

No. \_\_\_\_\_

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

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KIMBERLY R. SWEIDY,

*Petitioner,*

v.

SPRING RIDGE ACADEMY, ET AL.,

*Respondents.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

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Whether Federal Rule of Civil Procedure 56(f)(3) and the Due Process Clause permit a district court to grant summary judgment against a non-moving party on a ground that the moving party never raised—i.e., a ground identified by the court sua sponte—without first providing notice and a reasonable opportunity to respond, and whether a court of appeals may affirm such a grant by holding that the non-movant “waived” her right to respond to a ground she was never given the opportunity to address in the first place.

Whether a court of appeals violates the Seventh Amendment and this Court’s decisions in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Tolan v. Cotton*, 572 U.S. 650 (2014), when it affirms summary judgment by (a) drawing factual inferences against the non-moving party, (b) making its own factual findings based on a selective reading of the record, and (c) treating as “waived on appeal” claims the non-movant fully preserved and supported in the district court.

## **PARTIES TO THE PROCEEDING**

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Petitioner Kimberly R. Sweidy was the plaintiff-appellant below.

Respondents Spring Ridge Academy, Jean Courtney, Suzanne Courtney, Brandon Courtney, Erin Smith, Leslie Filsinger, Justin Zych, Kate Deily, and Veronica Borges were the defendants-appellees below.

## **RELATED PROCEEDINGS**

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United States District Court (D. Ariz.):

*Sweidy v. Spring Ridge Academy et al.*, No.  
3:21-cv-08013-SPL

Judgment entered: June 17, 2024

Partial Judgment after grant of request for  
new trial entered: January 10, 2025

Amended Judgment entered: January 24, 2025

United States Court of Appeals (9th Cir.):

*Sweidy v. Spring Ridge Academy, et al.*, No.  
24–4318

Memorandum entered: January 23, 2026

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## **I. INTRODUCTION**

When Kimberly Sweidy enrolled her daughter Rearden in Spring Ridge Academy (“SRA”), she believed she was placing Rearden in a legitimate therapeutic boarding school. 14-ER-2983–2984. She was not.

SRA and its principals lured vulnerable families by marketing SRA as a place to nurture and educate distressed teenagers. 11-ER-2200–2201; 14-ER-3113, 3157–3160. In reality, SRA was a place where teenage girls were deprived of sleep, food, and bathroom breaks; subjected to sexual abuse by “teachers”; denied medical care and accused of faking serious illness; and where parents, as part of their supposed “treatment,” were subjected to ritualistic exercises including being rocked like infants and blindfolded foot-rubbing by strangers. 10-ER-2055–2057, 2062–2064; 14-ER-3005–3007.

When Sweidy recognized what SRA was, she removed Rearden and rescinded her contract. 14-ER-3015–3016. Respondents responded by instigating and conspiring with Stata in Sweidy’s concluded family court proceedings, inserting themselves into the filing of the ex parte motion to reopen the proceedings that procured an unlawful order forcing Rearden’s return to SRA, and advocating for Rearden’s continued forced placement at SRA against custodial parent Sweidy’s express wishes, even after the COVID 19 pandemic began. 14-ER-3017–3019. Upon Rearden’s return, Respondents cut off Sweidy’s contact with her daughter entirely—deprivation so profound that when Rearden contracted a viral illness at the outset

of the COVID-19 pandemic, Sweidy could neither bring her home nor meaningfully check on her condition. 14-ER-3020–3022; 11-ER-2301.

Sweidy ultimately undertook extraordinary measures to secure Rearden’s permanent return to California. 14-ER-3049. She then brought suit against Respondents for the neglect, abuse, and fraud inflicted on her and Rearden. 14-ER-2981.

The judicial proceedings that followed compounded the injury. The district court dismissed many of Sweidy’s claims on summary judgment, in significant part on grounds that SRA never raised and that Sweidy was never given an opportunity to contest. Federal Rules of Civil Procedure 56(f)(3) and the Due Process Clause require notice and a reasonable opportunity to respond before a court may enter summary judgment sua sponte. Fed. R. Civ. P. 56(f)(3); U.S. Const., amends. V, XIV, § 1. The district court provided neither. The Ninth Circuit then further compounded the error by holding that Sweidy had “waived” her right to respond to arguments she was never given the chance to address, a result that is logically incoherent and renders Rule 56(f) a nullity.

The Ninth Circuit’s affirmance also cannot be squared with this Court’s decisions in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, and *Tolan v. Cotton*, 572 U.S. 650, or with the Seventh Amendment’s guarantee of the right to jury trial on disputed facts. Rather than draw all reasonable inferences in Sweidy’s favor, the courts below drew inferences against her, made independent factual findings from a selective reading of the record, and dismissed fully preserved and record-supported claims as waived on appeal. Left undisturbed, the

decision below gives district and circuit courts a blueprint for disposing of meritorious claims without ever submitting them to a jury.

This Court should grant certiorari to reaffirm that summary judgment procedure means what it says—and that litigants may not be stripped of their right to be heard, or their right to a jury, by procedural rulings untethered from the rules that govern them.

## **II. OPINIONS BELOW**

The Ninth Circuit’s opinion is unreported but is available at 2026 U.S. App. LEXIS 1692. App. 1a–12a. The District Court’s order partially granting summary judgment is unreported but is available at 2023 U.S. Dist. LEXIS 143657. App. 28a–71a. The District Court’s amended order entering judgment is unreported but is available at 2025 U.S. Dist. LEXIS 15202. App. 17a–20a.

## **III. JURISDICTION**

The Ninth Circuit entered its opinion on January 23, 2026. App. 1a–12a. A petition for rehearing was denied on March 16, 2026. App. 13a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **IV. CONSTITUTIONAL AND STATUTORY PROVISIONS**

The Seventh Amendment to the United States Constitution is reproduced at Appendix I. App. 72a.

Arizona Revised Statutes §§ 13–1301, 13–1302, 32–3283, 36–3211, 44–1522 are reproduced at Appendix I. App. 73a–87a.

Arizona Administrative Code §§ R4–6-1105, R9–10–707, R9–10–708, R9–10–712 are reproduced at Appendix I. App. 88a–106a.

## **V. STATEMENT**

### **A. Factual Background**

Sweidy and Raymond Stata finalized their divorce on December 30, 2017. 14-ER-2982. Custody of their younger daughter, Rearden, was ultimately awarded to Sweidy on June 26, 2018, following a period of unsupervised residence at Stata's home during which Rearden's grades and extracurricular performance declined sharply. 14-ER-2983.

On September 12, 2019, the parties placed Rearden in Outback Therapeutic Expeditions, a wilderness therapy program in Lehi, Utah. 14-ER-2984. Rearden's field therapist recommended that Rearden transition to a therapeutic boarding school. 14-ER-2983. On December 13, 2019, Sweidy and Stata enrolled Rearden at SRA at a cost of \$9,000 per month, based in part on SRA's representations that each student would receive a customized, evidence-based, multi-modality treatment plan. 14-ER-2984, 2992.

#### **1. The Respondents**

Jean Courtney ("JCourtney") founded SRA in 1996 and transferred ownership in 2017 to her son Brandon Courtney ("BCourtney") and his wife Suzanne Courtney ("SCourtney"), SRA's sole shareholders and directors. 14-ER-2985, 2988. SCourtney served as Executive Director; BCourtney as Program Director; and JCourtney continued conducting mandatory workshops. 14-ER-2988, 2995. Erin Smith was Director of Operational Excellence; Leslie Filsinger was Clinical Director with authority over all treatment plans and therapeutic decision-making; and Veronica Borges was listed as a therapist despite holding no Arizona licensure.

14-ER-2988–2990. Justin Zych served as Principal and Kate Deily as Admissions Director.  
14-ER-2989–2990.

## **2. The Workshops**

Sweidy attended the Parent Challenge Workshop on January 22–24, 2020. 14-ER-2994. The Lifespring workshop, run by JCourtney, included exercises in which participants were instructed to mock their partner’s disclosed shame behavior, and a “Black/Red Game” structured to induce conflict.

14-ER-2997–2999. When Sweidy declined to participate in the mocking exercise and later commented on being screamed at during the game, a staff group leader publicly told her, “You suck all the oxygen out of the room and there is none left for anyone else.” 14-ER-2997–2999.

Rearden reported that during the parallel Teen Challenge Workshop, students were instructed to beat chairs with rolled up towels wrapped in duct tape representing anger at their parents while other students screamed at them, including an episode in which Rearden beat the chair until it broke and had to be physically restrained from continuing.

14-ER-2987, 3002–3003. Rearden also described a prolonged, emotionally brutal group confrontation of another student who was sobbing. 14-ER-3006.

## **3. Conditions at SRA and SRA’s Misrepresentations**

Following the workshop, Borges provided Sweidy a one-size-fits-all Master Treatment Plan that falsely diagnosed Rearden with Cannabis Use Disorder, without reviewing any prior therapy, school, or medical records and without having met Sweidy.

14-ER-3003. Borges subsequently confirmed that Post-Induction Therapy was applied universally to

all students—directly contradicting Deily’s December 2, 2019, representation that Rearden would receive a customized plan. 14-ER-3013.

During a 24-hour off-campus visit, Rearden disclosed to Sweidy that she had been severely ill with explosive diarrhea for over a week, using adult diapers; that a staff member had accused her of faking illness and forced her to attend study hall; that she had missed two weeks of school without anyone from SRA notifying Sweidy, who held sole medical decision-making authority; and that she and two other students had spent an entire night together because one student was suicidal. 14-ER-3005–3006. Rearden also reported that students were detained in a van in a Target parking lot for hours without bathroom access, and that when Rearden threatened to urinate in the parking lot, SRA staff threatened to demote her and place her on a “Sex Offender List.” 14-ER-3006–3007. Sweidy also discovered that Rearden’s laundry smelled of feces due to sewage backed up into the water supply. 14-ER-3005.

After conducting research into SRA—including speaking with former students who uniformly described abuse, neglect, and manipulation worse than what prompted their enrollment—Sweidy flew to Arizona on February 3, 2020, accompanied by two Yavapai County Sheriffs, removed Rearden from SRA, and rescinded her contract with SRA. 14-ER-3014–3016.

#### **4. Forced Return and Retaliation**

SRA staff colluded and actively participated with Stata to obtain an ex parte family court order

requiring Rearden's return.<sup>1</sup> 14-ER-3017. In support, SRA provided Stata with the withdrawal statement Sweidy had signed under duress, Sweidy's confidential enrollment application containing Sweidy's and Rearden's social security numbers and therapy-related disclosures, and five advocacy documents authored by SRA staff—all of which Stata filed in the public family court record. 14-ER-2992, 3017–3019; Sealed ER-3423–2437.

Following Rearden's court-ordered return, SRA issued a protocol letter on February 25, 2020, cutting off all contact between Sweidy and Rearden, allegedly placing contact decisions in Rearden's hands subject to SRA's clinical approval, and restricting Sweidy's communications to three named individuals. 14-ER-3020. The promised monthly reports never materialized. 14-ER-3020. When the COVID-19 pandemic caused school closures statewide, SRA refused Sweidy's repeated requests to return Rearden home—even after SRA's own nurse reported Rearden was ill with throat symptoms. 14-ER-3021–3026.

On April 7, 2020, the Family Court rejected SRA's interpretation of its prior order and directed that both parents have equal access to Rearden.

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<sup>1</sup> SRA connected Stata with Dr. Mark Burdick, an educational consultant who admitted to referring students and their families to SRA since its inception. Stata hired Burdick as an "expert psychologist," and Burdick prepared a declaration that was filed in the family court. 14-ER-3022. The declaration presented more as a marketing brochure for SRA than an expert report. 14-ER-3032. The declaration included many factual errors and ethical violations, including statements by the Respondents that were allegedly made to Burdick by Respondents without obtaining consent from Sweidy on her own behalf or on behalf of her minor daughter, Rearden. 14-ER-3032–3033.

14-ER-3035. Despite this, SRA withheld academic and therapeutic records from Sweidy. 14-ER-3036–3037.

To secure Rearden’s release, Sweidy relinquished all legal and physical custody to Stata on the condition the court order Rearden home. 14-ER-3049. The court granted the request, and Rearden returned to California on June 28, 2020. 14-ER-3049. Notwithstanding the court’s directive to enroll Rearden in local California counseling, Stata continued Rearden’s enrollment in SRA’s online therapy program conducted by Borges—who holds no California license and whose illegal “therapy” actively undermined the licensed reconnection therapy the court had ordered for Sweidy and Rearden. 14-ER-3050. SRA continued until December 2020, when it declared Rearden a graduate and issued a falsified transcript. 5-ER-862.

## **5. Harm**

As a result of SRA’s conduct, Rearden regressed to the behavioral baseline she presented before Outback, now compounded by what has proven to be irreversible brainwashing, to this day. 14-ER-3045. Rearden also returned from SRA with an eating disorder she did not have upon enrollment. 14-ER-3053.

## **B. Procedural History**

Sweidy filed her 125-page Complaint (with 841 paragraphs of allegations) on January 21, 2021. 14-ER-2981. Respondents filed MSJs on January 13, 2023. 13-ER-2734; 12-ER-2686. The district court (1) granted Borges’s MSJ in its entirety, dismissing all claims against her; (2) granted the other MSJ as to JCourtney, SCourtney, BCourtney, Smith, Filsinger, and Zych, dismissing all claims as to these parties;

and (3) denied the MSJ as to the fraud claims against SRA and Deily, but granted the MSJ as to SRA and Deily as to all other claims. 1-ER-10–40.

After a jury trial where SRA and Deily were found liable for fraud, judgment was entered on June 17, 2024. 4-ER-659–660. Sweidy appealed on July 12, 2024. 4-ER-656. Three days later, SRA and Deily filed motions challenging the judgment, which included a request that the district court order a new trial. 4-ER-638. The district court granted Respondents’ request for a new trial (2-ER-60), after which it granted Respondents’ request for a partial judgment under Rule 54, which led to the entry of judgment on January 10, 2025. 1-ER-6–9. Judgment was amended on January 24, 2025. 1-ER-2. Sweidy filed an amended appeal on February 7, 2025. 2-ER-57.

On January 23, 2026, a Ninth Circuit panel affirmed the district court’s ruling. App.1a–13a. Sweidy’s request for rehearing and rehearing en banc was denied on March 16, 2026. App. 14a.

## **VI. REASONS FOR GRANTING THE PETITION**

### **A. RULE 56(F)(3) UNAMBIGUOUSLY REQUIRES NOTICE BEFORE SUA SPONTE SUMMARY JUDGMENT ON ANY GROUND, WHICH THE DISTRICT COURT FAILED TO PROVIDE AS IT RELATES TO SWEIDY'S CONTRACT CLAIM**

#### **1. The Text of Rule 56(f)(3) and This Court's Decision in *Celotex* Impose a Mandatory Notice Requirement**

Federal Rules of Civil Procedure 56(f) provides that a court may “grant the motion on grounds not raised by a party” or “consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute,” but only “[a]fter giving notice and a reasonable time to respond.” Fed. R. Civ. P. 56(f).

The mandatory requirement of notice was confirmed by this Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986), where Justice Rehnquist declared that although district courts possess inherent authority to enter summary judgment sua sponte, that power exists only “so long as the losing party was on notice that she had to come forward with all of her evidence.”

The notice requirement is equally compelled by the Due Process Clause. Before a court deprives a party of a claim through a dispositive ruling, that party must have a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Summary judgment entered on a ground the movant never raised satisfies neither Rule 56(f) nor the Constitution.

**2. The District Court Violated Rule 56(f) by Granting Summary Judgment on Grounds SRA Never Raised**

SRA's summary judgment motion did not challenge Sweidy's breach-of-contract claim on the ground of insufficient contractual specificity. 13-ER-2734–2751; 12-ER-2686–2703. The district court nonetheless granted summary judgment on precisely that basis, without providing Sweidy notice or any opportunity to respond. 1-ER-25. The court did not request supplemental briefing. It did not hold oral argument. 1-ER-10. The ruling arrived without warning, on a theory Sweidy had no reason to anticipate and no opportunity to contest.

That is precisely what Rule 56(f) forbids. The Seventh Circuit has held that “[w]hen a party moves for summary judgment on ground A, his opponent is not required to respond to ground B — a ground the movant might have presented but did not.” *Malhotra v. Cotter & Co.*, 885 F.2d 1305, 1310 (7th Cir. 1989). The Tenth Circuit reversed on comparable facts where “the district court granted judgment on a basis that was not raised by [the movant]” and the nonmovant was thereby prejudiced. *Oldham v. O.K. Farms, Inc.*, 871 F.3d 1147, 1150–52 (10th Cir. 2017). The Second Circuit held that “[a] district court may grant summary judgment sua sponte [ ] only after providing the parties with notice and an opportunity to be heard. *Kowalchuck v. Metro. Transp. Auth.*, 94 F.4th 210, 215 (2d Cir. 2024). The overwhelming majority of circuits that have addressed this question require notice before sua sponte summary judgment.

See, e.g., *Leyva v. On the Beach, Inc.*, 171 F.3d 717, 720 (1st Cir. 1999); *Albino v. Baca*, 747 F.3d 1162, 1172–73 (9th Cir. 2014) (en banc), overruled in part on other grounds in *Perttu v. Richards*, 605 U.S. 460 (2025).

The Ninth Circuit affirmed the district court’s sua sponte ruling by finding that Sweidy had waived her merits-based arguments for “failure to develop below.” DktEntry 23, pp. 66–77; App. 5a. That holding is legally incoherent and directly conflicts with this Court’s precedents on the meaning of waiver.

This Court has held, uniformly and repeatedly, that waiver is “an intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *Wood v. Milyard*, 566 U.S. 463, 473 (2012). Sweidy did not voluntarily relinquish anything. She was never told that the specificity of her contract’s terms was in issue; she had no reason to develop arguments on a matter that was never put at issue. The Ninth Circuit’s waiver holding rests on the proposition that a litigant must anticipate and brief every conceivable legal theory a court might someday raise on its own. That proposition has no basis in Rule 56, in due process, or in this Court’s jurisprudence.

This Court should grant certiorari to reaffirm that Rule 56(f)’s notice requirement is not a formality, and that the appellate waiver doctrine cannot be weaponized against a party that was never given the opportunity to be heard in the first place.

**B. THE DECISION BELOW  
CONFLICTS WITH THIS COURT'S  
SUMMARY JUDGMENT  
JURISPRUDENCE AND THE  
SEVENTH AMENDMENT BY  
DRAWING FACTUAL INFERENCES  
AGAINST THE NON-MOVING  
PARTY, MISCHARACTERIZING  
THE RECORD, AND TREATING  
PRESERVED CLAIMS AS WAIVED  
ON APPEAL**

Summary judgment is appropriate only when “there is no genuine issue as to any material fact” and the moving party is “entitled to judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 247. At that stage, the trial court’s function is not to weigh the evidence or determine the truth of the matter, but solely to determine whether there is a genuine issue for trial. *Id.* at 249–50. All evidence and inferences “must be viewed in the light most favorable to the” non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). An appellate court reviewing a summary judgment ruling is bound by the same standard. *Tolan v. Cotton*, 572 U.S. at 659–60. Where a court of appeals “fail[s] to credit evidence that contradicted some of its key factual conclusions” or “improperly ‘weigh[s] the evidence’ and resolves disputed issues in favor of the moving party,” it has violated both *Anderson* and the Seventh Amendment’s guarantee of the right to jury trial. *Id.* at 658; Fed. R. Civ. P. 38(a) [“The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.”]

The panel's decision did each of these things across multiple claims.

**1. Intentional Infliction of Emotional Distress ("IIED")**

The district court dismissed Sweidy's IIED claim for a purported lack of evidence of severe emotional distress, relying on a reference to "garden variety" emotional damages that was included in a response to a request for psychological evaluation.

1-ER-34-36; 13-ER-2799, 2832. The panel affirmed, but only by misquoting Sweidy's briefing in two material respects.

First, the panel characterized Sweidy as arguing that Respondents' conduct "inherently" causes severe emotional distress in all parents, and that she therefore was not required to prove her own distress, which the panel framed as an attempt to "collapse the first and third elements" of IIED. App. 4a. But that is not what Sweidy argued. Quoted in full, her brief stated:

Depriving Sweidy of her parental and custodial rights — her right and duty to ensure the health, safety, and welfare of her daughter — is something that would inherently cause severe emotional distress. And it did. As Sweidy claimed in her verified Complaint, she suffered "severe emotional distress as a result of the interference with [her] custodial rights." DktEntry 23, pp. 58-59.

Sweidy did not argue she was exempt from proving distress; she argued she had proven it. She was arguing that the very real emotional distress she

suffered was inherently what one would expect a parent to suffer under these abhorrent circumstances (i.e., “garden variety” relative to the situation).

Second, the panel attributed to Sweidy the statement that she “was not required to show proof of [her distress].” App. 4a. This distorts the record. What Sweidy actually wrote was that she was “not required to show proof of heart attack, premature birth, ‘extreme shock,’ or even loss of sleep, certainly not at the summary judgment stage.” DktEntry 51, p. 12. The panel replaced a specific list of physical symptoms—heart attack, premature birth, extreme shock—with the words “her distress,” transforming a correct statement of Arizona law into an admission against interest. Under Arizona’s controlling standard, IIED requires that emotional distress be of such serious nature that it would not be expected to be endured by a reasonable person. *Lucchesi v. Frederic N. Stimmell, M.D., Ltd.*, 149 Ariz. 76, 78–79 (Ariz. 1986). Sweidy was precisely correct that proof of specific physical ailments is not required under that standard. A reasonable juror could find that Sweidy’s attested distress—arising from the forced separation from her daughter, the deprivation of her custodial authority, and the retaliatory conduct documented throughout the record—exceeds what a reasonable person is expected to endure.

Stringing together cropped quotations from separate briefs to construct a purported concession, and affirming summary judgment on that basis, is incompatible with *Tolan*’s mandate that the non-movant’s submissions be credited, not rewritten. *Tolan*, 572 U.S. at 660.

## **2. Breach of Contract**

As stated above, the panel rejected Sweidy's breach of contract claim for procedural reasons, erroneously finding waiver. The panel also stated that even if it considered Sweidy's arguments on the merits, it would still conclude she failed to raise a genuine dispute, claiming her arguments were "based on only general promises and are otherwise unsupported." App. 6a. The panel offered no analysis, failing to explain how an explicit promise to provide licensed or evidence-based therapy, is unspecific or unsupported by the evidence.

Sweidy's contract claim is simple. First, SRA failed to provide licensed therapy. Its "therapist" was Veronica Borges, who is not a professionally licensed therapist. 14-ER-3071–3073. SRA's defense is that Borges is "appropriately licensed"—as a behavioral health technician. AB 36–37. SRA thus admits that Borges, the person to whom Sweidy and Rearden were assigned for licensed therapy, is not appropriately licensed as a therapist. This alone is enough to support Sweidy's claim.

Furthermore, although SRA contends that Borges "legally provided behavioral health treatment for which she was licensed" (AB 37), there is no such thing as a *licensed* behavioral health technician. 14-ER-3072–3073. It is not a "profession" for which licensure exists or is required. 14-ER-3072–3073

Second, SRA expressly promised to provide evidence-based therapy. And yet, as SRA openly admitted in its Appellee's Brief, it has no idea what that term means. Indeed, to support its argument that post-induction therapy was evidenced-based, SRA (1) provided the dictionary definition of "evidence" (not evidence-based) as "something that

furnishes proof”; and (2) argued that post-induction therapy is allegedly based on “Pia Mellody’s work on codependency.” AB 38–39. According to SRA, any “evidence” is enough to qualify a treatment modality as evidence-based.

SRA stretches the meaning of “evidence-based” beyond recognition. Rather than refer to a process that has undergone rigorous scientific testing and received acceptance from the scientific community, SRA believes “evidence-based” refers to that which is supported by any “evidence” whatsoever, regardless of the quality or quantity thereof. AB 39.

By admitting its vast ignorance as to the meaning of “evidence based,” SRA has tacitly conceded its failure—and inability—to fulfill its express contractual promise. This is *prima facie* breach of contract.

### **3. Breach of Implied Covenant of Good Faith and Fair Dealing**

The panel found “the record suggests that it was Sweidy who rejected these services,” thereby resolving a disputed factual inference against the non-movant on summary judgment. App. 7a. The record, however, contains evidence that, prior to Sweidy’s contract rescission, Borges unilaterally canceled family therapy with Sweidy and Rearden and unilaterally canceled Sweidy’s participation in Family Workshop I, and after Sweidy’s contract rescission, (1) Defendants unilaterally restricted all communication between Sweidy and Rearden at SRA’s clinical discretion; (2) SRA’s Director of Operations threatened “termination of all communication”; and (3) Sweidy was prevented from communicating with her daughter for five weeks. 14-ER-3013–3015, 3020; 11-ER-2301. The panel

identified no record basis for its contrary finding. Resolving that disputed inference against Sweidy usurped the jury's role under *Anderson*, 477 U.S. at 255.

The panel also held that Sweidy's implied covenant claim "is based in tort, not contract" and was undeveloped. App. 6a-7a. That holding misstates Arizona law. The implied covenant is inherent in every contract, preventing parties from impairing the other's right to receive benefits, and ordinarily the remedy is contractual. *McAlister v. Citibank*, 171 Ariz. 207, 213 (Ariz. Ct. App. 1992); *Burkons v. Ticor Title Ins. Co.*, 168 Ariz. 345, 355 (Ariz. 1991). The implied covenant may sound in either contract or tort depending on the relationship and circumstances. *McAlister*, 171 Ariz. at 213. Sweidy's brief expressly stated that her claim sounds in contract, not tort, and offered evidence that SRA impeded her and Rearden's right to receive the licensed, evidence-based therapy SRA had promised. DktEntry 23, pp. 77–80; 14-ER-2995–2996. No expert standard of care is required—either the promised therapy was provided or it was not.

Even under a tort framing, the panel's conclusion that Sweidy "failed to cite [expert reports] in her opposition brief" ignores that Sweidy cited those reports in her statement of controverting facts. 7-ER-1376–1379. Treating that citation as nonexistent to support a waiver finding is another instance of selectively reading the record against the responding party.

#### **4. Negligence Per Se**

The panel rejected Sweidy's negligence per se claim under A.R.S. § 13–1302, finding that evaluating the claim would require interpreting the

Family Court's custody order. App. 8a. But the Family Court's order was unambiguous: Sweidy held sole legal and physical custody of Rearden, making it unlawful for Respondents to unilaterally restrict Sweidy's communication with her daughter. 10-ER-2123. Where a court order is clear on its face, no interpretive inquiry is required and the panel's concern is unfounded.

The panel further rejected Sweidy's claim under A.R.S. § 32-3283, finding no evidence that Respondents had anything to do with the public filing of Sweidy's confidential information. App. 8a-9a. That is the wrong question. The statutory violation occurred when Respondents disclosed the information to Stata, not when Stata chose to file it publicly. 14-ER-3017, 3073. The provision prohibits disclosure; it does not require that the disclosing party control the downstream use of the information.

The panel additionally found "no evidence that documents were 'received by reason of the confidential nature of the behavioral health professional-client relationship.'" App. 8a-9a. Critically, Respondents raised this argument neither in the district court nor on appeal. 12-ER-2699; 13-ER-2745-2747; Answering Brief, pp. 59-61. The panel thus granted summary judgment sua sponte on yet another ground that Sweidy had no notice to contest—compounding the Rule 56(f) error discussed above. The record, in any event, indisputably demonstrates that all sensitive information was received in the context of a therapeutic boarding school relationship in which both Sweidy and Rearden were promised licensed behavioral health therapy. The documents at issue included, without limitation, Sweidy's and Rearden's social security numbers, information regarding complications

during Sweidy’s pregnancy and delivery, and other confidential disclosures necessary only for therapeutic purposes. 14-ER-3017–3018, 3071–3074; Sealed ER 3426–3428. That information was received by reason of the confidential relationship as a matter of law.

## **5. Conversion**

The panel found that Sweidy “does [not] refer to any evidence that Defendants seriously interfered with her property rights” and that she “refused to answer questions about the property” in her deposition. App. 11a-12a. Neither finding is supported by the record.

The evidence shows Respondents did not return Sweidy’s property despite her repeated requests, and that Sweidy remains dispossessed of it. 10-ER-2160–2175; 14-ER-3057, 3103; Sealed-ER-3435. Evidence of wrongful retention is sufficient for a jury to infer conversion. *Shartzer v. Ulmer*, 333 P.2d 1084, 1088 (Ariz. 1959); *Jabczynski v. S. Pac. Mem’l Hosp.*, 579 P.2d 53, 58 (Ariz. Ct. App. 1978).

As for the deposition testimony, the record does not show a refusal to answer. When asked where her property went, Sweidy responded: “Didn’t go to my house. That’s what I know,” “I don’t know. Ask Rearden,” and “I know it did not go to me. I’m assuming it went to Mr. Stata, but I have no necessarily direct evidence.” 11-ER-2399:2–4, 5–9; 2402:14–17. Those are answers, not refusals. Characterizing them as a “refusal”—and using that characterization to defeat a conversion claim—is a credibility determination that belongs exclusively to a jury reviewing a live witness, not to an appellate court evaluating a cold deposition transcript. *Tolan*, 572 U.S. at 659–60; *Anderson*, 477 U.S. at 255.

Taken together, the panel’s treatment of these four claims reflects a consistent pattern: drawing inferences against the non-movant, mischaracterizing the record, and substituting the panel’s own factual judgments for those of a jury. That pattern is irreconcilable with *Anderson, Tolan*, and the Seventh Amendment, and it warrants this Court’s review.

**C. THIS CASE IS A MATTER OF EXCEPTIONAL IMPORTANCE**

**1. Congress Has Recognized the Troubled Teen Industry as a Distinct, High-Risk Sector Requiring Federal Attention**

This case reflects an industry that has drawn the sustained concern of Congress, federal regulators, and a bipartisan coalition of legislators for nearly two decades, yet remains almost entirely unregulated.

In October 2007, the House Committee on Education and Labor convened hearings specifically titled “Cases of Child Neglect and Abuse at Private Residential Treatment Facilities.” 110th Cong., 1st Sess., Serial No. 110–68 (Oct. 10, 2007).<sup>2</sup> Testifying before the Committee, the Government Accountability Office identified thousands of allegations of abuse—including deaths—at youth residential programs across the country between 1990 and 2007. U.S. Gov’t Accountability Off., *Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth* 1–4 (Oct. 10, 2007).<sup>3</sup> A follow-up hearing in April 2008 revealed deceptive

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/CHRG-110hhrg38055/pdf/CHRG-110hhrg38055.pdf>

<sup>3</sup> <https://www.gao.gov/assets/gao-08-146t.pdf>

marketing practices, kickback arrangements between referral services and program operators, and fraudulent tax schemes. U.S. Gov't Accountability Off., *Selected Cases of Death, Abuse, and Deceptive Marketing* 3–5 (Apr. 24, 2008).<sup>4</sup>

Congress has attempted to address this regulatory vacuum. The Stop Child Abuse in Residential Programs for Teens Act was introduced in the 110th, 112th, and 115th Congresses—passing the House in 2008 before dying in the Senate—and has yet to be enacted. 110th Cong., H.R. 5876 (2008) *Stop Child Abuse in Residential Programs for Teens Act of 2008*;<sup>5</sup> 112th Cong., H.R. 3126 (2011) *Stop Child Abuse in Residential Programs for Teens Act of 2011*;<sup>6</sup> 115th Cong., H.R. 3024 (2017) *Stop Child Abuse in Residential Programs for Teens Act of 2017*.<sup>7</sup>

The Keeping All Students Safe Act, which targets the restraint and seclusion practices documented throughout this record, attracted 106 bipartisan cosponsors in the 118th Congress but similarly died without enactment. 118th Cong., H.R. 3470 (2023) *Keeping All Students Safe Act*.<sup>8</sup> In December 2024, Congress finally enacted *the Stop Institutional Child Abuse Act*—the first federal legislation ever to specifically address this industry. Pub. L. No. 118–194, 138 Stat. 2663 (2024) *Stop Institutional*

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<sup>4</sup> <https://www.gao.gov/assets/gao-08-713t.pdf>

<sup>5</sup> <https://www.congress.gov/bill/110th-congress/house-bill/5876>

<sup>6</sup> <https://www.congress.gov/bill/112th-congress/house-bill/3126/all-info>

<sup>7</sup> <https://www.congress.gov/bill/115th-congress/house-bill/3024>

<sup>8</sup> <https://www.congress.gov/bill/118th-congress/house-bill/3470/text>

*Child Abuse Act.*<sup>9</sup> The Act mandates a comprehensive National Academies study of youth residential programs but imposes no binding safety standards. The regulatory gap it acknowledges remains open.

The legislative history of these efforts is a sustained, bipartisan recognition that therapeutic boarding schools, wilderness programs, and similar facilities—precisely the type of operation at issue here—occupy a dangerous regulatory gray zone in which vulnerable children and their families have no federal protection and limited state recourse.

## **2. The Judiciary Serves as the Primary Check on an Otherwise Unregulated Industry**

Because no federal licensing or inspection regime governs these programs, and because state regulatory frameworks are inconsistent and often nonexistent, civil litigation is, for most families, the only mechanism of accountability. SRA operated as a for-profit facility charging \$9,000 per month for services it did not deliver, employing unlicensed personnel in clinical roles, and retaliating against a parent who attempted to exercise her custodial rights. The only recourse available to Sweidy was the courts.

The panel’s decision forecloses that recourse at every turn. It holds that a parent who presents substantial evidence of fraud, abuse, medical neglect, and custodial interference faces structural procedural barriers—sua sponte summary judgment on grounds never raised, preserved claims treated as waived, inferences drawn against the non-movant—that prevent her claims from ever reaching

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<sup>9</sup> <https://www.govinfo.gov/content/pkg/PLAW-118publ194/pdf/PLAW-118publ194.pdf>

a jury. The effect is not merely to decide this case against Sweidy. It is to signal to every operator in this industry that the procedural mechanisms of federal litigation can be deployed to insulate them from liability even when a jury later finds fraud, as occurred here.

The Troubled Teen Industry targets children who are particularly vulnerable—minors with mental health challenges, behavioral struggles, or trauma—and relies on the desperation of parents seeking help. When courts enforce barriers to recovery that no rule of procedure or substantive law requires, they deepen the exploitation of families in crisis. As experts whose opinions were in the record before the district court testified, SRA’s treatment modalities were “not evidence-based.”

12-ER-2505–2507. A panel that affirms summary judgment on these claims without engaging that evidence leaves those conclusions unchallenged and unreviewed.

### **3. The Decision Below Has Broad Implications for Consumer Protection in the Market for Therapeutic and Educational Services**

This case also implicates Arizona’s consumer fraud law, Ariz. Rev. Stat. § 44–1522, which prohibits “any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment . . . of any material fact with intent that others rely” in connection with the sale of merchandise—a term the statute expressly defines to include services. The record here established precisely this kind of conduct: SRA’s admissions director made individualized promises of customized, evidence-based therapeutic treatment to induce

Sweidy's enrollment, and a jury subsequently found those representations constituted fraud. Nevertheless, the Ninth Circuit held that, aside from JCourtney, there was no evidence that Respondents knew the workshops were abusive or coercive. App. 10a. As a preliminary matter, the concession as to Jean Courtney concerning a triable issue should have precluded summary judgment. And yet the panel affirmed summary judgment as to all Respondents, including Jean Courtney. Furthermore, a juror could readily infer knowledge: any reasonable person would know that the workshops—which subjected its participants to public criticism, attacks, humiliation, and embarrassment in order to break down their rational faculties and put them in an emotionally dysregulated and psychologically vulnerable state subject to Respondents' coercive control (14-ER-2994–3006)—was not the therapy that was promised or that any reasonable person would sign up for.

Indeed, the Ninth Circuit appeared more concerned with protecting the Troubled Teen Industry than resolving the merits of the case. Oral Argument Transcript, 00:10:42 [Judge Smith: “It seems to me that if we just rely upon these conclusions, uh, no academy would survive basically.”]. By affirming dismissal of the claims challenging the delivery of those promised services, the panel weakens the application of consumer protection law to an industry that depends for its revenue on representations it does not honor.

The implications extend beyond this case. An industry that thrives on opacity—where parents cannot verify treatment quality, where children are held with limited outside contact, and where

promised services are never delivered or documented—is precisely the type of market consumer fraud statutes were designed to regulate. If courts require evidentiary standards that are structurally impossible to satisfy in this information-asymmetric context, they validate a business model built on concealment.

#### **4. This Case Presents the Court with a Vehicle of Exceptional Clarity**

This is not a close case on the facts. A jury found SRA and its admissions director committed fraud, awarding Sweidy (a) \$25,000 for Sweidy’s assertion of actual fraud against SRA; (b) \$25,000 for Sweidy’s assertion of consumer fraud against SRA; and (c) \$2,500,000 in punitive damages (an unprecedented amount in this type of case given it did not involve a wrongful death claim). 4-ER-659. The district court then granted a new trial. The claims dismissed before that verdict—the claims at issue in this petition—were dismissed through procedural mechanisms this petition demonstrates were legally erroneous: summary judgment on unraised grounds without notice, appellate waiver of preserved arguments, and inferences drawn against the non-movant in direct violation of *Anderson* and *Tolan*.

If this Court does not clarify the procedural standards governing civil claims against youth residential programs, the result will be that federal procedure is routinely deployed to bar recovery before the merits are ever reached—even when, as here, the jury ultimately confirms the fraud. That is not a tolerable outcome in any litigation context. It is especially intolerable in one where Congress has expressly recognized the absence of regulatory protection and where the judiciary is the last line of

accountability, and where this Court has acknowledged that “it cannot [ ] be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

## **VII. CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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