits standard[]" was imposed. Pet at 11, 13. The District Court granted summary judgment to the Cornelia Respondents under Fed. R. Civ. P. 56.[5] Pet. App.37a–38a. The Ninth Circuit affirmed under Rule 56. Pet.App.8a–11a. There is no conflict with a federal rule because the merits adjudication was pursuant to Rule 56 and only that federal rule.

No burden on the merits was shifted. The District Court and Ninth Circuit applied Rule 56 under its ordinary interpretation. The entire premise of the purported circuit split Petitioners claim is that Nevada's anti-SLAPP statute imposed a heightened burden on Petitioners that conflicted with federal practice. Yet no such heightened burden was imposed on Petitioners.

To the contrary, the only additional burden under state law was imposed on the Cornelia Respondents to demonstrate that, once judgment under Rule 56 was warranted on the merits of Petitioners' claims, the statements were made in good faith. As to the merits, the courts below explicitly evaluated the claims under Federal Rule 56, holding that summary judgment

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[4] Although the Mulvehill Respondents join this opposition, none of the questions presented by Petitioners relate to the personal jurisdiction issue.

[5] Fed. R. Civ. P. 12 was not a basis for either the Ninth Circuit or the District Court decisions in evaluating Petitioners' claims against the Cornelia Respondents, and the question of any potential conflict with the Nevada anti-SLAPP statute is not properly before the Court. *See* Pet.App.8a–11a, 26a–29a, 37a–38a.

independently satisfied the Nevada anti-SLAPP statute. Pet.App.11a. The ensuing fee award under Nev. Rev. Stat. § 41.670, implemented under Fed. R. Civ. P. 54(d), will be purely a consequence of that summary judgment ruling, not the product of any heightened or modified procedural burden.

As the panel noted, the substantive rights accorded by the Nevada anti-SLAPP statute, including fees and a malicious prosecution-type cause of action, go "beyond what a grant of summary judgment under Fed. R. Civ. P. 56 provides." Pet.App.5a n.1. Winning on the merits, whether by Rule 56 or otherwise, is merely antecedent to subsequent "beyond" steps to vindicate these rights; for fees, it is a Rule 54(d) motion, for the cause of action it is the filing of a new case. Petitioners were never subjected to a higher state-law burden, let alone prejudiced by one.

Reviewing the panel's decision would not alter the outcome of this litigation. The Nevada anti-SLAPP statute operated strictly as a post-judgment fee-shifting mechanism, not as a standard that governed the merits. It was not a burden-shift as to the merits but rather operated solely as to a substantive right to fee-shift within the ambit of a Rule 54(d) motion following a decision on the merits. Any additional burden was borne entirely by the Cornelia Respondents, not Petitioners. This mirrors the standard burden of proof parties routinely encounter when seeking prevailing party fees in federal courts on state law claims.

Here, *certiorari* would yield nothing more than an advisory opinion on an abstract issue neither raised nor decided below. Resolving this question would not change the result; the Cornelia Respondents prevailed on summary judgment under Rule 56's standard and remain entitled to their fees as the prevailing parties. And, as noted above, questions regarding an award of fees are not ripe; the fee motion remains pending.

C. There is No Operative Circuit Split on Substantive Rights of Immunity and Fees

Nevada's anti-SLAPP statute, Nev. Rev. Stat. § 41.650, is distinct from other states' anti-SLAPP statutes, and no division exists regarding its application in federal court. The claimed anti-SLAPP circuit split centers primarily on statutes that impose procedural burden shifting, such as California, Georgia, and D.C. *See* Cal. Civ. Proc. Code § 425.16; O.C.G.A. § 9-11-11.1; D.C. Code §§ 16-5502–16-5504. Although the Nevada anti-SLAPP statute contains provisions that govern procedure in the state courts of Nevada, it also contains substantive provisions (immunity and fee-shifting) that govern tort liability under Nevada law. The Cornelia Respondents invoked the latter when seeking to enforce their rights to immunity and fees under state law, using the "special motion" nomenclature to highlight the invocation of state substantive law. And only the substantive immunity and fee shifting provisions had any effect on the decisions below. There is no question as to whether state substantive law governing fee shifting should apply to federal courts adjudicating state tort claims.

There is no "common architecture" at issue. Pet. at 5. Nevada's anti-SLAPP statute is different from the state statutes that are the purported subject of a circuit split. The law does not merely establish a procedure for early dismissal; it creates substantive rights independent of any procedural motion: Nev. Rev. Stat. § 41.650 provides that a qualifying movant is "immune from any civil action" based on protected communications. That is a substantive immunity, not a pleading rule. The Nevada Supreme Court has so held. *See Smith v. Zilverberg*, 137 Nev. 65, 73, 481 P.3d 1222, 1231 (2021)("To further these important purposes, the anti-SLAPP statutes provide immunity from civil liability for claims against protected speech."). No procedural portion of the Nevada anti-SLAPP statute was applied in the decisions below; the judgment under review involves no discovery stay, state merits standard, motion timing, or even interlocutory appeal.

The Nevada anti-SLAPP statute provides for a state-law substantive immunity. "Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law."[6] *Gasperini v. Ctr. for Humanities*, 518 U.S. 415, 427 (1996).

Neither Rule 12(b)(6) nor Rule 56 is broad enough to control or answer the question of whether a speaker has substantive tort immunity or is entitled to attorney's fees. As the Court reaffirmed in *Shady Grov*e, while federal procedural rules exist to govern the "manner and the means" of enforcing a right, they do not exist to alter or abolish substantive remedies created by state legislatures. *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393, 407 (2010). Because no Federal Rule answers the "same question" as Nevada's substantive immunity and fee-shifting provisions, no conflict exists under *Shady Grov*e's first step. Under the Rules of Decision Act, 28 U.S.C. § 1652, federal courts are bound to enforce these state

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[6] While the district court had subject matter jurisdiction because Petitioners filed a Lanham Act claim, the Petition only concerns their state-law claims evaluated under Nevada law.

substantive entitlements to avoid the very inequitable administration of justice and forum shopping that *Erie* forbids. *Shady Grove*, 559 U.S. at 419-423 (Stevens, J. concurring).

The Circuit Courts uniformly agree that state substantive immunity provisions apply in federal court under *Erie*. *See, e.g.*, *Gray-Hopkins v. Prince George's Cnty., Maryland*, 309 F.3d 224, 231 (4th Cir. 2002) ("the nature and scope of a claimed immunity" is a matter of "substantive state law."); *Sheth v. Webster*, 145 F.3d 1231, 1236 (11th Cir. 1998) ("[S]tate law governs the applicability of immunity to state law claims."); *In re City of Philadelphia Litig.*, 49 F.3d 945, 957 (3d Cir. 1995) ("[I]t is state law that provides the substantive doctrine of immunity."); *Napolitano v. Flynn*, 949 F.2d 617, 621 (2d Cir. 1991) (holding that state law governs the applicability of immunity claims). Nevada's explicit statutory substantive immunity is unenforceable in practice if substantive fee-shifting cannot accompany it in federal court.

Moreover, Nevada's anti-SLAPP statute can be further distinguished from statutes driving the asserted circuit conflict. The four circuits Petitioners invoke each held that different states' procedures, *i.e.* their special motions and their merits standards, collide with Rules 12 and 56. *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328 (D.C. Cir. 2015) (addressing the D.C. Anti-SLAPP Act, D.C. Code §§ 16-5501 *et seq.*); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345 (11th Cir. 2018) (addressing the Georgia anti-SLAPP law, O.C.G.A. § 9-11-11.1(b)(1)); *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019) (addressing the Texas Citizens Participation Act ("TCPA"), Tex. Civ. Prac. & Rem. Code §§ 27.001-011); and *La Liberte v. Reid*, 966

F.3d 79 (2d Cir. 2020) (addressing the California Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16). However, none of these circuits held that a state may not immunize a category of speech from liability or suit, because no such holding would be defensible.

Notably, in *Adelson*, the Second Circuit applied NRS 41.650 and NRS 41.670 and found them "unproblematic" because each "(1) would apply in state court had suit been filed there; (2) is substantive within the meaning of *Erie* . . . ; and (3) does not squarely conflict with a valid federal rule." *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014). And when the Second Circuit later declined to apply California's statute in *La Liberte*, it distinguished Nevada's by name: "Nevada's statute is quite different," because its effects "are substantive." 966 F.3d at 86 n.3 (quoting *Adelson v. Harris*, 973 F. Supp. 2d 467, 493 n.21 (S.D.N.Y. 2013)). Although there have been amendments to the Nevada anti-SLAPP statute, those revisions did not alter it core substantive protections. *See* 2015 Nev. Stat., ch. 428, § 13. The revisions do not touch the holding in *Adelson*; the immunity and fee remedy are the same and the merits, including the substantive immunity, were vindicated here through a summary judgment motion. Pet.App.11a. As to the Nevada statute at issue, there is no split whatsoever; the courts of appeals decisions cited by Petitioner favor Respondents.

Petitioners exclude the Tenth Circuit from their argument because the New Mexico anti-SLAPP statute, "does not shift burdens or alter merits standards and thus does not affect the outcome on the merits." Pet. at 16, citing *Los Lobos Renewable Power, LLC v. AmeriCulture, Inc.*, 885 F.3d 659, 670–73 (10th Cir. 2018) (analyzing N.M. Stat. § 38-2-9.1). This concession is fatal to the Petition because the Nevada anti-SLAPP statute, like the New Mexico statute, also does not shift burdens or alter merits standards in such a way as to be irreconcilable with the Federal Rules. No burden was shifted here and no merits standard was altered; the panel affirmed on Rule 56 alone. Pet.App. 11a.

Nevada's anti-SLAPP's fee provision, Nev. Rev. Stat. § 41.670(1)(a), is the enforcement mechanism for its statutory immunity. An immunity that a speaker must spend six figures to vindicate is not an immunity. Nev. Rev. Stat. § 41.670(1)(a) is a substantive fee shifting provision; under the statute, if a defendant prevails, the "court shall award reasonable costs and attorney's fees to the person against whom the action was brought[.]" State fee-shifting statutes are consistently treated as substantive for *Erie* purposes. *See, e.g.*, *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 259 n.31 (1975) ("in an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court . . . . state law denying the right to attorney's fees or giving a right thereto, which reflects a substantial policy of the state, should be followed"); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 555–56 (1949). The only elements of Nevada's anti-SLAPP statute at issue in this case are the substantive rights of immunity and fee-shifting. Fee shifting is a substantive consequence that provides relief to a prevailing good-faith communicant.

Petitioners have not identified any circuit split over whether Nevada's statute in particular applies in federal court, nor that there exists any split over the general application of state fee-shifting provisions specifically. The absence of such a split is dispositive. Importantly, this Court accords "great deference to the interpretation and application of state law by the courts of appeals." *Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 45 (2017) (citing *Pembaur v. Cincinnati*, 475 U.S. 469, 484, n. 13, (1986)). This deference ensures that the Court does not review appellate decisions unnecessarily. *Id.* Importantly, this Court recognizes that "lower federal courts are better schooled in and more able to interpret the laws of their respective States." *Id.* (cleaned up); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 182-83 (2019) (deferring to the Ninth Circuit's interpretation and application on state law).

Stripping the fee remedy in federal court would not harmonize federal procedure, but rather would nullify a substantive state right in federal court while leaving it intact in state court This is the precise asymmetry *Erie* forbids. Eliminating anti-SLAPP fee-shifting in federal court would directly incentivize forum shopping.

Specifically, this dispute largely concerns certain Nevada parties litigating Nevada-law claims. Petitioners nevertheless elected to proceed in federal court despite the availability of state-court jurisdiction over the action, including their Lanham Act claims. By selecting a federal forum, Petitioners now seek to strip substantive protections Nevada has afforded speakers sued over matters of public concern. The asymmetry is obvious: if Nevada's mandatory fee-shifting protection disappears at the courthouse door, plaintiffs would possess a ready-made incentive to file federal actions whenever possible solely to avoid substantive consequences imposed by Nevada law. *Erie* was designed to prevent precisely that sort of forum-driven alteration of substantive rights. *See Godin v. Schencks*, 629 F.3d 79, 92 (1st Cir. 2010) ("were [the anti-SLAPP provisions] not to apply in federal court, the incentives for forum shopping would be strong: electing to bring state-law claims in federal as opposed to state court would allow a plaintiff to . . . circumvent any liability for a defendant's attorney's fees or costs");[7] *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) ("Conversely, a litigant otherwise entitled to the protections of the Anti-SLAPP statute would find considerable disadvantage in a federal proceeding," which would "run squarely against the 'twin aims' of the *Erie* doctrine").

Similarly, an out-of-state defendant sued in the plaintiff's state court would be penalized for removing a SLAPP suit. Removal affords "a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants." *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 553-54 (2005). If the Nevada anti-SLAPP statute's substantive fee-shifting provision cannot apply in removed cases, a SLAPP victim would be disincentivized to remove and lose that important federal forum and be subject to state courts that might otherwise favor the home state plaintiff.

Accordingly, a rule disallowing the application of substantive fee-shifting would frustrate the *Erie*

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[7] Although Petitioners point to *Godin's* application of Maine's anti-SLAPP law, that statute was subsequently repealed and replaced with the Uniform Public Expression Protection Act effective January 1, 2025. Pet. 17 n.5. Thus, even if *Godin* was wrongly decided, the First Circuit may yet issue a different decision should a case under the new Maine law find its way to them, and any "split" relates to a repealed statute.

doctrine and undermine the First Amendment interests anti-SLAPP statutes are designed to protect.

D. The Case is in an Interlocutory Posture, and the Injury Petitioners Complain of May Never Materialize

This case is interlocutory in a way that goes to the heart of Petitioners' asserted injury. The Ninth Circuit reversed and remanded the District Court's dismissal of the Mulvehill Respondents for lack of personal jurisdiction in light of the recent *Shopify* decision. Pet.App.6a-8a. (citing *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2025) (*en banc*)). The claims against the Mulvehill Respondents were revived and are yet to be adjudicated. No fee award has been entered as to any respondent. The District Court has not addressed entitlement to fees, what fees are reasonable, or how to allocate them between the substantive right to fees under state law and the parallel Lanham Act fee request under 15 U.S.C. § 1117(a). *Compare Tobinick v. Novella*, 884 F.3d 1110 (11th Cir. 2018) (affirming fee award resting on both the Lanham Act and an anti-SLAPP statute).

Notably, the Lanham Act, 15 U.S.C. § 1117, provides an independent basis for fee recovery. Petitioners do not seek review of any determination relative to their loss on the Lanham Act claim. Recovery under state law could be largely co-extensive with recovery under the Lanham Act. At that point, the question posed is merely academic and would afford Petitioners no actual relief. Because no final decision has been rendered, the issue is not yet ripe. *See, e.g.*, *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945-46 (2012)(Alito, J., Statement respecting denial of petitions for writs of *certiorari*). If and when a fee award is entered, Petitioners may then appeal it, and the question, if properly preserved, which it was not, can reach this Court on a complete record showing what the statute actually cost them. Petitioners' focus on the anti-SLAPP question is nothing more than an attempt to escape the financial consequences of litigation designed to punish lawful speech.

Moreover, the interlocutory nature of the case extends beyond the fee issue. The Ninth Circuit's decision reinstated the claims against the Mulvehill Respondents and remanded them for further proceedings. Pet.App.4a-8a, 11a. As a result, the merit defenses available to those Respondents, including their substantive rights under the Nevada anti-SLAPP statute, have never been adjudicated. Thus, a substantial portion of the litigation remains pending below, and the questions Petitioners seek to present arise in a fragmented procedural posture where different defendants stand in materially different positions. This Court would benefit from allowing the proceedings to reach final judgment before considering review; the fragmented procedural posture of the Cornelia Respondents and Mulvehill Respondents makes the present petition an even poorer vehicle than prior anti-SLAPP petitions that this Court has declined to review. *See Gopher Media LLC v. Melone*, No. 25-1067.

E. The Decision Below is an Unpublished Memorandum Disposition that Decides Nothing for the Ninth Circuit

The disposition below "is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3." Pet.App.1a n.*. For anyone other than the parties, it can be ignored.

Petitioners and the amicus brief rely on *Berk v. Choy*, 607 U.S. 187 (2026). However, they overstate *Berk'*s reach. As the Central District of California recently observed, and as amicus itself quotes (Amicus Br. at 4), "*Berk* did not address or discuss California's anti-SLAPP statute, nor did it directly overrule any existing Ninth Circuit precedent permitting the application of the anti-SLAPP statute in federal court." *Left v. Anson Funds Mgt. LP*, No. 2:25-cv-10432-SPG-JC, 2026 U.S. Dist. LEXIS 109795, at *24 (C.D. Cal. Mar. 31, 2026).

Instead, *Berk* addressed a Delaware affidavit-of-merit requirement in medical malpractice cases and the Court held it was displaced by Fed. R. Civ. P. 8. 607 U.S. at 199. *Berk* represents a straightforward application of the *Hanna* and *Shady Grove* frameworks to stand for the uncontroversial rule that state procedural requirements duplicating a federal rule's function violates *Erie* and the Rules Enabling Act, 28 U.S.C. § 2072(b). *Berk,* 607 U.S. at 198 (citing *Hanna v. Plumer*, 380 U.S. 460, 471 (1965)). It is a case about *pleading requirements*. Unlike in *Berk*, no Federal Rule answers the questions Nevada's substantive provisions answer here, namely whether a defendant is immune from liability for good-faith communications on issues of public concern and who bears the attorneys' fees when such a suit fails. Rule 56 governs how the merits were tested, and the merits were tested under Rule 56 alone; Rule 54(d)(2) then expressly accommodates claims for attorneys' fees grounded in substantive law. It is remedial relief provided by the statute. *Berk* did not hold that a State cannot immunize a category of speech from liability, and it did not address, much less abolish, substantive fee-shifting in federal court for the filing of a meritless defamation claim. *Berk* changed nothing about anti-SLAPP fee-shifting for statutes that create substantive immunity.

By contrast, Nevada's post-judgment fee-shifting provision under Nev. Rev. Stat. § 41.670(1)(a) does not "answer the same question" as any Federal Rule of Civil Procedure. It does not impose a pre-suit procedural hurdle or alter the "plausibility" standard of a complaint. Under the "direct collision" standard of *Burlington*, Rules 8, 12, and 56 leave ample room for the operation of state substantive fee remedies once a case has been resolved on the merits under standard federal rules. *Burlington Northern R. Co. v. Woods*, 480 U.S. 1, 4–5 (1987). Tracing the path from *Hanna* through *Shady Grove* to *Berk* confirms that while states cannot rewrite the procedural machinery of the federal courts, they remain entirely free to attach substantive fee consequences to the vindication of state-created immunities.

Moreover, in *Berk*, the question was pressed in the district court, decided by the district court, briefed on appeal, and resolved by the Third Circuit. *Berk*, 607 U.S. at 190-191. While the Third Circuit's opinion was unpublished, it fully addressed the question presented to this Court. *Berk v. Choy*, No. 23-1620, 2024 U.S. App. LEXIS 18336, at *1-2 (3d Cir. July 25, 2024). Here, there is good reason why the appellate decision was labelled as not for publication. The Ninth Circuit resolved Petitioners' appeal on Rule 56 and disposed of the Cornelia Respondents' fee-entitlement cross-appeal in barely a page of settled circuit law that no party had asked it to revisit. Pet.App.11a.

The *amicus curiae* supporting Petitioners goes further and asks this Court to summarily reverse or grant, vacate, and remand the entirety of the Ninth Circuit's decision without any real consideration of the case itself or what summary reversal would mean here.[8] Amicus Br. at 22–23. This is not appropriate. Rather, "a GVR order is potentially appropriate where 'intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation'" *Elmbrook Sch. Dist. v. Doe*, 573 U.S. 922, 926 (2014) (Scalia, J., dissenting from denial of certiorari) (quoting *Lawrence v. Chater*, 516 U. S. 163, 167 (1996) (per curiam)). There have been no intervening developments that warrant this Court's intervention. Petitioners can show no reasonable probability that the lower courts would alter their ruling upon reconsideration. Nor would redetermination affect the ultimate outcome of the litigation: the Cornelia Respondents are independently entitled to summary judgment on the merits of the claims irrespective of the substantive immunity and fees afforded by Nevada's anti-SLAPP statute.

Whatever issues *amicus curiae* is having in its own case are wholly different from the ones present here and such issues should be resolved in their own proceedings. The A*micus* is injecting abstract issues not raised below and with no connection to this case. Because Petitioners failed to show a genuine dispute

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[8] Petitioners also seek vacatur as to the public figure ruling (Pet. at 4, 32, 35-36), but they do not go so far as to seek a GVR order.

of material fact that could preserve their claims under basic Rule 56 standards, *amicus*'s theoretical arguments are unreviewable in this posture.

F. This Court Declined *Certiorari* in *Gopher Media* and this Case is a Worse Vehicle

While the Court is certainly aware of its own docket, it bears noting that the Court recently chose not to grant *certiorari* in cases presenting far better vehicles. The same issue has been presented and declined in numerous prior petitions, including *Ctr. for Med. Progress v. Planned Parenthood*, No. 18-696, *Clifford v. Trump*, No. 20-602, and *Retzlaff v. Van Dyke*, No. 19-1272. Petitioners catalogue those denials and explain why each vehicle was flawed. Pet. at 27–28. They do not explain why a case with more defects than any of them is the right one.

Recently, the Court denied certiorari in *Gopher Media LLC v. Melone*, Sup. Ct. No. 25-1067, *cert. denied* June 15, 2026, which arose from the Ninth Circuit, where the anti-SLAPP issues were properly preserved, thoroughly litigated, and considered by the Ninth Circuit sitting *en banc*. If the Court passed on *Gopher Media*, without a call for the record, after one conference, and without relist, there is no better reason for granting this Petition.

Petitioners' best effort to explain the denial in *Gopher Media* is that it was a worse vehicle because the *en banc* court "expressly declined to reach" the applicability question. Pet. at 27. That is an irreconcilably inconsistent argument for parties who forfeited the issue they seek to present. Moreover, the decision at issue is unpublished, the fee proceedings remain unresolved, claims remain pending on remand, and review would not disturb the Rule 56 judgment entered against them. Whatever one thinks of *Gopher Media*, this case is not an upgrade.

The aforementioned cases were all far better positioned for review and the unpreserved, isolated fee allocation issue here under Nevada law makes this case a far worse vehicle.

II. The Public-Figure Issue Does Not Warrant *Certiorari*

A. Petitioners Allege Only Misapplication of a Rule they Concede is Correct

Petitioners fail to show any misapplication of law or circuit split on the public figure issue. Petitioners do not ask this Court to change the framework of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Petitioners accept it, recite it, and only argue that the Ninth Circuit applied it incorrectly to this record. Pet. at 31–36. They identify no circuit conflict on the limited-purpose public figure standard. They identify no decision of any court of appeals in tension with the decision below. They identify no question of federal law on which the courts are divided.

Petitioners invoke the separate opinions dissenting from denial of certiorari in *Berisha v. Lawson*, 141 S. Ct. 2424 (2021). Pet. at 31–32. This Court has repeatedly declined to revisit *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and its progeny, and Petitioners do not ask it to.

The Petition is but a request for error correction, and this Court's Rule 10 addresses it directly: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Petitioners fail to show this is one of those rare cases in which *certiorari* should be granted. Petitioners' reliance on *Berisha* underscores that Question 2 is an invitation to reweigh a summary judgment record, affirmed following *de novo* review (Pet.App.4a), and not a question to resolve the landscape of the law.

B. The Panel Applied the Correct Standard

The panel stated the governing rule: plaintiffs "become limited-purpose public figures when they voluntarily inject themselves into a public controversy which predates their conduct for the purpose of influencing the controversy's resolution." Pet.App.8a-9a (citing *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022)). *Planet Aid*, in turn, applies *Gertz*. 44 F.4th at 925. Petitioners quarrel with the length of the analysis, not its content.

Brevity here reflects the strength of the record, not its absence. Petitioners pleaded and consistently positioned themselves as prominent operators of a "leading entrepreneurship, finance, business, real-estate and self-improvement company," charged individual coaching fees starting at $60,000 and often exceeding $75,000, boasted of their YouTube following, and operated under a federally registered trademark ("Derek Moneyberg"). Pet.App.24a, 29a. And the panel found, as a matter of record, that the public controversy over the legitimacy and quality of Petitioners' coaching services "existed at least before December 2020," that is, before any challenged statement was published. Pet.App.8a-9a. The District Court correctly noted that Petitioners "cannot 'have it both ways.'" Pet.App.34a. Having marketed themselves in their own complaint as prominent figures to establish their reputation, they cannot simultaneously claim to be private individuals for purposes of defeating an actual malice inquiry. *Id.*

Respondents did not manufacture the controversy. Petitioners' public figure status was not bootstrapped from the alleged defamation itself and unlike in *Wolston v. Reader's Digest Ass'n*, Petitioners were not "dragged unwillingly into the controversy." 443 U.S. 157, 166 (1979). The legitimacy of high-priced online so-called "wealth coaching" was a live and public dispute before December 2020, and Petitioners were not bystanders to it; as the panel found, they "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." Pet.App.9a, 20a-21a.

The "Authentic or Charlatan" series examined online coaches and gurus charging large sums. Pet.App. 24a, 29a. As the District Court observed, "prospective clients have the right to know about Buczkowski's background and form their own opinions on him[.]" Pet.App.29a-30a. Petitioners voluntarily made their coaching services, their reputation, and their credibility central to their public-facing identity. The inescapable conclusion was that Petitioners voluntarily injected themselves into a public controversy via their extensive self-promotion.

Petitioners' argument that the Ninth Circuit reached its conclusion in "a single sentence" (Pet.at 9) does not suggest review is warranted. The panel's succinctness reflects the fact that the issue was not even close, not that it suffered from a lack of analysis. In fact, appellate courts routinely decide appeals with a single word "affirmed" where, as here, the district court's analysis was correct. Notably, the panel reached the same public-figure conclusion twice, in the December 30 disposition and again in the February 25 superseding disposition after full rehearing briefing. No more "particularized" analysis was required when the District Court adequately performed it. Pet.App.33a-34a.

C. *Certiorari* Would Not Change the Outcome

Even if this Court granted review and vacated on Question 2, Petitioners would not prevail on their claims. If Petitioners were private figures, they still must be able to prove, at a minimum, negligence. *See Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483 (1993) (setting forth the elements of a defamation claim, including a minimum of "negligence"); *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386 (2009) (setting forth the elements of a business disparagement claim, including a requirement of "malice" defined as intent to harm or reckless disregard for truth or falsity); *Star v. Rabello*, 97 Nev. 124, 125 (1981) (setting forth the elements of an intentional infliction of emotional distress claim, including a requirement of intent or recklessness). "Negligence is failure to exercise that degree of care in a given situation which a reasonable man under similar circumstances would exercise." *Driscoll v. Erreguible*, 87 Nev. 97, 101 (1971). The panel found affirmatively that Cornelia "reasonably researched and corroborated the statements" and credited his sources. Pet.App.10a. Under *Driscoll*, negligence is the failure to exercise reasonable care, so a record that shows reasonable care cannot support a negligence verdict. This determination of reasonableness made by the panel defeats a claim of negligence, let alone intentional falsity or reckless disregard for the truth. Thus, even if the courts below erred in finding Petitioners to be limited-purpose public figures, a finding that they were private figures would not affect the outcome of this case.

CONCLUSION

The petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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