

**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**

REPLY BRIEF OF PETITIONERS

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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.

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REPLY BRIEF OF PETITIONERS

Respondents do not dispute the D.C. Circuit’s 2015 holding that a state anti-SLAPP special motion cannot operate in federal court alongside Rules 12 and 56, or that three circuits have followed it, including with respect to the same California statute the Ninth Circuit enforces. Pet.12–21. They argue only that Nevada is different.

It is not. Nevada’s special motion mirrors California’s “probability of prevailing” standard, as the panel found before collapsing it into Rule 56. Respondents cite codified legislative intent; for twenty-seven years, the Ninth Circuit has relied on legislative intent to hold that these statutes do not “directly collide” with Rules 12(b)(6) and 56. The D.C., Eleventh, Fifth, and Second Circuits disagree. Only this Court can resolve it.

Respondents’ vehicle objections are meritless. They call Question 1 non-outcome-determinative yet pursue the mandatory fee award below. Waiting will not help: Petitioners raised *Berk v. Choy*, 607 U.S. 187 (2026), on rehearing but were denied leave—the Ninth Circuit will not revisit it.

Respondents invoke the “strength of the record” on the second question but identify no voluntary injection. The panel’s one-sentence holding omits the element *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974), requires—that the plaintiff acted to influence the controversy’s resolution—and the designation supplied the actual-malice standard governing every ruling below.

The Court should grant review.

I. Nevada’s Anti-SLAPP Statute Is Within the Circuit Split.

The California, Texas, Georgia, D.C., and Maine anti-SLAPP statutes impose special motions with heightened pleading standards. App.57a–70a. Six circuits divide three ways in federal court—the First applying them as enacted, the Ninth rewriting them, and the D.C., Eleventh, Fifth, and Second finding them displaced under *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010). Pet.5 n.1, 12–21. The Ninth Circuit first held an anti-SLAPP statute applicable in federal court in *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), and adopted the hybrid approach used by the panel below in *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828 (9th Cir. 2018). In 2022, the Ninth Circuit considered *Shady Grove* and distinguished the contrary holdings as resting on conflicts between heightened burden standards and the Federal Rules, declaring under *Planned Parenthood* “[n]o such conflict exists in [the Ninth] Circuit.” *CoreCivic, Inc. v. Candide Group, LLC*, 46 F.4th 1136, 1141 (9th Cir. 2022). Amicus documents these developments. Thomas More Soc’y Amicus Br. 10–17.

The panel found “Nevada’s and California’s anti-SLAPP statutes are similar in structure, purpose, and language and ‘share a near-identical structure for anti-SLAPP review.’” App.11a n.3 (citing *Coker v. Sassone*, 432 P.3d 746, 749 n.3 (Nev. 2019); Cal. Civ. Proc. Code §§ 425.16(b), (c)). Applying the Ninth Circuit’s hybrid approach (Pet.*i*, 19–21), it stated that

“[t]he second prong of Nevada’s anti-SLAPP analysis simply ‘collapsed’ into the summary judgment standard under Fed. R. Civ. P. 56 when [the] motion challenges the factual sufficiency of a complaint.” App.11a (citing *Planned Parenthood*, 890 F.3d at 834). It held the prong satisfied: “Since . . . this panel affirms the district court’s grant of summary judgment . . . , the second prong is satisfied.” App.11a–12a.

a. *Adelson construed the pre-2013 statute.* Respondents cite (BIO.14–16) *Adelson v. Harris*, 774 F.3d 803 (2d Cir. 2014) and *La Liberté v. Reid*, 966 F.3d 79 (2d Cir. 2020). *Adelson* construed Nevada’s materially different pre-2013 statute. NRS 41.660(3)(a) (1997) required the court to “[t]reat the motion as a motion for summary judgment.” App.70a. *Adelson* found that formulation “unproblematic” because it imposed no burden beyond the federal standard. 774 F.3d at 809. The 2013 amendment added the “probability of prevailing” heightened burden, and the 2015 amendment substituted “prima facie evidence” for “clear and convincing evidence” to conform the plaintiff’s burden to California’s. 2013 Nev. Stat., ch. 176, § 3; 2015 Nev. Stat., ch. 428, § 13; NRS 41.665(2); App.56a. *La Liberté* held California’s identically worded burden-shifting provision was displaced by Rules 12(b)(6) and 56. 966 F.3d at 88–89. Pet.15.

b. *Los Lobos involved a statute with no special motion.* Respondents call (BIO.15–16) Petitioners’ exclusion of the Tenth Circuit “fatal.” But *Los Lobos Renewable Power, LLC v. AmeriCulture, Inc.*, 885 F.3d 659, 668–73 (10th Cir. 2018), involved a statute that supplies no special motion, burden-shifting, or heightened merits standard. Nevada’s statute supplies all three. NRS 41.660(3)(a)–(b), App.54a. Pet.16.

c. *Zilverberg* applied the standard the panel collapsed. Respondents cite (BIO.12–13) *Smith v. Zilverberg*, 481 P.3d 1222, 1231 (Nev. 2021), which used legislative intent under NRS 41.650 to construe a fee provision’s scope. The plaintiff lost at the motion-to-dismiss stage for failing to make the prima facie “probability of prevailing” showing. *Id.* at 1229. The panel, by contrast, collapsed that standard into Rule 56. App.11a.

d. *Godin* remains *First Circuit* law. Respondents rely on *Godin v. Schencks*, 629 F.3d 79 (1st Cir. 2010), for their *Erie* argument (BIO.18), but in the same footnote call it “a repealed statute” (BIO.18 n.7). Maine’s replacement supplies a special motion with a 60-day deadline and a prima facie burden. Pet.17 n.5; 14 M.R.S. §§ 734, 737.

II. The Question Is Squarely Presented and This Case Is an Excellent Vehicle.

Petitioners defeated the special motion in the district court, so they had no occasion to press the Rules Enabling Act argument; a party who prevails on that motion cannot forfeit the issue by not challenging a ruling in its favor. Once a claim is properly presented, “parties are not limited to the precise arguments they made below.” *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (citation omitted). The issue is legal on a complete record. Respondents (BIO.6–9) ignore that posture and the circuit precedent that made Petitioners’ arguments futile.

The panel’s hybrid approach under *Planned Parenthood* resolved fee entitlement after a Rule 56 merits dismissal, conflicting with four circuits. The conflict undermines uniformity in Ninth Circuit district

courts, where anti-SLAPP motions remain “standard practice.” *Gopher Media LLC v. Melone*, 154 F.4th 696, 711 (9th Cir. 2025) (en banc) (Bress, J., concurring).

a. *Petitioners prevailed in the district court on the first prong.* App.29a–31a. The panel reversed that denial and revived the motion. App.1a–12a.

b. *Circuit precedent foreclosed the argument from the outset.* *CoreCivic*, 46 F.4th at 1141, rejected the *Shady Grove* challenge before merits briefing began on September 30, 2022, App.23a–24a, ECF Nos. 61–62 & 78–79. Respondents (BIO.6–7) say Petitioners could have preserved the issue, but Petitioners need not argue what circuit precedent foreclosed. *Carr v. Saul*, 593 U.S. 83, 93 (2021). Under *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc), neither the district court nor a panel could depart from *CoreCivic* absent “clearly irreconcilable” intervening authority.

c. *Review is available now.* Respondents note (BIO.19–20) that no fee award has been entered. This Court reviewed fee entitlement on that posture last Term, granting certiorari where the court of appeals had remanded for calculation of the award. *Lackey v. Stinnie*, 604 U.S. 192 (2025). No merits judgment existed there; one does here. 28 U.S.C. § 1254(1) permits certiorari “before or after rendition of judgment or decree,” and a pending fee proceeding is collateral. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199 (1988); accord *Ray Haluch Gravel Co. v. Central Pension Fund*, 571 U.S. 177, 183 (2014). The decision below resolved entitlement, leaving only the amount. The Lanham Act request cannot cure a state-law entitlement the federal court had no power to recognize. Fees under 15 U.S.C. § 1117(a) require an

“exceptional case” finding, *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014); the mandatory Nevada award requires none. Respondents concede that no court has addressed “how to allocate” the two (BIO.19). The Mulvehill Respondents never moved under the anti-SLAPP statute; their jurisdictional dismissal was reversed on unrelated grounds and does not touch the judgment under review. App.5a–8a.

d. *An unpublished decision is no obstacle.* This Court reviewed an unpublished disposition in *Berk v. Choy*, 2024 WL 3534482 (3d Cir. July 25, 2024).

III. Further Percolation Is Neither Needed Nor Likely.

a. *The en banc route is closed.* Respondents answer (BIO.7) that “the Ninth Circuit was free to revisit its precedent, as recent en banc grants show, and Petitioners never asked,” citing *Gopher Media*, 154 F.4th 696. *Gopher Media* proves the opposite. There, the three-judge panel requested briefing on “whether California’s anti-SLAPP statute applies in federal court,” and the en banc court declined: “We do not reconsider our precedent in [*Newsham*] . . . and we assume for purposes of this opinion that California’s anti-SLAPP statute” applies. 154 F.4th at 700 & n.2. Judge Bress, joined by Judges Collins, Lee, andumatay concurred in the judgment while rejecting the premise that the statute applies, explaining that “[w]e have no license for allowing state procedural law to govern in federal court, much less state procedural law that we have rewritten ourselves.” *Id.* at 710–711 (Bress, J., concurring).

b. *The Ninth Circuit will not revisit the question now.* Petitioners sought rehearing en banc in light of *Berk*; the court denied leave, App.46a–48a, after the superseding disposition stated that “[n]o future petitions for rehearing or rehearing en banc will be entertained,” App.45a. Another Ninth Circuit panel ordered supplemental briefing on whether *Berk* is clearly irreconcilable with its anti-SLAPP decisions, then narrowed to Article III. On September 4, 2026, it vacated the fee award on leave-to-amend grounds and expressly reserved the question: “we do not determine now whether [*Newsham*] . . . is clearly irreconcilable with . . . *Berk*.” *Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model Curriculum Consortium*, Nos. 24-7676, 25-3436, 2026 U.S. App. LEXIS ___, at *8 n.2 (9th Cir. Sept. 4, 2026). District courts treat the question as settled, and the Ninth Circuit continues to affirm awards. *Ailes v. Klemann*, No. CV 26-14-M-DWM, 2026 U.S. Dist. LEXIS 141590 (D. Mont. June 25, 2026) (collecting cases); *Hammett v. Stern*, No. 24-3621 2026 U.S. App. LEXIS 14991 (9th Cir. May 27, 2026). A Rule 28(j) letter put *Berk* before the panel in *Reintegrative Therapy Ass’n, Inc. v. Kinitz*, No. 22-56009 2026 U.S. App. LEXIS 16324 (9th Cir. June 3, 2026), on April 27, 2026; the decision never mentions it, and rehearing was denied without a judge requesting a vote.

c. *Gopher Media’s* petition presented only “[w]hether a pretrial denial of rights conferred by California’s anti-SLAPP law is immediately appealable.” Pet. for Writ of Cert. at i, No. 25-1067 (U.S. filed March 6, 2026). *Gopher Media* asked this Court to consolidate it with this case as “raising applicability directly.” Reply.Br. 3, No. 25-1067.

Gopher Media closed the Ninth Circuit’s interlocutory route. 154 F.4th at 700. The applicability question now reaches this Court only after a merits disposition, as here. The remaining candidates involve jurisdictional dismissals, letting courts resolve fees without reaching applicability. *Concerned Jewish Parents* did exactly that. *Akhmetshin v. Browder*, 181 F.4th 1307 (D.C. Cir. 2026), affirmed denial of fees after a jurisdictional dismissal—and in the D.C. Circuit, *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328 (D.C. Cir. 2015), has already answered applicability, leaving nothing to decide. This case offers no such off-ramp: a merits disposition triggered entitlement to a mandatory Nevada fee award.

The split is mature: every court of appeals to reach it has worked through *Shady Grove*, and Judge Bress’s concurrence catalogues the Ninth Circuit’s writings since 2013. 154 F.4th at 709–15. The circuit’s “clearly irreconcilable” standard invites panels to distinguish *Berk* as limited to affidavit-of-merit statutes rather than confront the special-motion regime.

IV. The Anti-SLAPP Decision Below Is Wrong.

Nevada’s special motion answers when a court must dismiss a claim before trial: the plaintiff must show a “probability of prevailing.” NRS 41.660(3)(b). Rule 56 answers that question differently, permitting judgment only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Abbas*, 783 F.3d at 1334 (quoting Fed. R. Civ. P. 56(a)). If Rule 56 is valid under the Rules Enabling Act, the state law is displaced. Because *Shady Grove* produced no majority rule on validity, *Abbas* applied *Sibbach’s*

test—whether a Federal Rule “really regulates procedure”—and held the D.C. statute inapplicable. 783 F.3d at 1336–37 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)). The Second, Fifth, and Eleventh Circuits followed. *Berk* confirms that *Sibbach* supplies the test and that “the substantive nature of [a state] law, or its substantive purpose, makes no difference.” 607 U.S. at 199. Rules 12(b)(6) and 56 really regulate procedure; Nevada’s special motion and the fee conditioned on it cannot apply in federal court.

The Ninth Circuit’s rewriting does not avoid displacement. NRS 41.670(1)(a) awards fees only “[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660.” App.56a. Respondents concede that no such motion operated— “[n]o procedural portion of the Nevada anti-SLAPP statute was applied” (BIO.13)— yet recast the provision as awarding fees “if a defendant prevails” (BIO.16). The hybrid approach purports to resolve prong two’s collision with Rules 12(b)(6) and 56 by substituting federal standards, leaving a standalone prevailing-party fee that no legislature enacted. *Berk* rejected that workaround: rewriting state law into a “free-floating” substitute “does not magically dispel the conflict.” 607 U.S. at 196. Respondents (BIO.16) invoke, as did Judge Bennett in a separate *Gopher Media* concurrence, the rule that “[s]tate fee-shifting statutes are consistently treated as substantive for *Erie* purposes.” 154 F.4th at 707. But those statutes did not condition fees on a procedural device conflicting with the Federal Rules. *See Abbas*, 783 F.3d at 1338 n.5 (“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).”).

V. The Public-Figure Designation Cannot Stand.

The panel’s treatment of the limited-purpose public-figure doctrine presents a clean, outcome-determinative vehicle under this Court’s existing *Gertz* framework.

a. *The defect is omission, not imprecision.* The panel recited that a plaintiff becomes a limited-purpose public figure by voluntarily injecting himself into a controversy predating the defendant’s conduct “for the purpose of influencing the controversy’s resolution,” App.8a–9a, then asserted that Petitioners had voluntarily injected themselves into a pre-existing controversy without identifying any act of injection or the controversy, or finding the required purpose. App.9a. *Gertz* independently confines the designation to matters germane to the controversy, 418 U.S. at 351–52, a requirement the panel never addressed. Respondents say “[b]revity here reflects the strength of the record, not its absence” (BIO.26). Brevity does not excuse skipping an element. Nor can the panel borrow from the affirmed order. The district court identified no public controversy, relying on the pervasive-fame inquiry *Gertz* reserves for general-purpose public figures before concluding that “plaintiffs are, at the very least, limited-purpose public figures.” App.33a–34a. Respondents’ Rule 10 invocation (BIO.26) presupposes a properly stated rule; the panel recited the rule without applying it.

b. *No court identified the controversy or an act of voluntary injection.* The panel’s sentence names no dispute, participants, occasion, or act. Its only proof—“evidence in the record suggests” the controversy “existed at least before December 2020,” App.9a—goes to timing, the sole undisputed element. That date is

when Respondents’ videos began. Respondents point to subscriber counts, coaching fees, and a federal trademark (BIO.26)—evidence of selling a service, not entering a public debate to “influence the resolution of the issues involved.” *Gertz*, 418 U.S. at 345. *Wolston v. Reader’s Digest Ass’n*, 443 U.S. 157, 167 (1979), holds that a person is “not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention.” Respondents had reason to name the act; they did not. If the only controversy is one Respondents’ videos created, *Hutchinson v. Proxmire* forbids it: those charged with defamation “cannot, by their own conduct, create their own defense by making the claimant a public figure.” 443 U.S. 111, 135 (1979).

c. *The accusations bear no relation to a coaching controversy.* The five accusations—lying about one’s education, money laundering, drug manufacturing, framing a co-defendant, and involvement in a death—are unrelated to coaching services. App.24a–25a; *Gertz*, 418 U.S. at 351–52. The panel’s “legitimacy” language permits that elision: a controversy over whether coaching is worth its price is not a controversy over whether the coach is a felon. Respondents’ recitation describes commercial activity, not *Makaeff*-style injection. *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 266–68 (9th Cir. 2013).

d. *The designation controlled every ruling below and is outcome-determinative.* Respondents’ argument (BIO.28–29) goes to remand’s merits, not the vehicle. The district court denied Petitioners’ motion for partial summary judgment on the defamation claim as moot solely “[b]y granting this portion of defendants’ motion for summary judgment” on actual malice. App.35a;

App.37a–38a, ECF No. 60. That ruling turns on the public-figure designation. The panel’s finding that Respondents “reasonably researched and corroborated the statements,” App.10a, rests on the first-prong standard of *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019). The panel framed it in actual-malice terms, presupposing the designation. If the designation is wrong, the standard of review on remand changes, and the panel’s finding has no independent force. The district court found the first prong unmet—insufficient proof that Cornelia was unaware the statements could be false and no showing of “good faith.” App.30a. Without the designation’s actual-malice overlay, that finding is not a win for Respondents but the starting point on remand. The findings *Gertz* requires should be made there in the first instance. *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (“[W]e are a court of review, not of first view”).



CONCLUSION

The petition should be granted, and the public-figure ruling vacated and remanded for the findings *Gertz* requires.

Respectfully submitted,

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