ARIZONA SUPREME COURT

David S. Gingras, *Petitioner*, v. State Bar of Arizona, *Respondent*.	Arizona Supreme Court No.: ____________________ Office of the Presiding Disciplinary Judge No. PDJ2026-9010

APPENDIX TO
PETITION FOR SPECIAL ACTION (APPELLATE)
VOLUME 1

7	3/31/2026	Notice of Filing Supplemental Authority	0182–0251
8	4/14/2026	Motion to Dismiss, and Alternatively, Motion for Summary Judgment	0252–0299
9	4/14/2026	Statement of Undisputed Material Facts	0300–0310

Exhibit 1

James D. Lee, Bar No. 011586
Craig Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
[redacted]
Phoenix, Arizona 85016-6266
Telephone: [redacted]
Email: [redacted]

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member of the State Bar of Arizona, **DAVID S. GINGRAS,** Bar No. 021097, Respondent.	**PDJ 2026-9010** **AMENDED COMPLAINT** [State Bar Nos. 24-1692, 24-1826, 24-2483, 24-2819, 24-3080 and 25-1230]

Amended complaint is made against Respondent as follows:

INTRODUCTION

1. Respondent represented Laura Owens in Maricopa County Superior Court regarding a motion for sanctions filed against her in a paternity case she had filed.

2. After being hired by Owens, Respondent became aware, based on his investigation and research, that she had made contradictory statements about her actions and had altered at least one medical record.

3. Despite being aware that Owens had given contradictory versions of events and altered at least one medical record, Respondent failed to withdraw as counsel for Owens or, alternatively, failed to diligently investigate and research relevant facts, pursued claims that were without merit, prepared an affidavit for Owens to sign that included false information, failed to take steps to address false statements that Owens made during her deposition and two hearings, and presented Owens' false testimony to the Court.

4. During the period of representation, Respondent failed to comply with a court order directing him not to disclose outside of counsel for the parties "any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties."

5. During the period of representation, Respondent took steps to prevent Michael Marraccini, a potentially adverse witness, from appearing and testifying at a hearing held on June 10, 2024.

6. During the period of representation, Respondent made public, disparaging remarks on social media about members of the public and Maricopa County Superior Court Judge Julie Mata, who presided over the paternity case filed by Owens.

7. During the period of representation, Respondent filed and pursued a non-meritorious appeal.

GENERAL ALLEGATIONS

8. At all times relevant, Respondent was licensed to practice law in Arizona, having been admitted to practice in Arizona on October 21, 2004.

COUNT ONE
(File Nos. 24-1692, 24-1826, 24-2483, 24-2819, 24-3080 and 25-1230)

9. On August 1, 2023, Laura Owens filed, *pro se*, a *Petition for Court Order for Paternity and Legal Decision-Making, Parenting Time, and Child Support* ("*Petition for Court Order for Paternity*") against Clayton Echard (*In re Matter of Owens and Echard*, Maricopa County Superior Court No. FC2023-052114; hereafter, "the paternity case").

10. The *Petition for Court Order for Paternity* alleged that Owens had become pregnant by Echard.

11. On September 14, 2023 (prior to Respondent's involvement in the paternity case), Owens filed, *pro se*, an *Expedited (!) Motion to Seal Court Record*, asking the court to seal the entire record in the paternity case.

12. Owens attached to that *Expedited (!) Motion to Seal Court Record* copies of several email messages from Echard to Owens in which he sought evidence that she was pregnant.

13. Echard asserted in email messages that Owens (a) was not pregnant by him, (b) had never undergone an ultrasound, (c) had offered illogical excuses to

delay testing, and (d) had provided him with a sonogram that had been created from an image on the internet.

14. Among the email messages attached to the *Expedited (!) Motion to Seal Court Record* was a July 25, 2023 email message from Echard to Owens, which reflected that Echard believed that Owens had provided him with a false sonogram.

15. The *Expedited (!) Motion to Seal Court Record* indicated that Owens had failed to provide Echard with evidence that she was pregnant by Echard.

16. Owens' September 14, 2023 *Expedited (!) Motion to Seal Court Record* and other documents in the court record, including Echard's email messages to Owens, placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

17. Respondent had a duty to diligently investigate and research everything that Owens told him or provided to him.

18. Respondent failed to diligently investigate and/or research Owens' allegations to determine whether her statements to him, opposing counsel and the court were truthful or that the sonogram provided to him and used during a court hearing on June 10, 2024, was an image created by an ultrasound performed on Owens.

19. On January 3, 2024, Echard's counsel filed a *Motion for Sanctions Pursuant to Rule 26* [of the Arizona Rules of Family Law Procedure], in which he requested that Owens be sanctioned for filing the *Petition for Court Order for Paternity* and later documents for an improper purpose and without medical evidence to support her claim that she was pregnant.

20. Echard's January 3, 2024 *Motion for Sanctions Pursuant to Rule 26* placed Respondent on notice that Echard had claimed that Owens was not pregnant, which created a duty on his part to ensure that his investigation and research thoroughly addressed everything that Owens told him or provided to him.

21. On February 21, 2024, Judge Mata issued a minute entry order scheduling a hearing in the paternity case on June 10, 2024, to address the issue of sanctions and attorney's fees related to the paternity case filed by Owens.

22. On March 11, 2024, Echard's counsel filed a *Motion to Compel*, which stated in part that Owens had testified at her deposition that she had altered a sonogram, falsely claiming it came from Southwest Medical Imaging.

23. Based on the March 11, 2024 *Motion to Compel*, Respondent was once again placed on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

24. During or about March 2024, Owens hired Respondent to represent her regarding the *Motion for Sanctions Pursuant to Rule 26*.

25. On March 25, 2024, Respondent filed a notice of appearance on Owens' behalf in the paternity case.

26. Upon agreeing to represent Owens, Respondent had a duty in preparing her defense to the *Motion for Sanctions Pursuant to Rule 26* and represent her at the June 10, 2024 hearing to (a) diligently investigate and research both parties' assertions and documentation, (b) carefully review the entire court record in the paternity case and related cases between Owens and Echard, (c) review the file provided to him by Owens' former counsel, (d) review the information and documents provided to him by Echard's counsel, and (e) review other information that came to his attention.

27. On March 26, 2024, Echard's counsel filed a *Motion for Relief from Judgement [sic] Based on Fraud* (hereafter *Motion for Relief from Judgement*) in *In the Matter of Owens and Echard*, Maricopa County Superior Court No. FC2023-052771, an order of protection case.

28. That March 26, 2024 *Motion for Relief from Judgement* stated in part:

> On October 6, 2023[,] and October 25, 2023, Plaintiff [Owens] committed <u>fraud</u> when she filed her underlying Petition for Order of Protection and then testified before Judge Doody under the fraudulent pretense that she was pregnant with Defendant [Echard]'s "twins" and that Defendant [Echard] was "cyberbullying her" by posting her "medical records" online." To be clear, <u>**Plaintiff [Owens] was never**</u>

> **pregnant by Defendant [Echard]** as they did not have penetrative sexual intercourse.

(Bold typeface and underlines in original).

29. That *Motion for Relief from Judgement* further stated that Owens had admitted during her deposition that she had modified the medical records, which the Court relied upon to grant an order of protection.

30. That *Motion for Relief from Judgement* noted that Owens had "provided no verifiable medical evidence to support her alleged twin pregnancy and ha[d] admitted that the ultrasound at the core of this Court's basis for granting the Protection Order was *de facto* fraudulent." (Underlines and italics in original).

31. That *Motion for Relief from Judgement* contained additional information relevant to the paternity case.

32. That *Motion for Relief from Judgement* again placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father; those issues were relevant to the *Motion for Sanctions Pursuant to Rule 26*.

33. On April 9, 2024, Respondent filed a *Notice of Appearance and Notice re: Pending Motion* on Owens' behalf in the order of protection case (FC2023-052771).

34. On April 22 and May 9, 2024, Respondent provided Echard's counsel with supplemental disclosure statements that failed to adequately address Owens' changing version of events.

35. On June 10, 2024, Judge Mata presided over a hearing to address Echard's request for sanctions and attorney's fees.

36. During that June 10, 2024 hearing, Owens provided false testimony about matters pertaining to her alleged pregnancy.

37. Respondent failed to correct or clarify Owens' false testimony during direct examination or redirect examination.

38. On June 18, 2024, Judge Mata entered an *Under Advisement Ruling* regarding the June 10, 2024 hearing, in which she found that (i) Owens failed to "meet the burden of clear and convincing evidence that [Echard] was the father of [Owen]'s alleged pregnancy"; (ii) Owens "acted unreasonably when she initiated litigation without basis or merit"; (iii) the *Petition for Court Order for Paternity* was "premature at best"; (iv) Owens "repetitively failed to comply with [Family Law Rule] 49 [regarding disclosure], even on Order of this Court"[1] (Judge Mata did *not* find that Respondent had failed to comply with the disclosure or discovery rules or

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[1] The *Under Advisement Ruling* did not specify the disclosure violations, other than to state that Owens presented new information about an ultrasound at the hearing and testified on the day of the hearing that she anonymously sought care at a Planned Parenthood location in Los Angeles, which had never been disclosed.

the Court's April 4, 2024 order compelling disclosure); (v) Owens "acknowledged [that] she altered hCG test results,[2] [and] an ultrasound and sonogram[3]"; (vi) "the petition was not filed in good faith, the petition was not grounded in fact or based on law, the petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party"; (vii) Owens "provided false testimony as to the viability of the pregnancy" in the paternity case, the order of protection case, and an injunction against harassment case filed by Echard; and (vii) Owens "knowingly presented a false claim, [and] knowingly violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415."

39. On August 16, 2024, Judge Mata issued an *Order re: Application for Attorneys' Fees and Costs*, directing Owens to pay a total of $149,219.76 in attorneys' fees and costs to Echard within 180 days.

<u>Respondent Violated Judge Mata's February 21, 2024 Order</u>

40. All allegations set forth above are incorporated herein as if set forth in full.

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[2] An hCG (human chorionic gonadotropin) test is a medical procedure used to detect pregnancy.

[3] An "ultrasound" is the medical imaging technique; a "sonogram" is the image produced by an ultrasound.

41. On February 21, 2024, Judge Mata issued a minute entry order in the paternity case regarding the status conference held on that date, which stated in part:

> **IT IS FURTHER ORDERED** denying counsel for Petitioner [Laura Owens]'s oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality.
>
> . . . .
>
> Further discussion is held regarding discovery and disclosure.
>
> Counsel for Petitioner [Owens] addresses the Court with an oral request to have the Court order his client provide medical records pertaining to the pregnancy only.
>
> **LET THE RECORD FURTHER REFLECT** that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties.
>
> **IT IS FURTHER ORDERED** that the records be disclosed dating back to August 2020.

(Capitalization and bold typeface in original).

42. On April 1, 2024, Respondent filed a *Motion for Extension of Time to Respond to Respondent [Echard]'s [March 11, 2024] Motion to Compel* (hereafter *Motion for Extension of Time to Respond*), to which he attached a declaration that he signed.

43. Respondent included the following in his April 1, 2024 *Motion for Extension of Time to Respond*: (a) a reproduction of a portion of Owens' "Lab Results History" report dated June 1, 2023; (b) a portion of an "Unable to Process Request" notice from Banner Health regarding Owens; and (c) a portion of a receipt from Banner Urgent Care regarding Owens dated June 1, 2023.

44. Respondent included the following in his April 1, 2024 declaration: (a) a reproduction of a portion of Owens' "Lab Results History" report dated June 1, 2023; (b) a portion of a receipt from Banner Urgent Care regarding Owens dated June 1, 2023; (c) a portion of an "Unable to Process Request" notice from Banner Health regarding Owens; and (d) copies of messages between Owens and Dr. Joshua Makhoul.

45. Respondent knowingly violated Judge Mata's order by disclosing information and documents related to Owens' medical records in his *Motion for Extension of Time to Respond* and declaration.

46. Respondent failed to file a motion to seal either his April 1, 2024 *Motion for Extension of Time* or his declaration, despite Judge Mata's February 21, 2024 minute entry order.

47. On April 4, 2024, Respondent posted the following on his law office blog:

> . . . [O]n October 16, 2023, Laura had a blood test done at a lab. Wanna guess what the results showed? PREGNANT. But don't take my word for it, the report can be viewed <u>right here</u>.

(The underlined text was a link to Owens' October 17, 2023 Sonora Quest Laboratories' medical report).

48. Respondent knowingly violated Judge Mata's February 21, 2024 order by including a link on his blog that led to Owens' October 17, 2023 Sonora Quest

Laboratories' medical report.

49. Also on April 4, 2024, Gregg Woodnick, Echard's counsel, sent an email message to Respondent, which stated in part: "I am also not certain why you are publishing court documents and your client's personal medical records contrary to court order. Laura [Owens] needs to comply with the order and provide disclosure."

50. That email message from Attorney Woodnick placed Respondent on notice that he needed to take some action to seal Owens' medical information and documents.

51. Despite notice from Echard's counsel regarding his violation of Judge Mata's February 21, 2024 order, Respondent failed to file a motion to seal Owens' medical information and documents that he had disclosed in his April 1, 2024 *Motion for Extension of Time to Respond* and attached declaration.

52. On or about April 19, 2024, Respondent posted on his law office blog (and/or other social media) the content set forth in Exhibit A to this complaint, which included a portion of one of Owens' medical reports.

53. On April 26, 2024 (a Friday), at approximately 5:52 p.m., Respondent filed *Petitioner's Response to Respondent's Amended Motion for Relief Based on Fraud* (hereafter "April 26, 2024 *Response*").

54. Respondent's filing of the April 26, 2024 *Response* did not, at the time he filed it, become a matter of public record.

55. That April 26, 2024 *Response* included a summary of portions of Dr. Deans and Dr. Justicia-Linde's expert report, which they had prepared for Echard (*e.g.*, pages 8 through 11, under the heading "Ms. Owens Was Pregnant," discussed Dr. Deans and Dr. Justicia-Linde's expert report, and a quotation taken from Drs. Deans and Justicia-Linde's expert report appeared near the bottom of page 10).

56. Attached to that April 26, 2024 *Response* was a copy of Dr. Deans and Dr. Justicia-Linde's expert report and Dr. Deans' curriculum vitae.

57. That April 26, 2024 *Response* discussed the report provided by Owens' medical expert, Dr. Michael Medchill; attached to that April 26, 2024 *Response* was a copy of Dr. Medchill's expert report and curriculum vitae.

58. Also attached to that April 26, 2024 *Response* were copies of Owens' medical records and other documents relevant to Echard's claims (*e.g.*, Owens' affidavit dated April 16, 2024, included information from Owens' medical records and portions of her medical reports/records).

59. At approximately noon on Saturday, April 27, 2024, Respondent posted on his publicly accessible personal X (formerly Twitter) account, his law firm website and/or other social media a link to, among other things, his April 26, 2024 *Response*, which included portions of Owens' medical information and documents.

60. Respondent knowingly violated Judge Mata's February 21, 2024 minute entry order by posting Owens' medical information and documents on his X account or other social media.

61. On April 29, 2024, the Maricopa County Superior Court Clerk's Office docketed Respondent's April 26, 2024 *Response*, at which time that document became a public record available to the public through the Clerk's Office.

62. Neither Dr. Samantha Deans nor Dr. Faye Justicia-Linde consented to the publication of their expert report because it contained a review of Owens' private medical records, which was intended solely for the attorneys and the Court's review.

63. At no time did Respondent file a motion to seal (a) Owens' medical information or documents or (b) his April 26, 2024 *Response*, despite Judge Mata's February 21, 2024 minute entry order.

Ethical Violations Related to Respondent's Violation of Judge Mata's February 21, 2024 Order

64. By engaging in the conduct set forth above, Respondent violated ER 3.4(c) by knowingly violating Judge Mata's February 21, 2024 order and court rules; ER 3.6(a) by making extrajudicial statements that he knew or reasonably should have known would be disseminated by means of public communication and that would have a substantial likelihood of materially prejudicing the paternity case; ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay,

or burden any other person; and, Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating Judge Mata's February 21, 2024 order.

Respondent's Efforts to Preclude Michael Marraccini from Testifying on June 10, 2024

65. All allegations set forth above are incorporated herein as if set forth in full.

66. Laura Owens obtained a Domestic Violence Restraining Order (DVRO) against Michael Marraccini in California, which was renewed and extended to September 11, 2025.

67. That DVRO required Marraccini to remain at least 100 yards away from Owens.

68. During the course of the paternity case, Echard's counsel disclosed to Respondent that he intended to call Marraccini as a witness.

69. A few weeks later, just before the disclosure/discovery deadline, Echard's counsel informed Respondent that, contrary to information he (Respondent) had been given by Marraccini's California attorney, Marraccini would appear and testify at the hearing.

70. Neither Echard's counsel nor Marraccini nor Respondent filed a motion in the San Francisco County (California) Superior Court to modify the terms of the DVRO to allow Marraccini to testify in Arizona.

71. On April 30, 2024, Respondent filed a *Motion in Limine* asking the Court to preclude Marraccini from testifying because (a) his testimony would elicit improper Rule 404(b) evidence and (b) Echard's counsel had allegedly failed to comply with the disclosure rules regarding the nature of Marraccini's testimony; Respondent did *not* reference the existence of the DVRO in that *Motion in Limine*.

72. Also on April 30, 2024, Respondent filed an *Emergency Motion to Strike and Request for Immediate Telephonic Scheduling Conference* (hereafter "*Emergency Motion to Strike*"), which included a request for an immediate scheduling conference to address whether Echard's counsel would be permitted to call three newly-disclosed witnesses (one of whom was Marraccini) at the June 10, 2024 hearing.

73. On or about May 7, 2024, Echard's attorney subpoenaed Marraccini to testify as a Rule 404(b) witness at the hearing scheduled for June 10, 2024.

74. Marraccini was aware of the paternity case, and agreed to voluntarily appear and testify in Arizona at the June 10, 2024 hearing.

75. In an email message from Respondent to Echard's counsel on May 8, 2024, Respondent stated:

> This goes without saying, but to the extent I suggested [that] Mike [Marraccini] would be arrested if he comes to court in AZ, that suggestion is completely and totally withdrawn. I only said that because I didn't want Mike to show up without giving me the chance to at least interview him (as I would with *any* normal witness). As long as Mike agrees to have a reasonable call to answer to [sic] some questions, I'll

> stipulate and agree [that] his appearance in AZ is NOT a violation of anything[,] and will not expose him to arrest or other legal consequences.

(Italics and parenthetical in original).

76. Marraccini did not make himself available for Respondent to interview.

77. On May 21, 2024, Judge Mata issued a minute entry order denying Respondent's *Motion in Limine*.

78. On June 3, 2024, to preserve the issue of the propriety of Marraccini testifying at the June 10, 2024 hearing, Respondent filed a *Pretrial Statement* that addressed that issue.

79. In that *Pretrial Statement*, Respondent explained that it would be a crime for Marraccini to violate the California DVRO, and that any violation of the order by Marraccini would subject him to arrest.

80. That *Pretrial Statement* also stated that "[the] issue has been reported to Court security by undersigned counsel [Respondent][,] who has requested that Mr. Marraccini be arrested if he violates the DVRO, as the law requires."

81. Also on June 3, 2024, Respondent called security personnel at the Maricopa County Superior Court and spoke with Officer Gibbs, informing him that Owens had a valid DVRO from California and that she was concerned that he intended to violate the order by appearing at trial.

82. Also on June 3, 2024, Respondent sent an email message to Officer Gibbs, to which he attached a copy of the California DVRO.

83. Respondent's June 3, 2024 email message to Officer Gibbs stated that "court approval for [Marraccini] to appear [at trial] has not been granted, and the DVRO contains no exceptions for in-person contact like this."

84. Judge Mata had previously denied Respondent's April 30, 2024 *Motion in Limine* (to prevent Marraccini from testifying), but had not yet ruled on his objection to Marraccini's testimony, which he set forth in a *Petitioner's Pretrial Statement* filed on June 3, 2024.

85. Respondent also claimed in his June 3, 2024 email message to Officer Gibbs that if Marraccini appeared in court, he would clearly violate the DVRO.

86. Respondent additionally claimed in his June 3, 2024 email message to Officer Gibbs that "[d]ue to the short time before trial, [he] cannot raise this issue with Judge Mata before next week."

87. On June 4, 2024, Echard's counsel sent an email message to Officer Gibbs and Judge Mata's court stating that a "valid subpoena" had been issued for Marraccini's appearance; Respondent was "copied" on that email message.

88. Echard's counsel suggested in that June 4, 2024 email message to Officer Gibbs that Respondent's act of requesting law enforcement to enforce Owens' DVRO qualified as an attempt to intimidate a witness, as set forth in A.R.S.

§ 13-2802.

89. Sometime prior to the June 10, 2024 hearing, Respondent sent an email message to Marraccini's California attorney, informing her that, because of the DVRO, Marraccini would be arrested if he attended the June 10, 2024 trial.

90. On the morning of June 10, 2024, when Owens saw Marraccini in the parking lot, Respondent contacted Court security personnel, but he was informed that they were unable to help.

91. Shortly thereafter, Respondent called 9-1-1 from the courthouse parking lot to report Owens' concerns about Marraccini's ostensible violation of the DVRO.

92. Prior to commencement of the June 10, 2024 hearing, Court security personnel and/or the Maricopa County Sheriff's Office (MCSO) informed the Court that Respondent had called 9-1-1 from the parking lot of the Northeast Justice Court building and attempted to have Marraccini arrested for violation of the DVRO.

93. Judge Mata or a member of her staff, through Court Security personnel and/or MCSO, informed the responding police officers that Marraccini was responding to a valid subpoena and was not to be detained prior to his testimony.

94. On June 10, 2024, Court security personnel escorted Respondent and Owens from the parking lot to the courtroom prior to the hearing.

95. At the June 10, 2024 hearing, Judge Mata allowed Respondent to argue on the record (before any witness was called) his objection to Marraccini testifying.

96. Respondent argued nondisclosure as a basis for precluding Marraccini's testimony, as well as the existence of the DVRO, stating:

> The second issue, Your Honor, deals with this California court restraining order. I think you have a copy of it. It's one of our trial exhibits. We have a court record from the State of California that prohibits Mr. Marraccini from being within a hundred yards of Ms. Owens. He's in violation of it right now. There is no exception for court appearances. She [Owens] is so terrified that she may not be able to sit here during this trial. Under the full faith and credit clause of the U.S. Constitution and also under federal law, this Court is required to enforce that order as it is written. You can't change it, you can't modify it, you can't disregard it. And[,] yet here we are.

97. Judge Mata affirmed her prior ruling allowing Marraccini to testify.

98. Marraccini was sworn to testify in court on June 10, 2024, but never testified.

<u>Violations based on Respondent's Efforts to Preclude Michael Marraccini from Testifying on June 10, 2024</u>

99. Based on the conduct set forth above, Respondent violated ER 3.4(a) and ER 8.4(a) by unlawfully attempting to obstruct Clayton Echard's access to Marraccini's testimony, ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay or burden Echard or his counsel, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

<u>Respondent's Disparaging Comments about</u>
<u>Maricopa County Superior Court Judge Julie Mata</u>

100. All allegations set forth above are incorporated herein as if set forth in full.

101. Respondent knowingly made unprofessional, disparaging and inappropriate comments about Judge Mata's qualifications and/or integrity in documents filed with the court and in posts he made on social media account(s).

<u>First Instance</u>
(Judge Mata's Father's Attendance at the June 10, 2024 Hearing)

102. On July 8, 2024 (20 days after Judge Mata entered her *Under Advisement Ruling* regarding the June 10, 2024 hearing), Respondent filed a *Notice of Change of Judge for Cause; Memorandum & Affidavit in Support* (hereafter "*Notice of Change of Judge for Cause*"), which was unprofessional and inappropriately disparaging of Judge Mata. For example, Respondent stated the following in the *Notice*:

> It is difficult to image [sic] a more disrespectful, disreputable, and disgraceful act for any judge to commit than inviting her father to attend a high-profile trial *in support of a party*, while also privately engaging in prohibited *ex parte* discussions about the case with her father.[4] <u>These actions made a mockery of these proceedings</u>. As shown in the video clips submitted herewith, Clayton's supporters *gleefully* celebrated Judge Mata's father's participation in the case, even going so far as to laughingly ask people not to spread information about his participation because, after

[4] According to internet reports, Judge Mata's father attended the June 10, 2024 hearing over which Judge Mata presided, and was present in the overflow courtroom where the hearing was live-streamed.

> all, "*We don't need a mistrial here*." For once, those followers were exactly right – the conduct of Judge Mata and her father absolutely warrant a mistrial (or more accurately, a retrial, before a different, unbiased judge).
>
> This shameful conduct [by Judge Mata] not only violated Laura [Owens]'s rights, it raises serious questions regarding Judge Mata's fitness as a Judge of the Superior Court. Any reasonable objective observer in Laura's position would be justified in wondering, "Was my case fairly decided based on the evidence or was Judge Mata simply trying to impress her father – *Look at me Daddy! I'm a real Judge now! Just watch me destroy a young woman's life because the other party was on The Bachelor! Hee hee!*"
>
> Assuming the published allegations of Judge Mata are true (as documented, on video, by Clayton [Echard]'s own followers), this proves Judge Mata separately violated Rule 2.9(A) of the Code of Judicial Conduct. And Judge Mata's blatant, pervasive disregard for her ethical duties and her disrespect for Laura's fundamental rights helps explain the judge's numerous (and otherwise heretofore inexplicable) adverse rulings during this action.

(Italics, underline and parentheticals in original).

<u>Second Instance</u>
("[S]crewed up" Form of Final Judgment)

103. Sometime prior to September 3, 2024 (which was during the pendency of Owens' appeal from Judge Mata's *Under Advisement Ruling* dated June 18, 2024), Respondent posted on his law firm's or personal blog, X (formerly Twitter) account and/or other social media the content set forth in Exhibit B to this complaint.

104. Respondent's comment (above) pertained to Judge Mata's inadvertent reference to an incorrect Family Law rule regarding the final judgment language in her June 18, 2024 *Under Advisement Ruling* regarding the June 10, 2024 hearing

(she referenced Rule 78(b) of the Arizona Rules of Family Law Procedure instead of Rule 78(c); she corrected that inadvertent error on February 18, 2025, after the Arizona Court of Appeals remanded the matter to superior court).

<u>Third Instance</u>
(Commission of Crime)

105. Sometime prior to September 3, 2024 (during the pendency of Owens' appeal), Respondent posted on his law firm's or personal blog, X (formerly Twitter) account and/or other social media the content set forth in Exhibit C to this complaint (Respondent's reference to Judge Mata committing a crime pertained to her alleged failure to enforce the DVRO against Marraccini by allowing him to attend the June 10, 2024 hearing and be within 100 yards of Owens).

<u>Fourth Instance</u>
(Internet Posting of "Public Warning – Judge Julie A. Mata")

106. On December 16, 2024, Respondent posted on his law office blog/website the content set forth in Exhibit D to this complaint, which stated in part that "Google is not a valid legal source of evidence . . . . unless your case is assigned to Judge Mata" (ellipsis in original).

<u>Fifth Instance</u>
(Judge Mata Does Not Care About the Rules)

107. On December 10, 2024, Respondent recorded a podcast in which he stated the following:

> At 27:25 minutes – "If Judge Mata was a person who cared about the rules, . . . she would have sanctioned [Echard's counsel] Woodnick for

> making a false statement about the law, and she could have referred him to the State Bar like she did with me."

<u>Violations related to Respondent's Disparaging Comments about Judge Mata</u>

108. Based on the conduct set forth above, Respondent violated ER 4.4(a) by using means that have no substantial purpose other than to embarrass or burden Judge Julie Mata, ER 8.2(a) by making a statement with reckless disregard as to its truth or falsity concerning Judge Mata's qualifications or integrity, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rules 41(b)(3) and (7), Ariz. R. Sup. Ct., by failing to maintain the respect due to the court and Judge Mata and engaging in unprofessional conduct (including by making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity).

<u>Disparaging Comments about Members of the Public</u>

109. All allegations set forth above are incorporated herein as if set forth in full.

110. On November 21, 2024, Respondent sent an email message to Laura Owens and copyright@reddit.com, in which he identified himself as a lawyer in Phoenix, Arizona representing Owens in her case against Echard.

111. That November 21, 2024 email message, which Respondent made available to Reddit employees when he sent it to copyright@reddit.com, stated in part:

> Clayton [Echard]'s fans are, generally speaking, *total fucking psychotic assholes*. . . .
>
> . . . .
>
> Clayton's fans, being the total fucking assholes that they are, have come up with a new plan . . ..

(Italics in original).

112. On December 4, 2024, Respondent filed a *Request for Subpoenas to Identify Infringers pursuant to 17 U.S.C. § 512(h); and Supporting Declaration* (hereafter "*Request for Subpoenas*"); Respondent included a copy of his November 21, 2024 email message as Exhibit A to that *Request for Subpoenas*.

<u>Violation related to Respondent's Disparaging Comments About Members of the Public</u>

113. By engaging in the conduct set forth above, Respondent violated Rule 41(b)(7), Ariz. R. Sup. Ct., by engaging in unprofessional conduct.

<u>Respondent's Meritless Claims, False Information in an Affidavit, and Presentation of Owens' False Testimony/Changing Version of Events</u>

114. All allegations set forth above are incorporated herein as if set forth in full.

115. Echard's counsel deposed Laura Owens on March 1, 2024 (approximately three weeks before Owens hired Respondent).

116. During Owens' deposition, she testified that she had (a) an ultrasound performed at Planned Parenthood on July 7, 2023, in Mission Viejo, California; (b)

altered the California Planned Parenthood sonogram to say “SMIL” (Southwest Medical Imaging) instead of Planned Parenthood; (c) had gone to Planned Parenthood anonymously; (d) added her name to the sonogram; (e) not changed the date on the sonogram from July 2, 2023, to July 7, 2023; and (f) altered the sonogram at home using Adobe Acrobat.

117. On March 11, 2024, Echard’s counsel filed a *Motion to Compel* the production of, among other things, the original records from “Planned Parenthood – Mission Viejo Health Center.”

118. On March 25, 2024, Respondent sent an email message to Echard’s counsel stating he would take a “trust but verify” approach with Owens, and that he would actively investigate every detail of what she had said, looking for information that contradicted her statements.

119. On March 27, 2024, Echard’s counsel sent an email message to Respondent, stating that (a) Owens’ prior counsel had presented records to the court (including medical records and letters from law firms) that were fabricated by Owens, (b) Owens had “misused court processes in multiple states to perpetuate the most bizarre of cons for relationships,” and (c) four men had documented Owens faking pregnancies and fabricating medical records.

120. That March 27, 2024 letter from Echard’s counsel placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about

her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

121. On April 4, 2024, Judge Mata signed an order granting Echard's *Motion to Compel*, directing Respondent to provide Echard with the following, among other things, by 5:00 p.m., April 19, 2024: "All medical records for Petitioner [Owens] from Planned Parenthood Mission Viejo from on or about July 7, 2023."

122. That April 4, 2024 order placed Respondent on notice that he had to diligently search for all of Owens' medical records at Planned Parenthood Mission Viejo from on or about July 7, 2023.

123. On April 10, 2024, Respondent reviewed Judge Mata's April 4, 2024 order and sent an email message to Owens regarding that order.

124. When Respondent asked Owens for information about the Planned Parenthood sonogram, she provided him with her username and password for her Planned Parenthood patient portal.

125. On April 15, 2024, at 1:55 p.m., Respondent logged in to Owens' Planned Parenthood patient portal.

126. When Respondent logged in to Owens' Planned Parenthood patient portal on April 15, 2024, records reflected that Owens had scheduled an appointment at Planned Parenthood in California under her real name (apparently in late June

2023).

127. Owens' Planned Parenthood patient portal also reflected an appointment scheduled for July 2, 2023, at a Planned Parenthood location in Costa Mesa, California (located in Orange County).

128. Owens' Planned Parenthood portal did *not* reflect an appointment at a Planned Parenthood location in Los Angeles.

129. Although Respondent had checked Owens' Planned Parenthood portal on April 15, 2024, and knew it did not have records reflecting that Owens attended an appointment or had an ultrasound performed at the Mission Viejo location, he never took any steps to correct Owens' false deposition or June 10, 2024 hearing testimony that her ultrasound was performed in Mission Viejo or, additionally, in the case of the hearing, Los Angeles.

130. At some point in time, Respondent became aware that Echard's counsel had unsuccessfully sought copies of medical records pertaining to Owens from Planned Parenthood in Mission Viejo, California.

131. Upon learning that Echard's counsel had not obtained records from Planned Parenthood in Mission Viejo, Respondent was on notice that he needed to be more diligent and more closely scrutinize what Owens had told him.

132. Respondent was aware that Echard had alleged in his *Motion to Compel* that he (Echard or his counsel) had received confirmation from "nearly all providers"

that Owens was never a patient of theirs.

133. That *Motion to Compel* placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

134. Respondent learned prior to the June 10, 2024 hearing that Owens had not gone to a Planned Parenthood office in Mission Viejo, California.

135. Prior to the June 10, 2024 hearing, Owens told Respondent that she had made appointments with Planned Parenthood in southern California on two consecutive weekends: June 23 to 25, 2023, and June 30 to July 2, 2023.

136. Owens admitted to Respondent that she had altered the sonogram prior to the date she hired him.

137. On April 15, 2024, Respondent sent a draft affidavit to Owens to review and sign, after which she informed him by email about some possible changes, including the following: "[M]aybe don't include the ultrasound since I tampered with the top? I don't want [Dr. Medchill, Owens' expert witness] to question me and my credibility based on that."

138. On April 16, 2024, Respondent discussed with Owens the draft affidavit he had sent to her on April 15, 2024.

139. Later on April 16, 2024, Owens executed the affidavit that Respondent had drafted, and which was attached to the April 26, 2024 *Response [to Respondent Echard's Amended Motion for Relief Based on Fraud*].

140. Owens' affidavit, a portion of which is set forth in Exhibit E to this complaint, included an image of the altered sonogram.

141. Respondent subsequently learned that Owens had allegedly gone to Planned Parenthood in late June 2023, but took no steps to correct that false statement in her April 16, 2024 affidavit.

142. The sonogram that Owens claimed was from Planned Parenthood (shown above) includes her real name even though that sonogram was not a sonogram that resulted from an ultrasound that had been performed on Owens; Owens stated in her affidavit under penalty of perjury, however, that she had not changed anything on the sonogram other than the name of facility and date.

143. During Owens' March 1, 2024 deposition, she testified that she went to Planned Parenthood anonymously, and that she later added her name to the sonogram; Respondent read Owens' March 1, 2024 deposition transcript on April 8, 2024.

144. Respondent became aware that Owens had falsely testified during her March 1, 2024 deposition that she obtained the ultrasound on July 7, 2023.

145. Owens told Respondent that she went to Planned Parenthood *anonymously* and then later, at the June 10, 2024 hearing, testified she went to Planned Parenthood using a *fake name*.

146. Based on Respondent's review of the transcript of Owens' March 1, 2024 deposition, he knew that Owens either (a) testified falsely at her deposition by stating she had gone to Planned Parenthood anonymously, and subsequently changed the name of the facility and added her name to the sonogram, but did not change the date on it or (b) signed a false affidavit, which he filed, that stated she altered only the facility name and date.

147. Respondent failed to take steps to address Owens' false testimony during her deposition or to address her false affidavit.

148. Respondent never obtained from Owens the original, unaltered sonogram that she allegedly obtained from Planned Parenthood in California.

149. Respondent failed to verify with Planned Parenthood whether it treats people anonymously, or people using fake names.

150. On April 18, 2024, Respondent sent an email message to Owens stating that he had told Echard's counsel that she went to Planned Parenthood on July 2, 2023, but that he had located an email message from her to Dr. Zieman dated June 28, 2023, stating that she had gone to Planned Parenthood the previous weekend.

151. On June 3, 2024, Cory Keith, the attorney who represented Owens immediately prior to Respondent's representation of her, filed a notice in the paternity case captioned as "*Ethical Rule 3.3 Notice of Candor*" (hereafter "*Notice of Candor*").

152. In that *Notice of Candor*, Attorney Keith stated that he told the Court the following at a status conference on February 21, 2024: "[Owens] has not lied in this case. She has not intentionally lied to the Court."

153. Attorney Keith stated in that *Notice of Candor* that at the time he made those statements, he believed them to be true.

154. Attorney Keith further stated in that *Notice of Candor* that based on Owens' March 1, 2024 deposition testimony, he no longer believed the statements he made on February 21, 2024, were true.

155. Attorney Keith summarized Owens' deposition testimony in that *Notice of Candor*.

156. Attorney Keith included evidence in that *Notice of Candor* establishing that Owens had testified falsely before Maricopa County Superior Court Commissioner Cynthia Gialketsis several months earlier in *Echard v. Owens*, No. CV2023-053952, an injunction against harassment proceeding.

157. Respondent failed to take steps to address Owens' false statement to Judge Gialketsis during the November 2, 2023 hearing on the petition for injunction

against harassment.

158. Attorney Keith also noted in that *Notice of Candor* that Owens testified before Judge Gialketsis, among other things, that she had been seen by Dr. Higley "last Friday" (14:40 minutes into hearing), but stated during her March 1, 2024 deposition that she had an appointment with Dr. Higley, but did *not* attend the appointment.

159. At some point in time prior to the June 10, 2024 hearing, Owens admitted to Respondent that she incorrectly testified before Judge Gialketsis that she had just been seen by Dr. Higley "Last Friday," but in reality, had only made an appointment to see him.

160. Although Respondent was aware of the content of the *Notice of Candor*, he failed to diligently investigate and research Owens' statements to him, which he presented to the Court.

161. Prior to June 10, 2024, Respondent reviewed (a) transcripts and video recordings of prior hearings, (b) Owens and Echard's deposition transcripts (taken before Owens hired Respondent), (c) the file maintained by Owens' second attorney (including documents he had prepared and filed), (d) the report prepared by Echard's expert witness, (e) disclosures made by Echard's counsel, (f) the medical records provided by Owens, and (g) possibly other records and information related to issues in the paternity case and related cases.

162. Based on the information that Respondent acquired during his representation of Owens, he was aware that Owens had (a) testified falsely before Judge Gialketsis, (b) made false statements during her deposition, (c) altered a sonogram (which he offered into evidence during the June 10, 2024 hearing), and/or (d) signed an affidavit that included false information, which was filed with the Court.

163. Respondent knew that Owens had not been truthful about facts material to the paternity case, but did not withdraw from the case or take sufficient steps to address Owens' false statements and the altered sonogram.

164. During that June 10, 2024 hearing, Owens testified on direct examination that she obtained a sonogram at Planned Parenthood in "California."

165. Owens testified on direct examination that she went to Planned Parenthood "under a fake name," which was contrary to her deposition testimony (that she went anonymously).

166. Respondent asked Owens on direct examination if she "change[d] the name at the top of the sonogram." Owens responded, "of the location, yes."

167. Owens testified on direct examination that the Planned Parenthood sonogram was obtained at "the end of June [2023]."

168. Owens admitted during cross-examination that she had stated during her deposition that the ultrasound had been performed in Mission Viejo on July 7,

2023.

169. Owens also testified during cross-examination that she had been staying in Mission Viejo during or about late June or early July 2023.

170. Owens further testified during cross-examination that she had changed the date on the sonogram from July 2, 2023, to July 7, 2023, and that the July 2, 2023 date was the correct date; that testimony conflicted with her deposition testimony when she stated she had not changed the date on the Planned Parenthood sonogram and her testimony during direct examination that the ultrasound was conducted in late June 2023.

171. During cross-examination, Echard's counsel reminded Owens that during direct examination by Respondent, she testified that she went to Planned Parenthood under a fake name.

172. During cross-examination, Echard's counsel informed Owens that the Planned Parenthood office for Orange and San Bernado Counties (California) had submitted a letter noting that she had scheduled an appointment for July 2, 2023, but that the appointment was cancelled and that the ultrasound image she relied upon, which she claimed to have obtained from Planned Parenthood in Mission Viejo, was not consistent with ultrasound images from the Planned Parenthood offices in Orange and San Bernadino Counties.

173. Thereafter during cross-examination, Owens testified for the first time that her appointment was actually with Planned Parenthood in Los Angeles.

174. When asked during cross-examination when she went to Planned Parenthood in Los Angeles, Owens stated, "Exactly when I said I went. . . . July 2"; that testimony conflicted with her deposition testimony when she stated she had not changed the July 7, 2023 date on the Planned Parenthood sonogram and her testimony during direct examination that the ultrasound was conducted at the end of June 2023.

175. There was testimony presented during the June 10, 2024 hearing that Planned Parenthood requires patients to provide identification, and does not allow anyone to obtain services anonymously.

176. Respondent did not take any steps during direct or redirect examination to address Owens' false or inconsistent testimony (*e.g.*, the discrepancy between the date she testified to (i) during direct examination for the ultrasound (the end of June 2023); (ii) the date she stated during cross-examination (July 2 and 7, 2023); and the date she testified to during her deposition (July 7, 2023)).

<u>Violations Related to Respondent's Pursuit of Meritless Claims, False Information in an Affidavit, and Presentation of Owens' False Testimony/Changing Version of Events</u>

177. Based on the conduct set forth above, Respondent violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting

or controverting issues when he did not have a good faith basis in law and fact for doing so that was not frivolous, ER 3.3(a) and (b) by knowingly failing to take reasonable remedial measures when he knew that Owens intended to engage in, was engaging in or had engaged in criminal or fraudulent conduct related to the paternity case, ER 3.4(c) by knowingly disobeying an obligation under rules of the court, ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating any rule or order of the court.

Non-Meritorious Appeal

178. All allegations set forth above are incorporated herein as if set forth in full.

179. On September 5, 2024, Respondent filed a *Notice of Appeal* regarding the *Order re: Application for Attorneys' Fees and Costs* (*Owens v. Echard*, Arizona Court of Appeals No. 2 CA-CV 2024-0315).

180. On September 9, 2024, Respondent filed an *Amended Notice of Appeal* on Owens' behalf.

181. On November 14, 2024, Respondent filed an opening brief with Division Two of the Arizona Court of Appeals, which included non-meritorious arguments: (a) Respondent falsely asserted that Judge Mata ordered sanctions under

Rule 26; (b) Respondent set forth scenarios that were not based on the facts, so they did not have any bearing on the propriety of the fees awarded; (c) Respondent failed to meaningfully challenge Judge Mata's findings of fact; and (d) Respondent's position on appeal was unreasonable, in part because his Rule 26 argument was not grounded in law or fact, and his assertion that Judge Mata was biased and committed structural error failed to meaningfully address her rulings and ignored applicable law.

182. On March 28, 2025, Division Two of the Arizona Court of Appeals issued a memorandum decision denying Owens' appeal.

183. The Court of Appeals' memorandum decision stated in part:

> . . . [W]e note that a significant portion of Owens' appellate argument relies on her incorrect assertion that the trial court ordered sanctions under Rule 26. The court expressly awarded "attorney fees and costs" under A.R.S. §§ 25-324 and 25-415. . . .
>
> . . . .
>
> . . . [N]one of these scenarios posited by Owens have any bearing on the propriety of the fees awarded in this case, as that determination must be based not on conjecture, but on what actually occurred. . . .
>
> . . . .
>
> . . . The [superior] court also concluded that § 25-324(B) applied because Owens had "provided false testimony as to the viability of the pregnancy" and had sent Echard a letter prior to her deposition that "indicat[ed] her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated."

> On appeal, Owens does not meaningfully challenge these [superior court] findings but, instead, argues § 25-324 does not apply in paternity cases. . . .
>
> . . . .
>
> . . . Section 25-415(A)(3) states that "[t]he court shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds that the litigant . . . [v]iolated a court order compelling disclosure or discovery."[5] Here, the court made such a finding; thus, it was required to sanction Owens for the costs and reasonable attorney fees Echard had incurred. Owens does not meaningfully challenge that finding. . . .
>
> > [5] Section 25-415(A)(3) provides two exceptions: if "the court finds that the failure to obey the order was substantially justified or that other circumstances make an award of expenses unjust," it is not required to impose sanctions. The trial court made no such findings here.
>
> . . . Owens's position on appeal is unreasonable. *See Magee*, 206 Ariz. 589, n.1. Her Rule 26 argument is not grounded in law or fact. Likewise, her assertion that the trial judge was biased and committed structural error does not meaningfully address the trial court's rulings below and also ignores the applicable jurisprudence. We therefore award Echard his reasonable attorney fees and costs on appeal . . . .

(Some brackets in original).

<u>Violations Related to the Non-Meritorious Appeal</u>

184. By engaging in the conduct set forth above, Respondent violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting or controverting issues on appeal when he did not have a good faith basis in law and fact for doing so that was not frivolous, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

DATED this 25th day of February, 2026.

STATE BAR OF ARIZONA

/s/ James D. Lee
James D. Lee
Craig Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 25th day of February, 2026.

by: */s/ Melissa Duarte*
JDL:md

Exhibit A

Guess what Laura's weight was on November 14th? It's right there in the records (which Clayton's lawyer has), so you can read the number for yourself.

[RECORD SEALED PURSUANT TO COURT ORDER]

Exhibit B

David S. Gingras @DavidSGin... · 1h

The Notice of Appeal must be filed within 30 days of the judgment. Annoyingly, but not surprisingly, Mata screwed up the form of final judgment - it doesn't contain stuff required by the rules (shocker). We could ask her to fix this, but that would be a waste of time.

36

Exhibit C

David S. Gingras @DavidSGi... · 4m ···

No - the judge committing a CRIME was completely unnecessary; see: law.cornell.edu/uscode/text/18...

Me explaining how this made Laura feel was ENTIRELY necessary, legal, and ethical.

I hope no judge ever violates your rights and treats you this way. But if they did, how would you feel?

Exhibit D

Public Warning – Judge Julie A. Mata

David Gingras - December 16, 2024 - Uncategorized

Do you have a family law case in Maricopa County Superior Court? Is your case currently assigned to Judge Julie Ann Mata?

If so, please read this EXTREMELY important message.

If your family law case is currently assigned to Judge Mata, **you should immediately ask for your case to be reassigned to a new judge**. With only limited restrictions, the Arizona Rules of Family Law Procedure allow you to have a new judge assigned with virtually no questions asked. But you can lose this valuable right if you wait too long....so PLEASE, do yourself a favor — if your case is assigned to Judge Mata, you should consider immediately asking for a new judge.

Here's why — Judge Julie Mata has recently been accused of using ***Internet research*** to decide cases assigned to her. This is absolutely illegal and unethical, and it can lead to heartbreaking results for your family and loved ones.

In fact, in one recent complaint posted on TheRobingRoom.com, the author claims Judge Mata took his children away based on bogus information the judge found in a Google search. This is absolutely heartbreaking. And it's illegal.

Folks — it is BLATANTLY unlawful for a judge to decide your case based on something they found in an Internet search. This is a clear violation of both the United States Constitution and Rule 2.9 of the Arizona Code of Judicial Conduct. The law only permits a judge to decide your case based on admissible facts and evidence submitted in court.

Search

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Public Warning – Judge Julie A. Mata

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Recent Comments

Laurie Spaulding on LO v. CE – Into the Void

David Gingras on LO v. CE – Into the Void

David Gingras on LO v. CE – Into the Void

Google is not a valid legal source of evidence....unless your case is assigned to Judge Mata.

In fact, the Arizona Judicial Conduct Commission is currently investigating a complaint which accuses Judge Mata of making factual findings in a high profile case based solely on social media posts made after a hearing. You can read more about these serious allegations of misconduct against Judge Mata here and here. When the complaint against Judge Mata is resolved, we will report the outcome here.

So what can you do to protect your family and your rights? Simple — all you need to do is file a short document with the court to ask for a new judge. You DO NOT need to give any reasons or offer any proof to support your request. As long as you submit this form in a timely manner, you have the absolute right to one change of judge automatically.

David Gingras on LO v. CE – Into the Void

MAY 2025

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12	13	14	15	**16**	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

« Mar

. . . .

UPDATE: 12/19/2024 [. . .]

. . . .

In addition, after Mr. Gingras reported Judge Mata's apparent misconduct to the Arizona Commission on Judicial Misconduct, the judge appeared to engage in one or more acts of retaliation against Mr. Gingras by, among other things, filing a frivolous bar complaint against him. Those separate retaliatory acts by Judge Mata have also been reported to the Commission on Judicial Conduct as an apparent violation of the Commission's rules which expressly forbid any acts of retaliation by a judge in response to a complaint.

Exhibit E

28. On July 2, 2023, while traveling in southern California, I made an appointment with Planned Parenthood for the purpose of obtaining pills to medically terminate the pregnancy. . . .

29. My mother drove me to the Planned Parenthood location on July 2, 2023, but she did not come into the facility with me. . . .

30. I took a photo of the sonogram screen with my phone, but I did not want Clayton [Echard] to know where I had gone for the appointment. To conceal that information, I modified the image to change the facility name from Planned Parenthood to SMIL (Scottsdale Medical Imaging), and I also changed the date from July 2, 2023[,] to July 7, 2023. A copy of the modified sonogram image is shown below.

[RECORD SEALED PURSUANT TO COURT ORDER]

31. Other than changing the top part of the image to alter the facility name and date, ***I did not change any other part of the image.*** . . .

[Bold typeface and italics added].

Exhibit 2

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
03-6-2026

C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS,** Bar No. 021097 Respondent.	**PDJ 2026-9010** **RESPONDENT'S AMENDED ANSWER**

Pursuant to Ariz. R. Sup. Ct. 47, Respondent David S. Gingras submits the following Answer to the Amended[1] Complaint filed in this matter:

1. Respondent represented Laura Owens in Maricopa County Superior Court regarding a motion for sanctions filed against her in a paternity case she had filed.

Response: Admit.

2. After being hired by Owens, Respondent became aware, based on his investigation and research, that she had made contradictory statements about her actions and had altered at least one medical record.

Response: Admit.

3. Despite being aware that Owens had given contradictory versions of events and altered at least one medical record, Respondent failed to withdraw as counsel for Owens or, alternatively, failed to diligently investigate and research relevant facts, pursued claims that were without merit, prepared an affidavit for Owens to sign that included false information, failed to take steps to address false statements that

[1] For the convenience of the reader, this Amended Answer is substantively identical to the Answer Respondent filed in this matter on February 19, 2026; the only difference is the deletion of images from ¶¶ 52, 105 and 149.

Owens made during her deposition and two hearings, and presented Owens' false testimony to the Court.

Response: Respondent admits only the allegation that he "presented" testimony from Owens to the Court which Respondent did not know was false, and that he prepared and affidavit for Owens to sign which he did not know contained any false information. Deny all remaining allegations of this paragraph.

4. During the period of representation, Respondent failed to comply with a court order directing him not to disclose outside of counsel for the parties "any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties."

Response: Deny.

5. During the period of representation, Respondent took steps to prevent Michael Marraccini, a potentially adverse witness, from appearing and testifying at a hearing held on June 10, 2024.

Response: Deny, and affirmatively allege the State Bar's allegation contains knowingly false misrepresentations of fact.

6. During the period of representation, Respondent made public, disparaging remarks on social media about members of the public and Maricopa County Superior Court Judge Julie Mata, who presided over the paternity case filed by Owens.

Response: Respondent admits making certain public statements which contained lawful, truthful statements and opinions, all of which are protected speech under the First Amendment to the United States Constitution and the Arizona Constitution.

7. During the period of representation, Respondent filed and pursued a non-meritorious appeal.

Response: Respondent admits filing and pursuing an *unsuccessful* appeal, but denies it was non-meritorious.

8. At all times relevant, Respondent was licensed to practice law in Arizona, having been admitted to practice in Arizona on October 21, 2004.

Response: Admit.

9. On August 1, 2023, Laura Owens filed, pro se, a Petition for Court Order for Paternity and Legal Decision-Making, Parenting Time, and Child Support ("Petition for Court Order for Paternity") against Clayton Echard (In re Matter of Owens and Echard, Maricopa County Superior Court No. FC2023-052114; hereafter, "the paternity case").

Response: Admit.

10. The Petition for Court Order for Paternity alleged that Owens had become pregnant by Echard.

Response: Admit.

11. On September 14, 2023 (prior to Respondent's involvement in the paternity case), Owens filed, pro se, an Expedited (!) Motion to Seal Court Record, asking the court to seal the entire record in the paternity case.

Response: Admit.

12. Owens attached to that Expedited (!) Motion to Seal Court Record copies of several email messages from Echard to Owens in which he sought evidence that she was pregnant.

Response: Admit that Owens filed a motion with certain attachments, the substance of which speaks for itself.

13. Echard asserted in email messages that Owens (a) was not pregnant by him, (b) had never undergone an ultrasound, (c) had offered illogical excuses to delay testing, and (d) had provided him with a sonogram that had been created from an image on the internet.

Response: Admit that Owens filed a motion with certain attachments, the substance of which speaks for itself.

14. Among the email messages attached to the Expedited (!) Motion to Seal Court Record was a July 25, 2023 email message from Echard to Owens, which reflected that Echard believed that Owens had provided him with a false sonogram.

Response: Admit that Owens filed a motion with certain attachments, the substance of which speaks for itself.

15. The Expedited (!) Motion to Seal Court Record indicated that Owens had failed to provide Echard with evidence that she was pregnant by Echard.

Response: Admit that Owens filed a motion with certain attachments, the substance of which speaks for itself.

16. Owens' September 14, 2023 Expedited (!) Motion to Seal Court Record and other documents in the court record, including Echard's email messages to Owens, placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

Response: Respondent <u>denies</u> that a pleading filed by a *pro se* litigant more than seven months <u>before</u> Respondent met that litigant in a case in which Respondent was not involved somehow "placed Respondent on notice that he needed to be diligent" beyond the normal duty of diligence owed by every lawyer in every case.

17. Respondent had a duty to diligently investigate and research everything that Owens told him or provided to him.

Response: This allegation contains a legal conclusion for which no response is required. To the extent a response is required, Respondent asserts the State Bar's allegation materially misrepresents the law in multiple respects. *See*, *e.g.*, ER 3.3 [comment 8]:

> **The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. <u>A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact</u>.** A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See ER 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood. **If a lawyer reasonably believes that evidence has been materially altered or generated with the intent to deceive the court, the lawyer has an obligation to conduct a reasonable inquiry before submitting the evidence to the court.** The scope of the inquiry will vary according to the circumstances of each case, but factors to consider may include the probative value of the evidence, the value or importance of the case or issue, the source of the evidence, and what, if any, accessible, reliable, and affordable tools or methods are available to assess the evidence's authenticity or integrity. **If after inquiry the lawyer still does not know that the evidence has been materially altered or generated with intent to deceive, the lawyer retains discretion to submit the evidence to the court**. (emphasis added)

Respondent affirmatively alleges that comment 8 to ER 3.3 is an accurate statement of the law, and that a lawyer is obligated to conduct a *reasonable* inquiry when he believes a client may have altered evidence or offered false testimony. Respondent affirmatively alleges he complied with this duty in all respects at all times. Respondent further notes, as explained elsewhere, that sonograms are, as a matter of law, not relevant nor are they material to the issue of paternity. Sonograms are, by Arizona statute, not admissible or even relevant to the issue of paternity. Accordingly, exactly as comment 8 to ER 3.3 states, when he learned of the possibility that Ms. Owens *might* have altered or even completely fabricated one or more sonograms, Respondent took every reasonable step to investigate that issue, while also keeping in mind that the *probative value of the evidence* was basically ZERO (because sonograms cannot be used to prove or disprove paternity), and thus the "value or importance" of that evidence was minimal. Paternity claims *cannot* be resolved based on sonograms, so the validity of the sonogram in question was largely irrelevant.

18. Respondent failed to diligently investigate and/or research Owens' allegations to determine whether her statements to him, opposing counsel and the court were truthful or that the sonogram provided to him and used during a court hearing on June 10, 2024, was an image created by an ultrasound performed on Owens.

Response: Again, this allegation is based on a knowingly material misstatement of the law. Having said that, Respondent DENIES this allegation.

19. On January 3, 2024, Echard's counsel filed a Motion for Sanctions Pursuant to Rule 26 [of the Arizona Rules of Family Law Procedure], in which he requested that Owens be sanctioned for filing the Petition for Court Order for Paternity and later documents for an improper purpose and without medical evidence to support her claim that she was pregnant.

Response: Admit, and affirmatively allege the Motion for Sanctions was filed in direct violation of the Rules of Family Law Procedure, and that such motion was later <u>withdrawn</u> as a result of that violation.

20. Echard's January 3, 2024 Motion for Sanctions Pursuant to Rule 26 placed Respondent on notice that Echard had claimed that Owens was not pregnant, which created a duty on his part to ensure that his investigation and research thoroughly addressed everything that Owens told him or provided to him.

Response: DENY. Respondent further affirmatively alleges that he <u>did not represent Ms. Owens on January 3, 2024 when the Motion for Sanctions was filed, and did not know about the motion until three months later when he was retained on March 25, 2024.</u>

21. On February 21, 2024, Judge Mata issued a minute entry order scheduling a hearing in the paternity case on June 10, 2024, to address the issue of sanctions and attorney's fees related to the paternity case filed by Owens.

Response: Admit.

22. On March 11, 2024, Echard's counsel filed a Motion to Compel, which stated in part that Owens had testified at her deposition that she had altered a sonogram, falsely claiming it came from Southwest Medical Imaging.

Response: Admit.

23. Based on the March 11, 2024 Motion to Compel, Respondent was once again placed on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining

whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

Response: DENY. As he has repeatedly explained to Senior Bar Counsel James Lee, Respondent *again* affirmatively alleges that he did not represent Ms. Owen on March 11, 2024 when the Motion to Compel was filed. Respondent further affirmatively alleges that after he was retained on March 25, 2024, he reviewed the Motion to Compel and learned that the attorney who filed it (Echard's counsel Gregg R. Woodnick) **lied to the court in that pleading**. Among other things, Mr. Echard made multiple knowingly false representations of material fact to the court including:

1.) Mr. Woodnick falsely stated in the motion that "At Petitioner's [Laura Owens] Rule 57 deposition on March 1, 2024, Petitioner testified … She "miscarried" two (2) hand sized fetuses sometime in September/October." In truth, as reflected in the deposition transcript which was provided to Mr. Lee before this matter was commenced, Ms. Owens made no such statements in her deposition. Mr. Woodnick simply lied to the court about this fact.

2.) Mr. Woodnick falsely stated in the motion that "At Petitioner's [Laura Owens] Rule 57 deposition on March 1, 2024, Petitioner testified … When she "miscarried," she took photos of what would have been of 19-24 week twin fetuses." In truth, as reflected in the deposition transcript which was provided to Mr. Lee before this matter was commenced, Ms. Owens made no such statements in her deposition. Mr. Woodnick simply lied to the court about this fact.

3.) Mr. Woodnick falsely represented to the Court that Ms. Owens "Petitioner has willfully and wantonly failed to disclose information pursuant to Rule 49" and that she had been "evading any compliance with Rule 49 for over eight (8) months." In truth, Mr. Woodnick knew that *before* the Motion to Compel was filed, Ms. Owens had fully complied with her duty to disclose ALL information required by Family Law Rule 49. Mr. Woodnick simply lied to the court about this fact.

Respondent further affirmatively alleges that in addition to making multiple knowingly false representations to the court in the Motion to Compel, Mr. Woodnick made other knowingly false statements to Respondent during the course of their discussions. Upon learning that Mr. Woodnick had lied to him, Respondent confronted Mr. Woodnick and demanded an explanation as to why Mr. Woodnick had lied to Respondent and to the court. In response, Mr. Woodnick refused to communicate with Respondent, resulting in Respondent moving the court for an order requiring Mr. Woodnick to speak with him (which the court denied). Respondent affirmatively alleges that Mr. Woodnick's repeated acts of dishonesty, and Woodnick's refusal to speak with Respondent (in violation of the Rules of Family Law Procedure, and multiple ethical rules) caused him to reasonably conclude that Mr. Woodnick was not a truthful person, and that his allegations regarding Ms. Owens were false. These unlawful and unethical actions by Mr. Woodnick (which Respondent asked the court to stop, but which the court refused to do) further caused Respondent to reasonably believe that Ms. Owens was telling the truth and that Mr. Echard was not.

24. During or about March 2024, Owens hired Respondent to represent her regarding the Motion for Sanctions Pursuant to Rule 26.

Response: Respondent admits he was retained by Ms. Owens on March 25, 2024 to represent her with respect to all aspects of the *Owens v. Echard* litigation.

25. On March 25, 2024, Respondent filed a notice of appearance on Owens' behalf in the paternity case.

Response: Admit.

26. Upon agreeing to represent Owens, Respondent had a duty in preparing her defense to the Motion for Sanctions Pursuant to Rule 26 and represent her at the June 10, 2024 hearing to (a) diligently investigate and research both parties' assertions and documentation, (b) carefully review the entire court record in the paternity case and related cases between Owens and Echard, (c) review the file provided to him by Owens' former counsel, (d) review the information and documents provided to him by Echard's counsel, and (e) review other information that came to his attention.

Response: This allegation contains a legal conclusion for which no response is required. As noted above, this allegation also materially misstates the law.

27. On March 26, 2024, Echard's counsel filed a Motion for Relief from Judgement [sic] Based on Fraud (hereafter Motion for Relief from Judgement) in In the Matter

of Owens and Echard, Maricopa County Superior Court No. FC2023 052771, an order of protection case.

Response: Admit.

28. That March 26, 2024 *Motion for Relief from Judgment* stated in part:

> On October 6, 2023[,] and October 25, 2023, Plaintiff [Owens] committed fraud when she filed her underlying Petition for Order of Protection and then testified before Judge Doody under the fraudulent pretense that she was pregnant with Defendant [Echard]'s "twins" and that Defendant [Echard] was "cyberbullying her" by posting her "medical records" online." To be clear, **Plaintiff [Owens] was never 6 pregnant by Defendant [Echard]** as they did not have penetrative sexual intercourse.

Response: Admit.

29. That Motion for Relief from Judgement further stated that Owens had admitted during her deposition that she had modified the medical records, which the Court relied upon to grant an order of protection.

Response: Admit the motion contains certain allegations, the substance of which speak for themselves.

30. That Motion for Relief from Judgement noted that Owens had "provided no verifiable medical evidence to support her alleged twin pregnancy and ha[d] admitted that the ultrasound at the core of this Court's basis for granting the Protection Order was de facto fraudulent." (Underlines and italics in original).

Response: Admit the motion contains certain allegations, the substance of which speak for themselves.

31. That Motion for Relief from Judgement contained additional information relevant to the paternity case.

Response: Admit the motion contains certain allegations, the substance of which speak for themselves.

32. That Motion for Relief from Judgement again placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father; those issues were relevant to the Motion for Sanctions Pursuant to Rule 26.

Response: Deny.

33. On April 9, 2024, Respondent filed a Notice of Appearance and Notice re: Pending Motion on Owens' behalf in the order of protection case (FC2023-052771).

Response: Admit.

34. On April 22 and May 9, 2024, Respondent provided Echard's counsel with supplemental disclosure statements that failed to adequately address Owens' changing version of events.

Response: Admit that Respondent provided certain disclosures to Echard's counsel. The assertion that such disclosures "*failed* to adequately address Owens' changing version of events" is argumentative, improper, and misstates the legal requirements of what disclosure is required under Family Law Rule 49.

35. On June 10, 2024, Judge Mata presided over a hearing to address Echard's request for sanctions and attorney's fees.

Response: Admit.

36. During that June 10, 2024 hearing, Owens provided false testimony about matters pertaining to her alleged pregnancy.

Response: Respondent lacks sufficient information upon which to form a belief as to the accuracy of this allegation, and therefore denies same.

37. Respondent failed to correct or clarify Owens' false testimony during direct examination or redirect examination.

Response: This allegation misstates the facts and is based on a false premise – i.e., that Respondent *knew* Ms. Owens was testifying falsely. Respondent did *not* know Ms.

Owens was testifying falsely, and thus was under no obligation to correct or clarify such testimony. Respondent otherwise denies the allegation of this paragraph.

38. On June 18, 2024, Judge Mata entered an Under Advisement Ruling regarding the June 10, 2024 hearing, in which she found that (i) Owens failed to "meet the burden of clear and convincing evidence that [Echard] was the father of [Owen]'s alleged pregnancy"; (ii) Owens "acted unreasonably when she initiated litigation without basis or merit"; (iii) the Petition for Court Order for Paternity was "premature at best"; (iv) Owens "repetitively failed to comply with [Family Law Rule] 49 [regarding disclosure], even on Order of this Court"1 (Judge Mata did not find that Respondent had failed to comply with the disclosure or discovery rules or the Court's April 4, 2024 order compelling disclosure); (v) Owens "acknowledged [that] she altered hCG test results,[2] [and] an ultrasound and sonogram[3]"; (vi) "the petition was not filed in good faith, the petition was not grounded in fact or based on law, the petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party"; (vii) Owens "provided false testimony as to the viability of the pregnancy" in the paternity case, the order of protection case, and an injunction against harassment case filed by Echard; and (vii) Owens "knowingly presented a false claim, [and] knowingly violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415."

Response: Respondent admits the court issued a ruling, the substance of which speaks for itself.

39. On August 16, 2024, Judge Mata issued an Order re: Application for Attorneys' Fees and Costs, directing Owens to pay a total of $149,219.76 in attorneys' fees and costs to Echard within 180 days.

Response: Admit.

40. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A

41. On February 21, 2024, Judge Mata issued a minute entry order in the paternity case regarding the status conference held on that date, which stated in part: [text is quoted]

Response: Admit.

42. On April 1, 2024, Respondent filed a Motion for Extension of Time to Respond to Respondent [Echard]'s [March 11, 2024] Motion to Compel (hereafter Motion for Extension of Time to Respond), to which he attached a declaration that he signed.

Response: Admit.

43. Respondent included the following in his April 1, 2024 Motion for Extension of Time to Respond: (a) a reproduction of a portion of Owens' "Lab Results History" report dated June 1, 2023; (b) a portion of an "Unable to Process Request" notice from Banner Health regarding Owens; and (c) a portion of a receipt from Banner Urgent Care regarding Owens dated June 1, 2023.

Response: Admit.

44. Respondent included the following in his April 1, 2024 declaration: (a) a reproduction of a portion of Owens' "Lab Results History" report dated June 1, 2023; (b) a portion of a receipt from Banner Urgent Care regarding Owens dated June 1, 2023; (c) a portion of an "Unable to Process Request" notice from Banner Health regarding Owens; and (d) copies of messages between Owens and Dr. Joshua Makhoul.

Response: Admit.

45. Respondent knowingly violated Judge Mata's order by disclosing information and documents related to Owens' medical records in his Motion for Extension of Time to Respond and declaration.

Response: DENY.

46. Respondent failed to file a motion to seal either his April 1, 2024 Motion for Extension of Time or his declaration, despite Judge Mata's February 21, 2024 minute entry order.

Response: Respondent cannot admit nor deny the allegations of this paragraph because it is based on a false premise; i.e., that Respondent was under an obligation to file a Motion to Seal. No such obligation existed at the time, nor was there any lawful basis for such a duty to have been imposed, nor was there any legal basis to seek an order allowing any documents to be filed under seal.

47. On April 4, 2024, Respondent posted the following on his law office blog:

> . . . [O]n October 16, 2023, Laura had a blood test done at a lab. Wanna guess what the results showed? PREGNANT. But don't take my word for it, the report can be viewed right here.

Response: Admit.

48. Respondent knowingly violated Judge Mata's February 21, 2024 order by including a link on his blog that led to Owens' October 17, 2023 Sonora Quest Laboratories' medical report.

Response: DENY.

49. Also on April 4, 2024, Gregg Woodnick, Echard's counsel, sent an email message to Respondent, which stated in part: "I am also not certain why you are publishing

court documents and your client's personal medical records contrary to court order. Laura [Owens] needs to comply with the order and provide disclosure."

Response: Admit that Gregg Woodnick sent an email which contained certain statements, the substance of which speak for themselves. Affirmatively allege the above statement is not a complete discussion of the subject matter.

50. That email message from Attorney Woodnick placed Respondent on notice that he needed to take some action to seal Owens' medical information and documents.

Response: Deny.

51. Despite notice from Echard's counsel regarding his violation of Judge Mata's February 21, 2024 order, Respondent failed to file a motion to seal Owens' medical information and documents that he had disclosed in his April 1, 2024 Motion for Extension of Time to Respond and attached declaration.

Response: Respondent cannot admit nor deny the allegations of this paragraph because it is based on a false premise; i.e., that Respondent was under an obligation to file a Motion to Seal. No such obligation existed at the time, nor was there any lawful basis for such a duty to have been imposed, nor was there any legal basis to seek an order allowing any documents to be filed under seal.

52. On or about April 19, 2024, Respondent posted the following on his law office blog (and/or other social media), which included a portion of one of Owens' medical reports:

Guess what Laura's weight was on November 14th? It's right there in the records (which Clayton's lawyer has), so you can read the number for yourself.

Response: Admit.

53. On April 26, 2024 (a Friday), at approximately 5:52 p.m., Respondent filed Petitioner's Response to Respondent's Amended Motion for Relief Based on Fraud (hereafter "April 26, 2024 Response").

Response: Admit.

54. Respondent's filing of the April 26, 2024 Response did not, at the time he filed it, become a matter of public record.

Response: Deny.

55. That April 26, 2024 Response included a summary of portions of Dr. Deans and Dr. Justicia-Linde's expert report, which they had prepared for Echard (e.g., pages 8 through 11, under the heading "Ms. Owens Was Pregnant," discussed Dr. Deans and Dr. Justicia-Linde's expert report, and a quotation taken from Drs. Deans and Justicia-Linde's expert report appeared near the bottom of page 10).

Response: Admit.

56. Attached to that April 26, 2024 Response was a copy of Dr. Deans and Dr. Justicia-Linde's expert report and Dr. Deans' curriculum vitae.

Response: Admit.

57. That April 26, 2024 Response discussed the report provided by Owens' medical expert, Dr. Michael Medchill; attached to that April 26, 2024 Response was a copy of Dr. Medchill's expert report and curriculum vitae.

Response: Admit.

58. Also attached to that April 26, 2024 Response were copies of Owens' medical records and other documents relevant to Echard's claims (e.g., Owens' affidavit dated April 16, 2024, included information from Owens' medical records and portions of her medical reports/records).

Response: Admit.

59. At approximately noon on Saturday, April 27, 2024, Respondent posted on his publicly accessible personal X (formerly Twitter) account, his law firm website and/or other social media a link to, among other things, his April 26, 2024 Response, which included portions of Owens' medical information and documents.

Response: Admit.

60. Respondent knowingly violated Judge Mata's February 21, 2024 minute entry order by posting Owens' medical information and documents on his X account or other social media.

Response: Deny.

61. On April 29, 2024, the Maricopa County Superior Court Clerk's Office docketed Respondent's April 26, 2024 Response, at which time that document became a public record available to the public through the Clerk's Office.

Response: Deny. Respondent affirmatively alleges the State Bar's allegation contains a material misstatement of the law; i.e., that an electronically filed document is *not* deemed a public record until it is *docketed* by the clerk. That statement is materially false. *See* Ariz. Code of Jud. Admin. § 1—901(R) (setting forth electronic filing rules and procedures for Arizona courts, and explaining, "A submission is deemed filed on the date and time it is received by the EFSP [Electronic Filing Service Provider] unless the clerk later rejects the document based on a deficiency.") (emphasis added). The pleading which is the subject of this allegation was *not* rejected by the clerk based on a deficiency. As such, the matter was deemed filed, and therefore a matter of public record, on the date and time it was *received* by the Electronic Filing Service Provider, not the date and time it was subsequently docketed by the Clerk of Court. Under Arizona law, and under controlling United States Supreme Court precedent, a document filed with a court IS a public record, regardless of when (if ever) the clerk makes that document available online.

62. Neither Dr. Samantha Deans nor Dr. Faye Justicia-Linde consented to the publication of their expert report because it contained a review of Owens' private medical records, which was intended solely for the attorneys and the Court's review.

Response: Deny. By agreeing to appear as experts, and by submitting an expert report for use in the case, both Dr. Samantha Deans nor Dr. Faye Justicia-Linde knowingly and voluntarily consented to the publication of their expert report because the Arizona Rules of Family Law Procedure <u>require</u> all expert reports to be disclosed in the absence of a protective order which the court repeatedly refused to enter in this case. *See* Ariz. R. Fam. L. P. 49(j). In the absence of a specific court order prohibiting the disclosure of a specific expert report, there is no legal basis for an expert to require "consent" prior to the expert's report being published. In this case, no such order was ever issued. Respondent further notes that even if the court had issued a protective order limiting the disclosure of expert reports (which it did not), Mr. Woodnick never advised Respondent that the report of Drs. Deans and Justicia-Linde was marked confidential or that the sharing of the report was otherwise restricted in any way.

63. At no time did Respondent file a motion to seal (a) Owens' medical information or documents or (b) his April 26, 2024 Response, despite Judge Mata's February 21, 2024 minute entry order.

Response: Respondent cannot admit nor deny the allegations of this paragraph because it is based on a false premise; i.e., that Respondent was under an obligation to file a Motion to Seal. No such obligation existed at the time, nor was there any lawful basis for such a duty to have been imposed, nor was there any legal basis to seek an order allowing any documents to be filed under seal.

64. By engaging in the conduct set forth above, Respondent violated ER 3.4(c) by knowingly violating Judge Mata's February 21, 2024 order and court rules; ER 3.6(a) by making extrajudicial statements that he knew or reasonably should have known would be disseminated by means of public communication and that would have a substantial likelihood of materially prejudicing the paternity case; ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay, or burden any other person; and, Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating Judge Mata's February 21, 2024 order.

Response: Deny.

65. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A.

66. Laura Owens obtained a Domestic Violence Restraining Order (DVRO) against Michael Marraccini in California, which was renewed and extended to September 11, 2025.

Response: Admit.

67. That DVRO required Marraccini to remain at least 100 yards away from Owens.

Response: Admit.

68. During the course of the paternity case, Echard's counsel disclosed to Respondent that he intended to call Marraccini as a witness.

Response: Admit, with the caveat that Mr. Marraccini's counsel later informed Respondent, both verbally and later confirmed in writing, that Mr. Marraccini was not going to appear at trial in Arizona, and that as a result of that statement from Mr. Marraccini's counsel (and in the absence of any evidence that Mr. Woodnick had obtained a *lawful* subpoena which could compel Mr. Marraccini to appear in Arizona), Respondent understood and believed that Mr. Marraccini was *not* a trial witness.

69. A few weeks later, just before the disclosure/discovery deadline, Echard's counsel informed Respondent that, contrary to information he (Respondent) had been given by Marraccini's California attorney, Marraccini would appear and testify at the hearing.

Response: Admit.

70. Neither Echard's counsel nor Marraccini nor Respondent filed a motion in the San Francisco County (California) Superior Court to modify the terms of the DVRO to allow Marraccini to testify in Arizona.

Response: Admit. Respondent further affirmatively alleges that he told Echard's counsel, Gregg Woodnick, that an order from the issuing court in California would be required to modify the DVRO against Mr. Marraccini, and that as a result of both Arizona law and federal law, the Maricopa County Superior Court could not disregard or modify the California court's order. In addition, Respondent specifically informed Mr. Woodnick that both federal law and Arizona state law required the Maricopa County Superior Court to give full faith and credit to the California DVRO by enforcing that order, as written:

> Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory [1] as if it were the order of the enforcing State or tribe.

18 U.S.C. § 2265(a)

> A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction.

A.R.S. § 13–3602(V).

71. On April 30, 2024, Respondent filed a Motion in Limine asking the Court to preclude Marraccini from testifying because (a) his testimony would elicit improper

Rule 404(b) evidence and (b) Echard's counsel had allegedly failed to comply with the disclosure rules regarding the nature of Marraccini's testimony; Respondent did not reference the existence of the DVRO in that Motion in Limine.

Response: Admit that Respondent filed a Motion in Limine, the substance of which speaks for itself.

72. Also on April 30, 2024, Respondent filed an Emergency Motion to Strike and Request for Immediate Telephonic Scheduling Conference (hereafter "Emergency Motion to Strike"), which included a request for an immediate scheduling conference to address whether Echard's counsel would be permitted to call three newly-disclosed witnesses (one of whom was Marraccini) at the June 10, 2024 hearing.

Response: Admit.

73. On or about May 7, 2024, Echard's attorney subpoenaed Marraccini to testify as a Rule 404(b) witness at the hearing scheduled for June 10, 2024.

Response: Deny. Respondent is aware that Echard's counsel has *claimed* that he sent an Arizona subpoena to Mr. Marraccini at some point. Respondent affirmatively alleges an Arizona trial subpoena is not legally enforceable outside the State of Arizona, and that an Arizona subpoena could not have *lawfully* compelled any witness to travel from outside the state for the purpose of attending a hearing in Arizona.

74. Marraccini was aware of the paternity case, and agreed to voluntarily appear and testify in Arizona at the June 10, 2024 hearing.

Response: Admit Marraccini was aware of the case. Affirmatively allege Marraccini appeared in Arizona on June 10, 2024, but that Marraccini did NOT agree to testify at the hearing. On the contrary, as his attorney previously stated to Respondent, Mr. Marraccini *knew* he would not testify as a witness at the hearing.

Respondent further affirmatively alleges Marraccini has made public statements admitting: "I knew I wasn't going to be testifying [at the trial]". https://youtu.be/nhdseYCE9WU?si=kNHCtDZmhbq4HxPQ&t=5804 (at timestamp 01:36:44)

75. In an email message from Respondent to Echard's counsel on May 8, 2024, Respondent stated:

> This goes without saying, but to the extent I suggested [that] Mike [Marraccini] would be arrested if he comes to court in AZ, that suggestion is completely and totally withdrawn. I only said that because I didn't want Mike to show up without giving me the chance to at least interview him (as I would with any normal witness). As long as Mike agrees to have a reasonable call to answer to [sic] some questions, I'll stipulate and agree [that] his appearance in AZ is NOT a violation of anything[,] and will not expose him to arrest or other legal consequences.

Response: Respondent admits an email was sent (as part of a much longer and more detailed discussion), and that the quoted text appears in one such email. Respondent affirmatively alleges the quoted text does not accurately reflect the *complete* conversation on this subject.

76. Marraccini did not make himself available for Respondent to interview.

Response: Admit.

77. On May 21, 2024, Judge Mata issued a minute entry order denying Respondent's Motion in Limine.

Response: Admit.

78. On June 3, 2024, to preserve the issue of the propriety of Marraccini testifying at the June 10, 2024 hearing, Respondent filed a Pretrial Statement that addressed that issue.

Response: Admit.

79. In that Pretrial Statement, Respondent explained that it would be a crime for Marraccini to violate the California DVRO, and that any violation of the order by Marraccini would subject him to arrest.

Response: Admit.

80. That Pretrial Statement also stated that "[the] issue has been reported to Court security by undersigned counsel [Respondent][,] who has requested that Mr. Marraccini be arrested if he violates the DVRO, as the law requires."

Response: Admit.

81. Also on June 3, 2024, Respondent called security personnel at the Maricopa County Superior Court and spoke with Officer Gibbs, informing him that Owens had a valid DVRO from California and that she was concerned that he intended to violate the order by appearing at trial.

Response: Admit.

82. Also on June 3, 2024, Respondent sent an email message to Officer Gibbs, to which he attached a copy of the California DVRO.

Response: Admit.

83. Respondent's June 3, 2024 email message to Officer Gibbs stated that "court approval for [Marraccini] to appear [at trial] has not been granted, and the DVRO contains no exceptions for in-person contact like this."

Response: Admit.

84. Judge Mata had previously denied Respondent's April 30, 2024 Motion in Limine (to prevent Marraccini from testifying), but had not yet ruled on his objection to Marraccini's testimony, which he set forth in a Petitioner's Pretrial Statement filed on June 3, 2024.

Response: Admit.

85. Respondent also claimed in his June 3, 2024 email message to Officer Gibbs that if Marraccini appeared in court, he would clearly violate the DVRO.

Response: Admit.

86. Respondent additionally claimed in his June 3, 2024 email message to Officer Gibbs that "[d]ue to the short time before trial, [he] cannot raise this issue with Judge Mata before next week."

Response: Admit.

87. On June 4, 2024, Echard's counsel sent an email message to Officer Gibbs and Judge Mata's court stating that a "valid subpoena" had been issued for Marraccini's appearance; Respondent was "copied" on that email message.

Response: Admit.

88. Echard's counsel suggested in that June 4, 2024 email message to Officer Gibbs that Respondent's act of requesting law enforcement to enforce Owens' DVRO qualified as an attempt to intimidate a witness, as set forth in A.R.S. § 13-2802.

Response: Admit.

89. Sometime prior to the June 10, 2024 hearing, Respondent sent an email message to Marraccini's California attorney, informing her that, because of the DVRO, Marraccini would be arrested if he attended the June 10, 2024 trial.

Response: Respondent alleges this paragraph materially misstates the facts. Respondent alleges that on May 6, 2024 Respondent sent an email to Marraccini's California attorney, Randi Sue Pollock, in which he stated, among other things:

> Ms. Pollock,
>
> I am writing to document our discussion just now and to explain my position. Per the email below, we spoke about your client Mike Marraccini about two weeks ago. At that time, I told you I just wanted to speak with Mike and hear his side of the story. I also explained that IF Mike was going to be a witness in the Arizona paternity matter, I could (and would) be willing to subpoena him for a deposition, if he was unwilling to have a simple phone conversation.
>
> In response to that discussion, you sent me the email below stating that Mr. Marraccini was NOT going to testify at the trial in June.
>
> Since then, counsel for Mr. Echard has indicated Mr. Marraccini WILL be testifying in person at trial in June. This is, of course, inconsistent with what you said below.
>
> To clarify the situation, I called you again today to ask if it was possible for me to speak with Mr. Marraccini. Your response was (to paraphrase): "No, we are not willing to cooperate with you."
>
> In light of that response I want to make two things clear:
>
> 1.) If Mr. Marraccini intends to testify at trial, then I have an absolute right to know this, and I have a right to interview him. That interview can be done informally in a phone call, or it can be done formally in a deposition. Either way, refusing to cooperate is NOT an available option IF Mr. Marraccini wants to participate as a trial witness.
>
> 2.) On the phone, you suggested Mr. Marraccini may just "show up" at trial rather than participating as a subpoenaed witness (i.e., he would simply choose to be there, either as a spectator, or as a non-subpoenaed witness).
>
> **<u>If that is his plan</u>**, I need to be clear about our position – if Mr. Marraccini shows up as *either* a spectator or as a non-subpoenaed witness, <u>Laura will</u>

> ask the Phoenix Police to have Mr. Marraccini immediately arrested for violating the restraining order issued against him (copies attached).
>
> In short, I agree Mr. Marraccini CAN testify at trial without fear of arrest, *provided* he complies with the rules of procedure. That means, among other things, I have the right to interview him and take his deposition if necessary.
>
> If Mr. Marraccini does not want to comply with the procedural rules, that's 100% OKAY. I am more than happy if he wants to stay home (assuming he hasn't been lawfully summoned). But if he comes within 100 yards of Laura without being compelled to appear by valid subpoena, then he will risk arrest and prosecution for violating the restraining order.
>
> NOTE – Rule ER 3.4(f) of the Arizona Rules of Professional Conduct provides a lawyer shall not: "request a person other than a client to refrain from voluntarily giving relevant information to another party…."
>
> Based on this rule, I *assume* Mr. Woodnick has not instructed you or Mr. Marraccini to refrain from speaking to me. If that has occurred, it would be a *per se* violation of the ethical rules.
>
> Also, and just to be clear – I am not, under any circumstances, suggesting Mr. Marraccini should *not* participate in the trial if he has relevant information. All I am saying is that if he WANTS to testify, he needs to do so in a manner that complies with the rules and the law. This is mandatory to ensure basic fairness to ALL sides

Respondent further affirmatively alleges that he made multiple attempts to negotiate with Mr. Echard's counsel to ensure that Mr. Marraccini could appear and testify at trial, while also doing so in a manner that did not violate the California DVRO. Respondent even told Mr. Woodnick that as an attorney licensed to practice law in California, he (Respondent) would agree to prepare and file a stipulation with the California court which would modify the existing DVRO to allow Mr. Marraccini to travel to Arizona for the purpose of testifying at the Arizona hearing. Mr. Woodnick rejected this offer without any explanation, and instead Woodnick aided and abetted

Mr. Marraccini's criminal violation of the California court's order for the sole purpose of allowing Mr. Marraccini to terrify Ms. Owens by sitting less than 30 feet away from her despite the fact he had no intention of testifying, and did not testify.

90. On the morning of June 10, 2024, when Owens saw Marraccini in the parking lot, Respondent contacted Court security personnel, but he was informed that they were unable to help.

Response: Respondent admits that on June 10, 2024, Owens (and Respondent) saw Mr. Marraccini in the parking lot less than 300 feet away from Owens. At that time, Ms. Owens asked Respondent to contact court security to seek help, which he did. Ms. Owens further told Respondent that if he did not contact law enforcement, she would not be able to remain in court due to her fear of Mr. Marraccini. Respondent was extremely concerned that if he did not do everything possible to resolve Ms. Owens' concern, she would leave, resulting in extreme prejudice to the administration of justice. For that reason, Respondent initially contacted court security for assistance. In response, court security advised Respondent they could not arrest anyone for violating a court order, and that the only way to seek enforcement was to contact the Phoenix Police Department. In response to that suggestion from court security, Respondent contacted Phoenix Police for assistance.

91. Shortly thereafter, Respondent called 9-1-1 from the courthouse parking lot to report Owens' concerns about Marraccini's ostensible violation of the DVRO.

Response: Respondent admits calling 9-1-1, but not from the parking lot. The call was made while inside the courthouse while Respondent was standing at the court security station, following advice from court security staff who told Respondent to call Phoenix PD.

92. Prior to commencement of the June 10, 2024 hearing, Court security personnel and/or the Maricopa County Sheriff's Office (MCSO) informed the Court that Respondent had called 9-1-1 from the parking lot of the Northeast Justice Court building and attempted to have Marraccini arrested for violation of the DVRO.

Response: Respondent is not aware of what law enforcement told the court regarding this issue because Respondent was not present when law enforcement officers spoke with the judge.

93. Judge Mata or a member of her staff, through Court Security personnel and/or MCSO, informed the responding police officers that Marraccini was responding to a valid subpoena and was not to be detained prior to his testimony.

Response: Respondent is not aware of what the judge or her staff told law enforcement regarding this issue because Respondent was not present when law enforcement officers spoke with the judge.

94. On June 10, 2024, Court security personnel escorted Respondent and Owens from the parking lot to the courtroom prior to the hearing.

Response: Admit.

95. At the June 10, 2024 hearing, Judge Mata allowed Respondent to argue on the record (before any witness was called) his objection to Marraccini testifying.

Response: Admit.

96. Respondent argued nondisclosure as a basis for precluding Marraccini's testimony, as well as the existence of the DVRO, stating:

> The second issue, Your Honor, deals with this California court restraining order. I think you have a copy of it. It's one of our trial exhibits. We have a court record from the State of California that prohibits Mr. Marraccini from being within a hundred yards of Ms. Owens. He's in violation of it right now. There is no exception for court appearances. She [Owens] is so terrified that she may not be able to sit here during this trial. Under the full faith and credit clause of the U.S. Constitution and also under federal law, this Court is required to enforce that order as it is written. You can't change it, you can't modify it, you can't disregard it. And[,] yet here we are.

Response: Admit.

97. Judge Mata affirmed her prior ruling allowing Marraccini to testify.

Response: To the extent the reference to "her prior ruling" refers to the court's prior rulings on issues *other than* the DVRO, admit. With respect to the DVRO issue, that issue was never briefed prior to June 10, 2024, and the court made no rulings as to the DVRO issue before ruling from the bench on June 10, 2024.

98. Marraccini was sworn to testify in court on June 10, 2024, but never testified.

Response: Admit.

99. Based on the conduct set forth above, Respondent violated ER 3.4(a) and ER 8.4(a) by unlawfully attempting to obstruct Clayton Echard's access to Marraccini's testimony, ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay or burden Echard or his counsel, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

Response: Deny.

100. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A.

101. Respondent knowingly made unprofessional, disparaging and inappropriate comments about Judge Mata's qualifications and/or integrity in documents filed with the court and in posts he made on social media account(s).

Response: Respondent admits making certain statements regarding Judge Mata, the contents of which speak for themselves. Respondent affirmatively alleges every statement he made regarding Judge Mata was factually true, or was made with a good faith basis to believe it was true, or was an opinion protected by the First Amendment to the United States Constitution and by the Arizona Constitution.

102. On July 8, 2024 (20 days after Judge Mata entered her Under Advisement Ruling regarding the June 10, 2024 hearing), Respondent filed a Notice of Change of Judge for Cause; Memorandum & Affidavit in Support (hereafter "Notice of Change of Judge for Cause"), which was unprofessional and inappropriately disparaging of Judge Mata. For example, Respondent stated the following in the Notice: [quoted text]

Response: Respondent admits making certain statements regarding Judge Mata, the contents of which speak for themselves. Respondent affirmatively alleges every statement he made regarding Judge Mata was factually true, or was made with a good faith basis to believe it was true, or was an opinion protected by the First Amendment to the United States Constitution and by the Arizona Constitution.

103. Sometime prior to September 3, 2024 (which was during the pendency of Owens' appeal from Judge Mata's Under Advisement Ruling dated June 18, 2024), Respondent posted the following on his law firm's or personal blog, X (formerly Twitter) account and/or other social media: [quoted text]

Response: Respondent admits making certain statements regarding Judge Mata, the contents of which speak for themselves. Respondent affirmatively alleges every statement he made regarding Judge Mata was factually true, or was made with a good faith basis to believe it was true, or was an opinion protected by the First Amendment to the United States Constitution and by the Arizona Constitution.

104. Respondent's comment (above) pertained to Judge Mata's inadvertent reference to an incorrect Family Law rule regarding the final judgment language in her June 18, 2024 Under Advisement Ruling regarding the June 10, 2024 hearing (she referenced Rule 78(b) of the Arizona Rules of Family Law Procedure instead of Rule 78(c); she corrected that inadvertent error on February 18, 2025, after the Arizona Court of Appeals remanded the matter to superior court).

Response: Deny.

105. Sometime prior to September 3, 2024 (during the pendency of Owens' appeal), Respondent posted the following on his law firm's or personal blog, X 23 (formerly Twitter) account and/or other social media:

[IMAGE REMOVED]

(Respondent's reference to Judge Mata committing a crime pertained to her alleged failure to enforce the DVRO against Marraccini by allowing him to attend the June 10, 2024 hearing and be within 100 yards of Owens).

Response: Admit Respondent published the statement in question, but deny that the statement was *solely* limited to Judge Mata committing a crime related to her alleged failure to enforce the DVRO against Marraccini. For instance, although Judge Mata committed a federal crime in violation of 18 U.S.C. § 242 by willfully violating Laura's rights by refusing to enforce the California DVRO, and by intentionally violating Laura's right to due process, Judge Mata also committed other crimes including a violation of 18 U.S.C. § 1513(e) (which she violated by retaliating against Respondent for contacting law enforcement to report the *possible* commission of a federal crime by Mr. Marraccini).

106. On December 16, 2024, Respondent posted the following on his law office blog/website, which stated that "Google is not a valid legal source of evidence . . . . unless your case is assigned to Judge Mata": [quoted text]

Response: Admit.

107. On December 10, 2024, Respondent recorded a podcast in which he stated the following: At 27:25 minutes – "If Judge Mata was a person who cared about the rules, . . . she would have sanctioned [Echard's counsel] Woodnick for making a false statement about the law, and she could have referred him to the State Bar like she did with me."

Response: Admit.

108. Based on the conduct set forth above, Respondent violated ER 4.4(a) by using means that have no substantial purpose other than to embarrass or burden Judge Julie Mata, ER 8.2(a) by making a statement with reckless disregard as to its truth or falsity concerning Judge Mata's qualifications or integrity, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rules 41(b)(3) and (7), Ariz. R. Sup. Ct., by failing to maintain the respect due to the court and Judge Mata and engaging in unprofessional conduct (including by making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity).

Response: Deny.

109. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A.

110. On November 21, 2024, Respondent sent an email message to Laura Owens and copyright@reddit.com, in which he identified himself as a lawyer in Phoenix, Arizona representing Owens in her case against Echard.

Response: Admit Respondent sent an email, the contents of which speak for themselves.

111. That November 21, 2024 email message, which Respondent made available to Reddit employees when he sent it to copyright@reddit.com, stated in part:

Clayton [Echard]'s fans are, generally speaking, total fucking psychotic assholes. . . . . Clayton's fans, being the total fucking assholes that they are, have come up with a new plan . . ..

Response: Admit.

112. On December 4, 2024, Respondent filed a Request for Subpoenas to Identify Infringers pursuant to 17 U.S.C. § 512(h); and Supporting Declaration (hereafter "Request for Subpoenas"); Respondent included a copy of his November 21, 2024 email message as Exhibit A to that Request for Subpoenas.

Response: Admit.

113. By engaging in the conduct set forth above, Respondent violated Rule 41(b)(7), Ariz. R. Sup. Ct., by engaging in unprofessional conduct.

Response: Deny.

114. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A.

115. Echard's counsel deposed Laura Owens on March 1, 2024 (approximately three weeks before Owens hired Respondent).

Response: Admit.

116. During Owens' deposition, she testified that she had (a) an ultrasound performed at Planned Parenthood on July 7, 2023, in Mission Viejo, California; (b) altered the California Planned Parenthood sonogram to say "SMIL" (Southwest Medical Imaging) instead of Planned Parenthood; (c) had gone to Planned Parenthood anonymously; (d) added her name to the sonogram; (e) not changed the date on the sonogram from July 2, 2023, to July 7, 2023; and (f) altered the sonogram at home using Adobe Acrobat.

Response: Admit.

117. On March 11, 2024, Echard's counsel filed a Motion to Compel the production of, among other things, the original records from "Planned Parenthood – Mission Viejo Health Center."

Response: Admit.

118. On March 25, 2024, Respondent sent an email message to Echard's counsel stating he would take a "trust but verify" approach with Owens, and that he would actively investigate every detail of what she had said, looking for information that contradicted her statements.

Response: Admit.

119. On March 27, 2024, Echard's counsel sent an email message to Respondent, stating that (a) Owens' prior counsel had presented records to the court (including

medical records and letters from law firms) that were fabricated by Owens, (b) Owens had “misused court processes in multiple states to perpetuate the most bizarre of cons for relationships,” and (c) four men had documented Owens faking pregnancies and fabricating medical records.

Response: Admit.

120. That March 27, 2024 letter from Echard’s counsel placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events, and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

Response: Deny.

121. On April 4, 2024, Judge Mata signed an order granting Echard’s Motion to Compel, directing Respondent to provide Echard with the following, among other things, by 5:00 p.m., April 19, 2024: “All medical records for Petitioner [Owens] from Planned Parenthood Mission Viejo from on or about July 7, 2023.”

Response: Admit.

122. That April 4, 2024 order placed Respondent on notice that he had to diligently search for all of Owens’ medical records at Planned Parenthood Mission Viejo from on or about July 7, 2023.

Response: Admit.

123. On April 10, 2024, Respondent reviewed Judge Mata's April 4, 2024 order and sent an email message to Owens regarding that order.

Response: Admit.

124. When Respondent asked Owens for information about the Planned Parenthood sonogram, she provided him with her username and password for her Planned Parenthood patient portal.

Response: Admit.

125. On April 15, 2024, at 1:55 p.m., Respondent logged in to Owens' Planned Parenthood patient portal.

Response: Admit.

126. When Respondent logged in to Owens' Planned Parenthood patient portal on April 15, 2024, records reflected that Owens had scheduled an appointment at Planned Parenthood in California under her real name (apparently in late June 2023).

Response: Admit.

127. Owens' Planned Parenthood patient portal also reflected an appointment scheduled for July 2, 2023, at a Planned Parenthood location in Costa Mesa, California (located in Orange County).

Response: Due to the amount of time that has passed, caused by unnecessary and prejudicial delay on the part of the State Bar, Respondent cannot recall precisely what information was reflected in the patient portal when he briefly viewed it nearly two years ago.

128. Owens' Planned Parenthood portal did not reflect an appointment at a Planned Parenthood location in Los Angeles.

Response: Due to the amount of time that has passed, caused by unnecessary and prejudicial delay on the part of the State Bar, Respondent cannot recall precisely what information was reflected in the patient portal when he briefly viewed it nearly two years ago. Having said that, Respondent believes this allegation is correct, but has no knowledge as to whether the specific "patient portal" he viewed would have included such information.

129. Although Respondent had checked Owens' Planned Parenthood portal on April 15, 2024, and knew it did not have records reflecting that Owens attended an appointment or had an ultrasound performed at the Mission Viejo location, he never took any steps to correct Owens' false deposition or June 10, 2024 hearing

testimony that her ultrasound was performed in Mission Viejo or, additionally, in the case of the hearing, Los Angeles.

Response: Deny. Respondent affirmatively alleges (as he has *repeatedly* explained to bar counsel) that to the best of his knowledge, Ms. Owens' testimony at the June 10 trial was first time she had ever stated that she sought care from Planned Parenthood in *Los Angeles* as opposed to neighboring Orange County. As such, Respondent understood that when she changed her testimony on this issue on June 10th, Ms. Owens was in fact, doing so for the purpose of *correcting* her prior deposition testimony.

130. At some point in time, Respondent became aware that Echard's counsel had unsuccessfully sought copies of medical records pertaining to Owens from Planned Parenthood in Mission Viejo, California.

Response: Admit.

131. Upon learning that Echard's counsel had not obtained records from Planned Parenthood in Mission Viejo, Respondent was on notice that he needed to be more diligent and more closely scrutinize what Owens had told him.

Response: Deny.

132. Respondent was aware that Echard had alleged in his Motion to Compel that he (Echard or his counsel) had received confirmation from "nearly all providers" that Owens was never a patient of theirs.

Response: Admit that Respondent was aware of this allegation by Mr. Woodnick, and affirmatively alleged that Mr. Woodnick's statement to the court was *not* consistent with the actual testimony of Ms. Owens' providers, several of whom confirmed that she *was* a patient of theirs.

133. That Motion to Compel placed Respondent on notice that he needed to be diligent in (a) ensuring that Owens was truthful about her health, alleged pregnancy, medical records and events and (b) determining whether any legitimate evidence existed reflecting that Owens was pregnant and that Echard was the father.

Response: Deny.

134. Respondent learned prior to the June 10, 2024 hearing that Owens had not gone to a Planned Parenthood office in Mission Viejo, California.

Response: Deny.

135. Prior to the June 10, 2024 hearing, Owens told Respondent that she had made appointments with Planned Parenthood in southern California on two consecutive weekends: June 23 to 25, 2023, and June 30 to July 2, 2023.

Response: Admit.

136. Owens admitted to Respondent that she had altered the sonogram prior to the date she hired him.

Response: Admit that Owens admitted to *Mr. Woodnick*, during her deposition, prior to Respondent representing her, that she had altered the sonogram, and that based on Respondent's review of the deposition transcript, he learned of that admission.

137. On April 15, 2024, Respondent sent a draft affidavit to Owens to review and sign, after which she informed him by email about some possible changes, including the following: "[M]aybe don't include the ultrasound since I tampered with the top? I don't want [Dr. Medchill, Owens' expert witness] to question me and my credibility based on that."

Response: Admit.

138. On April 16, 2024, Respondent discussed with Owens the draft affidavit he had sent to her on April 15, 2024.

Response: Admit.

139. Later on April 16, 2024, Owens executed the affidavit that Respondent had drafted, and which was attached to the April 26, 2024 Response [to Respondent Echard's Amended Motion for Relief Based on Fraud].

Response: Admit.

140. Owens' affidavit included an image of the altered sonogram and stated, in part:

> 28. On July 2, 2023, while traveling in southern California, I made an appointment with Planned Parenthood for the purpose of obtaining pills to medically terminate the pregnancy. . . .
>
> 29. My mother drove me to the Planned Parenthood location on July 2, 2023, but she did not come into the facility with me. . . .
>
> 30. I took a photo of the sonogram screen with my phone, but I did not want Clayton [Echard] to know where I had gone for the appointment. To conceal that information, I modified the image to change the facility name from Planned Parenthood to SMIL (Scottsdale Medical Imaging), and I also changed the date from July 2, 2023[,] to July 7, 2023. A copy of the modified sonogram image is shown below.
>
> 31. Other than changing the top part of the image to alter the facility name and date, I did not change any other part of the image.

Response: Admit.

141. Respondent subsequently learned that Owens had allegedly gone to Planned Parenthood in late June 2023, but took no steps to correct that false statement in her April 16, 2024 affidavit.

Response: Deny.

142. The sonogram that Owens claimed was from Planned Parenthood (shown above) includes her real name even though that sonogram was not a sonogram that resulted from an ultrasound that had been performed on Owens; Owens stated in her affidavit under penalty of perjury, however, that she had not changed anything on the sonogram other than the name of facility and date.

Response: Respondent cannot understand what this allegation is claiming, and therefore denies same.

143. During Owens' March 1, 2024 deposition, she testified that she went to Planned Parenthood anonymously, and that she later added her name to the sonogram; Respondent read Owens' March 1, 2024 deposition transcript on April 8, 2024.

Response: Admit.

144. Respondent became aware that Owens had falsely testified during her March 1, 2024 deposition that she obtained the ultrasound on July 7, 2023.

Response: Admit.

145. Owens told Respondent that she went to Planned Parenthood anonymously and then later, at the June 10, 2024 hearing, testified she went to Planned Parenthood using a fake name.

Response: Respondent cannot admit or deny the allegations of this paragraph because they appear to either misstate the facts or combine two different issues.

146. Based on Respondent's review of the transcript of Owens' March 1, 2024 deposition, he knew that Owens either (a) testified falsely at her deposition by stating she had gone to Planned Parenthood anonymously, and subsequently

changed the name of the facility and added her name to the sonogram, but did not change the date on it or (b) signed a false affidavit, which he filed, that stated she altered only the facility name and date.

Response: Deny.

147. Respondent failed to take steps to address Owens' false testimony during her deposition or to address her false affidavit.

Response: Deny.

148. Respondent never obtained from Owens the original, unaltered sonogram that she allegedly obtained from Planned Parenthood in California.

Response: Admit.

149. Respondent failed to verify with Planned Parenthood whether it treats people anonymously, or people using fake names.

Response: Deny, and affirmatively allege due to medical privacy laws, it is not possible to conclusively "verify" whether Planned Parenthood has ever provided care to anyone anonymously, and/or whether Planned Parenthood has ever violated its own policies in this regard. In addition, anecdotal evidence appears to confirm that Planned Parenthood *does* provide both confidential AND anonymous care (to the extent Dr. Deans testified to the contrary on this issue, Respondent assumes the State Bar is in the process of pursing discipline against Mr. Woodnick for suborning perjury):

[IMAGE REMOVED]

150. On April 18, 2024, Respondent sent an email message to Owens stating that he had told Echard's counsel that she went to Planned Parenthood on July 2, 2023, but that he had located an email message from her to Dr. Zieman dated June 28, 2023, stating that she had gone to Planned Parenthood the previous weekend.

Response: Admit.

151. On June 3, 2024, Cory Keith, the attorney who represented Owens immediately prior to Respondent's representation of her, filed a notice in the paternity case captioned as "Ethical Rule 3.3 Notice of Candor" (hereafter "Notice of Candor").

Response: Admit.

152. In that Notice of Candor, Attorney Keith stated that he told the Court the following at a status conference on February 21, 2024: "[Owens] has not lied in this case. She has not intentionally lied to the Court."

Response: Admit.

153. Attorney Keith stated in that Notice of Candor that at the time he made those statements, he believed them to be true.

Response: Admit.

154. Attorney Keith further stated in that Notice of Candor that based on Owens' March 1, 2024 deposition testimony, he no longer believed the statements he made on February 21, 2024, were true.

Response: Admit.

155. Attorney Keith summarized Owens' deposition testimony in that Notice of Candor.

Response: Admit.

156. Attorney Keith included evidence in that Notice of Candor establishing that Owens had testified falsely before Maricopa County Superior Court Commissioner Cynthia Gialketsis several months earlier in Echard v. Owens, No. CV2023-053952, an injunction against harassment proceeding.

Response: Respondent is not aware of the "evidence" referred to in this paragraph.

157. Respondent failed to take steps to address Owens' false statement to Judge Gialketsis during the November 2, 2023 hearing on the petition for injunction against harassment.

Response: Respondent *again* reminds the Bar and the PDJ <u>that he did not represent Ms. Owens on November 2, 2023</u>, and was not present at that hearing. Respondent was not retained to represent Ms. Owens until March 25, 2024, and was not aware of any allegedly false statements Ms. Owens made in November 2023 until Mr. Keith took steps to correct any false statements Ms. Owens made at that hearing.

158. Attorney Keith also noted in that Notice of Candor that Owens testified before Judge Gialketsis, among other things, that she had been seen by Dr. Higley "last Friday" (14:40 minutes into hearing), but stated during her March 1, 2024 deposition that she had an appointment with Dr. Higley, but did not attend the appointment.

Response: Admit.

159. At some point in time prior to the June 10, 2024 hearing, Owens admitted to Respondent that she incorrectly testified before Judge Gialketsis that she had just

been seen by Dr. Higley "Last Friday," but in reality, had only made an appointment to see him.

Response: Admit.

160. Although Respondent was aware of the content of the Notice of Candor, he failed to diligently investigate and research Owens' statements to him, which he presented to the Court.

Response: Deny.

161. Prior to June 10, 2024, Respondent reviewed (a) transcripts and video recordings of prior hearings, (b) Owens and Echard's deposition transcripts (taken before Owens hired Respondent), (c) the file maintained by Owens' second attorney (including documents he had prepared and filed), (d) the report prepared by Echard's expert witness, (e) disclosures made by Echard's counsel, (f) the medical records provided by Owens, and (g) possibly other records and information related to issues in the paternity case and related cases.

Response: Admit.

162. Based on the information that Respondent acquired during his representation of Owens, he was aware that Owens had (a) testified falsely before Judge Gialketsis, (b) made false statements during her deposition, (c) altered a sonogram (which he

offered into evidence during the June 10, 2024 hearing), and/or (d) signed an affidavit that included false information, which was filed with the Court.

Response: Admit that at some point, Respondent learned that months before he agreed to represent her, Ms. Owens made inaccurate statements regarding "seeing Dr. Higley" versus "making an appointment to see Dr. Higley" at a hearing which Respondent did not attend and which were ultimately not relevant to any issue in the paternity action. Respondent further admits that at some point, he learned that Ms. Owens made admissions in her deposition to the effect that she had changed the facility name on the Planned Parenthood sonogram, which Ms. Owens admitted in her deposition before Respondent represented her. Respondent denies ever learning, prior to the conclusion of the paternity case, that Ms. Owens had lied during her deposition, or that she signed an affidavit that contained false information.

163. Respondent knew that Owens had not been truthful about facts material to the paternity case, but did not withdraw from the case or take sufficient steps to address Owens' false statements and the altered sonogram.

Response: Deny. Respondent further affirmatively alleges sonograms are *not relevant nor are they material* to any issue the court may consider in a statutory paternity establishment case. Arizona family courts are <u>not</u> courts of general jurisdiction and they do not have subject matter jurisdiction *except* as conferred by statute. In a statutory paternity establishment case like *Owens v. Echard*, the outcome of the case <u>cannot</u> be decided (nor can it change) due to the presence or absence of a sonogram. Therefore, even if Ms. Owens had lied about one or more sonograms, those lies were NOT material to the case.

This is so because Arizona law sets forth the <u>only</u> ways in which a court can establish biological paternity in a contested case. In the absence of a voluntary admission[2] of paternity by an alleged father, the court may only establish paternity by applying one of these statutory presumptions as to the father:

> 1. He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.
>
> **2. *Genetic testing affirms at least a ninety-five per cent probability of paternity.***
>
> 3. A birth certificate is signed by the mother and father of a child born out of wedlock.
>
> 4. A notarized or witnessed statement is signed by both parents acknowledging paternity or separate substantially similar notarized or witnessed statements are signed by both parents acknowledging paternity.

A.R.S. § 25–814 (emphasis added).

Notably, <u>**a sonogram is not listed among the relevant statutory factors a court may consider**</u>, because a sonogram does not contain any information about the DNA of the child or the alleged father. As such, a sonogram is <u>not relevant</u> or material in a contested

[2] Like many other states, Arizona has a policy of encouraging children to be raised by willing parents, even when the parent is not biologically related to the child, as opposed to allowing children to become wards of the state. For that reason, Arizona allows a putative father to *admit* paternity even as to a child which is not biologically his.

paternity action, and it cannot be used to meet the 95% DNA match required by A.R.S. § 25–814(A)(2). To meet that requirement, a DNA test is required, not a sonogram.

164. During that June 10, 2024 hearing, Owens testified on direct examination that she obtained a sonogram at Planned Parenthood in "California."

Response: Admit.

165. Owens testified on direct examination that she went to Planned Parenthood "under a fake name," which was contrary to her deposition testimony (that she went anonymously).

Response: The deposition and trial testimony of Ms. Owens is a matter of record. As for whether her trial testimony "was contrary" to her deposition testimony, this is a matter of argument which Respondent cannot admit or deny without reviewing both transcripts in full.

166. Respondent asked Owens on direct examination if she "change[d] the name at the top of the sonogram." Owens responded, "of the location, yes."

Response: Admit.

167. Owens testified on direct examination that the Planned Parenthood sonogram was obtained at "the end of June [2023]."

Response: Admit.

168. Owens admitted during cross-examination that she had stated during her deposition that the ultrasound had been performed in Mission Viejo on July 7, 2023.

Response: Admit.

169. Owens also testified during cross-examination that she had been staying in Mission Viejo during or about late June or early July 2023.

Response: Admit.

170. Owens further testified during cross-examination that she had changed the date on the sonogram from July 2, 2023, to July 7, 2023, and that the July 2, 2023 date was the correct date; that testimony conflicted with her deposition testimony when she stated she had not changed the date on the Planned Parenthood sonogram and her testimony during direct examination that the ultrasound was conducted in late June 2023.

Response: The deposition and trial testimony of Ms. Owens is a matter of record. As for whether her trial testimony "was contrary" to her deposition testimony, this is a matter of argument which Respondent cannot admit or deny without reviewing both transcripts in full.

171. During cross-examination, Echard's counsel reminded Owens that during direct examination by Respondent, she testified that she went to Planned Parenthood under a fake name.

Response: Admit.

172. During cross-examination, Echard's counsel informed Owens that the Planned Parenthood office for Orange and San Bernado Counties (California) had submitted a letter noting that she had scheduled an appointment for July 2, 2023, but that the appointment was cancelled and that the ultrasound image she relied upon, which she claimed to have obtained from Planned Parenthood in Mission Viejo, was not consistent with ultrasound images from the Planned Parenthood offices in Orange and San Bernadino Counties.

Response: Admit.

173. Thereafter during cross-examination, Owens testified for the first time that her appointment was actually with Planned Parenthood in Los Angeles.

Response: Admit.

174. When asked during cross-examination when she went to Planned Parenthood in Los Angeles, Owens stated, "Exactly when I said I went. . . . July 2"; that testimony conflicted with her deposition testimony when she stated she had not changed the July 7, 2023 date on the Planned Parenthood sonogram and her

testimony during direct examination that the ultrasound was conducted at the end of June 2023.

Response: Admit.

175. There was testimony presented during the June 10, 2024 hearing that Planned Parenthood requires patients to provide identification, and does not allow anyone to obtain services anonymously.

Response: Admit that Dr. Deans offered this testimony, but deny that Dr. Deans established that she had personal knowledge on this issue.

176. Respondent did not take any steps during direct or redirect examination to address Owens' false or inconsistent testimony (e.g., the discrepancy between the date she testified to (i) during direct examination for the ultrasound (the end of June 2023); (ii) the date she stated during cross-examination (July 2 and 7, 2023); and the date she testified to during her deposition (July 7, 2023)).

Response: As has been explained to bar counsel *repeatedly*, Respondent understood that when Ms. Owens changed her testimony at trial on June 10, 2024, <u>that change was made *to correct previous errors in her deposition testimony*</u>. Based on Ms. Owens taking steps to correct her own prior statements, Respondent had no reason to believe any *further* steps were required.

177. Based on the conduct set forth above, Respondent violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting or controverting issues when he did not have a good faith basis in law and fact for doing so that was not frivolous, ER 3.3(a) and (b) by knowingly failing to take reasonable remedial measures when he knew that Owens intended to engage in, was engaging in or had engaged in criminal or fraudulent conduct related to the paternity case, ER 3.4(c) by knowingly disobeying an obligation under rules of the court, ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating any rule or order of the court.

Response: Deny.

178. All allegations set forth above are incorporated herein as if set forth in full.

Response: N/A.

179. On September 5, 2024, Respondent filed a Notice of Appeal regarding the Order re: Application for Attorneys' Fees and Costs (Owens v. Echard, Arizona Court of Appeals No. 2 CA-CV 2024-0315).

Response: Admit.

180. On September 9, 2024, Respondent filed an Amended Notice of Appeal on Owens' behalf.

Response: Admit.

181. On November 14, 2024, Respondent filed an opening brief with Division Two of the Arizona Court of Appeals, which included non-meritorious arguments: (a) Respondent falsely asserted that Judge Mata ordered sanctions under Rule 26; (b) Respondent set forth scenarios that were not based on the facts, so they did not have any bearing on the propriety of the fees awarded; (c) Respondent failed to meaningfully challenge Judge Mata's findings of fact; and (d) Respondent's position on appeal was unreasonable, in part because his Rule 26 argument was not grounded in law or fact, and his assertion that Judge Mata was biased and committed structural error failed to meaningfully address her rulings and ignored applicable law.

Response: Admit that Respondent filed a brief in the appeal. Deny that *any* arguments or assertions raised in the appeal were frivolous.

182. On March 28, 2025, Division Two of the Arizona Court of Appeals issued a memorandum decision denying Owens' appeal.

Response: Admit.

183. The Court of Appeals' memorandum decision stated in part: . . . [W]e note that a significant portion of Owens' appellate argument relies on her incorrect assertion that the trial court ordered sanctions [additional quoted text].

Response: Admit the Court of Appeals decision contains the quoted statements.

184. By engaging in the conduct set forth above, Respondent violated ER 1.3 by failing to act with reasonable diligence in representing Owens, ER 3.1 by asserting or controverting issues on appeal when he did not have a good faith basis in law and fact for doing so that was not frivolous, and ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

Response: Deny.

DEFENSES/DISPOSITIVE ISSUES

Without acknowledging the following points are affirmative defenses for which Respondent bears the burden of proof (as opposed to issues for which the State Bar bears the burden), Respondent alleges his conduct did not violate any ethical rule(s) for the following additional reasons:

1.) This Court lacks subject matter as to the alleged misconduct set forth in ¶¶ 109–113 of the Complaint. Those allegations accuse Respondent of acting unprofessionally when he sent an email that contained the words "assholes" and "fucking assholes". The email in question was sent by Respondent on his own behalf while acting to enforce his own legal rights. By acting to enforce his own rights, Respondent was not engaged in the practice of law; "one who acts only for himself in legal matters is not … practicing law." *Munger Chadwick, P.L.C. v. Farwest Dev. & Const. of the Sw., LLC*, 235 Ariz. 125, 127 n.3, 329 P.3d 229, 231 n.3 (Ct. App. 2014) (quoting *State ex rel. Frohmiller v. Hendrix,* 59 Ariz. 184, 190, 124 P.2d 768, 772 (1942)); "In Arizona, one who acts only for himself in legal matters is not considered to be engaged in the practice of law." *Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (Ct. App. 1983) (citing *State ex rel. Frohmiller v. Hendrix,* 59 Ariz. 184, 190, 124 P.2d 768, 772 (1942)). While Respondent admits the Arizona Supreme Court has jurisdiction to regulate the practice of law, the Supreme Court (and this Court) do not have plenary jurisdiction over those who are *not* engaged in the practice of law, simply because they happen to be lawyers.

2.) Substantial parts of this matter (including the issue raised above) arise from speech and conduct which is protected by the First Amendment and by other legal authority. Accordingly, Respondent's actions are protected by Arizona's anti-SLAPP law, A.R.S. § 12–751. Respondent intends to seek dismissal of this matter pursuant to that statute within the time limit provided by A.R.S. § 12–751(D).

3.) The State Bar's allegations in this matter violate Respondent's Constitutional rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution. Among other things, the State Bar has acted unlawfully by:

   a. Seeking to punish Respondent for violating rules which are unconstitutionally vague, both on their face and as applied;

b. Seeking to punish Respondent for violating rules in a manner which violates his rights to free speech protected by the First Amendment and the Arizona Constitution;

c. Seeking to punish Respondent for violating court orders which were unconstitutionally vague and/or which conflicted with other orders such that they failed to provide Respondent with notice regarding the scope of prohibited conduct;

d. Selectively seeking discipline against Respondent in a manner which arbitrarily violates the State Bar's own policies;

e. Arbitrarily ignoring misconduct by others involved in the same matter;

f. Adopting arbitrary policies and applying them in an arbitrary and unfair manner;

g. Retaliating against Respondent for engaging in protected speech;

h. Engaging in prejudicial delay.

Respondent's Address

Pursuant to Sup. Ct. R. 58(b), Respondent's address is:

David S. Gingras
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044

Respondent confirms the above address is the address reported to the state bar pursuant to Sup. Ct. R. 32(c)(4)(iii).

WHEREFORE, Respondent prays for the following:

A. For an order finding that Respondent's conduct in this matter did not violate any rule of professional conduct;

B. For an award of Respondent's reasonable attorney's fees (if any) and costs pursuant to A.R.S. § 12-353 and/or A.R.S § 12-751;

C. For an award of costs to include damages for documented time away from employment pursuant to A.R.S § 12-751(F);

D. For such other and further relief as the Court deems appropriate.

Respectfully submitted: March 6, 2026

__/s/ David S. Gingras__
David S. Gingras, #021097
Gingras Law Office, PLLC
[redacted]
Phoenix, AZ 85044
Tel.: [redacted]
[redacted]
Respondent

CERTIFICATE OF SERVICE

Original electronically filed via email to [redacted] on February 19, 2026 with:

Disciplinary Clerk of the
Office of the Presiding Disciplinary Judge
Supreme Court of Arizona
[redacted]
Phoenix, AZ 85007

Mr. James D. Lee, Esq.
Craig Henley, Esq.
State Bar of Arizona
c/o [redacted]
Phoenix, AZ 85016-6266

/s/ David S. Gingras

Exhibit 3

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
03-9-2026

C.LOPEZ
DISCIPLINARY CLERK

James D. Lee, Bar No. 011586
Craig D. Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
[redacted]
Phoenix, Arizona 85016-6266
Telephone [redacted]
Email: [redacted]

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** **Bar No. 021097** Respondent.	**PDJ 2026-9010** **MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS** [State Bar Nos. 24-1826, 242483, 24-2819, 24-3080 and 25-1230]

Pursuant to Ariz. R. Civ. P. 12(c), incorporated into disciplinary proceedings by Ariz. R. Sup. Ct. 48(b), the State Bar of Arizona moves for a judgment on the pleadings regarding several ethical violations alleged in the State Bar's Amended Complaint because Respondent's Amended Answer has admitted sufficient facts to support the alleged ethical violations.

I. Legal Basis.

"[Regarding] a motion for judgment on the pleadings the court may consider as true such allegations of the complaint as are admitted by the answer. If these allegations set forth a claim for relief and the answer fails to assert a legally sufficient defense plaintiff is entitled to judgment." *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958) [citing *Walker v. Estavillo*, 73 Ariz. 211, 240 P.2d 173 (1952)].

II. Factual Basis.

On February 17, 2026, the State Bar filed its Complaint which was served timely on Respondent. Respondent filed his Answer on February 19, 2026.

Following an Initial Case Management Conference, the State Bar filed an Amended Complaint on February 25, 2026 to address formatting issues raised by the Presiding Disciplinary Judge (PDJ).[1]

On March 9, 2026, Respondent filed his Amended Answer which Respondent identifies as "substantially identical to the Answer Respondent filed in

[1] The Amended Complaint only differs from the initial Complaint insofar as two medical records and three social media posts that were included in the initial Complaint were removed from the body of the Complaint and attached as exhibits to the Amended Complaint.

this matter on February 19, 2026; the only difference is the deletion of images from ¶¶. 52, 105 and 149."

Respondent has unequivocally admitted most of the facts which, as explained more fully below, independently establish certain ethical violations set forth in the Complaint (see Amended Answer at paragraphs 1-2, 8-15, 19, 21-22, 24-25, 27-31, 33, 35, 38-39, 41-44, 47, 52-53, 55-59, 66-67, 69, 71-72, 76-88, 91, 94-96, 98, 101-103, 105-107, 110-112, 115-119, 121-126, 130, 135, 137-140, 143-144, 148, 150-155, 158-159, 161, 164, 166-169, 171-174, 179-180, 182-183).

While Respondent partially admitted other paragraphs, the qualified admissions substantively admit the alleged facts necessary to support the alleged ethical violations (see Amended Answer at paragraphs 3, 6-7, 34, 49, 68, 70, 74-75, 90, 97, 132, 136, 162, 175, 181).

Finally, Respondent denies certain allegations that are not necessary to prove the alleged ethical violations. (see Amended Answer at paragraphs 4, 5, 16-18, 20, 23, 26, 32, 36-37, 45-46, 48, 50-51, 54, 60-64, 73, 89, 92-93, 99, 104, 108, 113, 120, 127-129, 131, 133-134, 141-142, 145-147, 149, 156-157, 160, 163, 165, 170, 176-177, 184).

A. Respondent violated Judge Mata's February 21, 2024 order in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct.

Respondent judicially and unequivocally admits the following paragraphs which independently prove Respondent's violations of Rule 42, Ariz. R. Sup. Ct., ER 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct.:

1) Paragraph 9: Respondent admits that the Maricopa County Superior Court case of *In the Matter of Owens and Echard*, FC2023-052114 was filed on August 1, 2023 (hereinafter referred to as "the paternity case").

2) Paragraphs 24-25: Respondent admits that he was hired by Laura Owens in March 2024 and filed a notice of appearance in the paternity case on her behalf on March 25, 2024.

3) Paragraph 41: Respondent admits that he knew of Judge Mata's February 21, 2024 in the paternity case stating, among other things, "that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties".

4) Paragraphs 42-43: Respondent admits that he subsequently filed a motion in the paternity case, attaching a declaration dated April 1, 2024 which was signed by him and included three medical records.

5) Paragraph 44: Respondent admits that his April 1, 2024 declaration included references to the three medical records which was attached to the motion.

6) Paragraph 47: Respondent admits that he posted a Sonora Quest Laboratories medical record dated October 16, 2023 on his law office blog on April 4, 2024.

7) Paragraph 49: Respondent admits that he was immediately informed of the violation of Judge Mata's February 21, 2024 order.

8) Paragraph 52: Respondent admits that he subsequently posted a portion of another medical report on his law office blog.

9) Paragraphs 53, 55-58: Respondent admits filing a responsive document in the paternity case on April 26, 2024 which included medical records and summary portions of expert medical reports which were prepared for the opposing party.

10) Paragraph 59: Respondent admits that he posted the April 26, 2024 response as well as attached medical information and documents on his publicly accessible online X (formerly Twitter) account, his law firm's website and/or other social media on April 27, 2024.

While Respondent denies the conclusion that he violated the cited ethical rules, based on the foregoing, Respondent admits the essential factual allegations supporting a finding that Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct. as alleged in the Complaint.

B. Respondent's disparaging comments about Judge Mata were violated Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), 8.2(a), and 8.4(d).

Respondent admits the following paragraphs which independently evidence Respondent's violations of Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), 8.2(a), and 8.4(d):

1. Paragraph 101-103, 105-107: Respondent admits making the cited statements regarding Judge Mata and the public, "the contents of which speak for themselves".

In his "defense", Respondent affirmatively alleges that he believes(d) in the truth of the disparaging statements and believes that the disparaging statements constitute "an opinion protected by the First Amendment of the United States Constitution and by the Arizona Constitution".

Respondent's belief is disproven by, among other cases, the following specific to attorney discipline:

- *In re: Matter of James Lawrence Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).

- *In re: Meyer L. Ziman*, SB-12-0037-AP (PDJ 2011-9067); see also *In re: Meyer L. Ziman*, 174 Ariz. 61, 847 P.2d 106 (1993).

- *In re: Douglas B. Levy*, SB-21-0085-AP (PDJ 2019-9044).

- *In re: Vladimir Gagic*, SB-22-0085-AP (PDJ 2022-9050).

While Respondent unequivocally admits making unprofessional and disparaging remarks about Judge Mata, Respondent again denies the conclusion that he violated the cited ethical rules.

However, based on the foregoing, Respondent admits the essential factual allegations supporting a finding that Respondent violated Rule 41(b)(3) and (7), and Rule 42, Ariz. R. Sup. Ct., ER 4.4(a), 8.2(a), and 8.4(d).

CONCLUSION

For the reasons set forth above, the PDJ should enter a partial judgment on the pleadings under Ariz. R. Civ. P. 12(c) in favor of the State Bar and against Respondent on the unequivocally admitted facts which prove the alleged ethical violations and set this matter for an aggravation-mitigation hearing to determine the appropriate sanction.

DATED this 9th day of March, 2026.

STATE BAR OF ARIZONA

/s/ Craig D. Henley

Craig D. Henley
James D. Lee

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 9th day of March, 2026.

Copy of the foregoing emailed
this 9th day of March, 2026, to:

Honorable Lisa A. VandenBerg
Presiding Disciplinary Judge
Supreme Court of Arizona
[redacted]
Phoenix, Arizona 85007
E-mail: [redacted]

David S. Gingras
Gingras Law Office, PLLC
[redacted]
Phoenix, Arizona 85044-6417
Email: [redacted]
Respondent

Lawyer Regulation Records Manager
State Bar of Arizona
[redacted]
Phoenix, Arizona 85016-6266
[redacted]

by: */s/Odalys Leon Valdez*
CDH/olv

Exhibit 4

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
03-18-2026

C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **RESPONSE TO STATE BAR'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

In terms of the underlying facts, this case is *exceptionally* complex. Fortunately, the issues raised by the state bar's motion are relatively simple. The bar claims it is entitled to judgment on the pleadings because no material facts are in dispute and based on those undisputed facts, the bar asserts it is entitled to judgment as a matter of law.

This argument fails for three separate, independent reasons.

First, contrary the bar's argument, multiple material facts are in dispute. That point, standing alone, requires the denial of the bar's motion.

Second, even if all material facts were undisputed (which they are not), the bar's position is directly contrary to controlling law. Accordingly, the bar has *not* shown it is entitled to judgment as a matter of law.

This leads to the third and perhaps most important point – the bar has moved for judgment *offensively*; i.e., it seeks an order resolving several claims in the Complaint. But in this posture (where a *complaining* party seeks judgment on the pleadings *offensively*), the Court cannot limit its review to only the Complaint.

Rather, in addition to reviewing the Complaint, the Court must also consider defenses raised in Respondent's Answer. In doing so, the Court must:

- Assume every fact alleged and position taken in Respondent's Answer is true;
- Apply all reasonable inferences in favor of Respondent; and
- Taking all facts as true, the Court must consider whether as a matter of law, the Answer raises *any potential defense* to the bar's claims.

If the Answer shows any potentially viable defense, this Court's task ends. In that case, only one choice remains: the Court must deny the bar's motion so the record can be fully developed. Only then may the Court review the facts, determine whether they are uncontested, and if they are, the Court may consider whether one party or the other prevails as a matter of law.

That task cannot be done on a bare, undeveloped record based solely on the pleadings. For these reasons, the bar's motion must be denied.

II. BACKGROUND—*OWENS v. ECHARD*

The origin of this dispute is a family court case called *Owens v. Echard* filed by petitioner Laura Owens against respondent Clayton Echard. Most of the extensive background details and procedural history of *Owens v. Echard* are cataloged in the Request for Judicial Notice ("RJN") submitted herewith.

The details of *Owens v. Echard* are exceptionally complicated. The case initially involved a simple paternity case (FC2023-052114) but it metastasized into something far more complicated.

Aside from the narrow issue of Ms. Owens' pregnancy claim (which was simple, and ultimately moot, long before Respondent appeared in the case) the case included what amounted to a civil tort *counterclaim* by the respondent, Clayton Echard. In his counterclaim, Mr. Echard alleged Ms. Owens faked multiple pregnancies with multiple men over a period of nearly 10 years, and that she had engaged in misconduct in a variety of relationships with multiple different men. This involved and/or implicated *extensive* other litigation including:

- *Owens v. Gillespie*, FN2021-004799 (an order of protection matter)
- *Owens v. Gillespie*, CV2021-052893 (a civil assault case with fraud counterclaims which spanned three years)
- *Owens v. Gillespie*, FN2022-052111 (an order of protection renewal)
- *Owens v. Echard*, FC2023-052771 (an order of protection matter)
- *Echard v. Owens*, CV2023-053952 (a harassment injunction matter)
- *Owens v. Marraccini*, San Francisco Superior Court Case No. FDV-18-813693 (a domestic violence restraining order "DVRO" matter)
- *Owens v. Mulvey* (a non-existent California paternity case)

Discussing the facts of each matter and explaining how they related to the paternity case filed by Ms. Owens would take dozens and dozens, if not hundreds of pages. This is why Respondent expressed incredulity at the state bar's suggestion this case could be fully presented in a single day. That assertion was not an accurate reflection of how complicated this case is (as the PDJ is about to discover).

But there is good news. To resolve the current motion, it is *not* necessary for the Court to hear the *entire* story. Not yet. However, to help understand the background, which is necessary to resolve the bar's motion, some basic details of *Owens* are explained in Respondent's declaration submitted herewith.

Against that extremely complicated backdrop, after nearly two years of investigation, the state bar charged Respondent with misconduct related to *Owens*. In the instant motion, the bar raises only two distinct claims:

1.) An allegation Respondent violated a court order which, according to the bar, required information to be filed under seal; and

2.) An allegation Respondent violated multiple ethical rules by making "disparaging" statements about the trial Judge Julie A. Mata.

As explained below, the bar is not entitled to judgement on the pleadings as to either claim. The material facts relating to both claims are heavily disputed, and the bar's position (as to both claims) is directly contrary to law.

In addition, Respondent's Answer (which the bar <u>never</u> discusses in any meaningful way) raises multiple viable defenses. Those defenses preclude the bar's request for judgment as a matter of law, at least at this stage. Those defenses include (but are not limited to) an allegation the bar has misstated the law and omitted facts in a manner which presents a false impression about what occurred.

Respondent also asserts the "disparaging" statements he made about Judge Mata were <u>**entirely true**</u> (<u>not</u> that he merely *believed* them to be true), and thus are protected speech under the First Amendment. Respondent further asserts the bar seeks to enforce rules which are unconstitutional, and that the bar has acted in an arbitrary and unlawful manner which violates Respondent's rights under both the Due Process Clause and the Arizona anti-SLAPP law, A.R.S. § 12–751.

Under the highly deferential standards that apply here, the Court is required to assume Respondent's factual assertions and legal defenses are correct. The Court must also resolve every reasonable inference in Respondent's favor. Applying those well-worn standards, the bar's motion must be denied.

III. DISCUSSION

a. Rule 12(c)—Legal Standard

The Court is familiar with the rules, but a short discussion is nevertheless helpful:

> [When made defensively] a Rule 12(c) motion is subject to a similar standard as a Rule 12(b)(6) motion to dismiss for failure to state a claim. This standard requires that the allegations of the non-moving party be accepted as true and that the allegations of the moving party which have been denied be treated as false. It further requires that the facts be construed in the light most favorable to the nonmoving party. Judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law.

Delta Zee Sols. LLC v. Britannia Tucson LLC, 2026 WL 71411, *3 (D.Ariz. 2026) (cleaned up) (citing extensive authority).[1]

Because the bar is acting as plaintiff, there is a *second* step the Court must consider which the bar's motion completely ignores—whether *Respondent's Answer* raises any potentially viable defense; "A plaintiff is entitled to judgment on

[1] References to unpublished federal decisions are expressly authorized by Ariz. Sup. Ct. R. 111(d) (allowing decisions other than Arizona *state* cases to be cited, as long as permitted by the rules of the other forum). The Federal Rules of Appellate Procedure expressly permits citations to unpublished federal decisions. *See* Fed. R. App. P. 32.1(a). Unpublished state authority is cited for persuasive value per Supreme Court Rule 111(c)(1)(C).

the pleadings **only** where the complaint 'set[s] forth a claim for relief **and** the answer fails to assert a legally sufficient defense[.]'" *Flake v. Silva*, 2025 WL 2452213, *3 (Ariz.App. 2025) (emphasis added) (quoting *Pac. Fire Rating Bureau v. Ins. Co. N. Am.*, 83 Ariz. 369, 376 (1958)). "Or, stated differently, a plaintiff's motion for judgment on the pleadings should be denied where issues of fact are properly raised by the answer." *Bank of Am., N.A. v. Allen*, 2015 WL 6696911, *2 (Ariz. App. 2015) (emphasis added) (quoting *Dons Club v. Anderson,* 83 Ariz. 94, 98 (1957)).

This Court must accept Respondent's assertions and defenses as true, and construe all inferences in a light most favorable to Respondent. Under that simple standard, the bar's motion must be denied.

b. The State Bar Is Not Entitled To Judgment On The First Claim Accusing Respondent of Violating a Court Order

i. The Material Facts Are Disputed

The first issue involves a claim Respondent violated a court order which, according to the bar, required certain information to be filed under seal. The specific language at issue is found in a lengthy minute entry order issued on February 21, 2024 (before Respondent was involved in the case) which stated; "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60 at 8; Amended Complaint ¶ 41.

On its face, this issue appears simple. Respondent's Answer admits the court issued the minute entry in question and admits the minute entry contains that language. *See* Respondent's Answer ¶ 44. However, that is *not* the end of the story.

Respondent's Answer affirmatively alleges the state bar has misrepresented the scope and meaning of that order by omitting extensive other information that conflicts with the bar's self-serving interpretation of the order. *See*, *e.g.*, Answer at ¶¶ 46–51. Respondent has further raised a defense that the bar's position seeks "to punish Respondent for violating court orders which were unconstitutionally vague and/or which *conflicted with other orders* such that they failed to provide Respondent with notice regarding the scope of prohibited conduct …." Answer at 67, ¶ c (emphasis added).

Understanding those points requires reviewing additional information far beyond the pleadings. The reasons are explained at length in Respondent's declaration submitted herewith and are summarized below.

In short, prior to the February 21, 2024 minute entry which Respondent is accused of violating, Ms. Owens made no fewer than **three separate requests** for confidentiality/protective/sealing orders, **all of which were denied**. The first was a *pro se* motion filed on September 14, 2023, RJN Ex. 17, which the court denied on October 20, 2023. RJN Ex 20. The second was a motion filed on January 17, 2024 by Ms. Owens' prior counsel which specifically asked the court to limit the sharing of information disclosed during discovery. RJN Ex. 39.

Importantly, although Mr. Echard did not oppose Ms. Owens' initial confidentiality motion (which was still denied), his counsel, Mr. Woodnick, angrily objected to the second motion. That objection argued, among other things, it would be unconstitutional for the court to issue an order restricting the parties from sharing information about their claims. RJN Ex. 43.

Mr. Woodnick went further, arguing that because Ms. Owens previously moved for an order sealing the case (which the court denied), it was improper for her to make a second such request; "Apparently, Petitioner feels she is entitled to what is essentially a backdoor Motion to Seal after this Court already **denied** her attempt." RJN Ex. 43 at 1:27–28 (all emphasis in original).

On February 15, 2024 the trial judge issued an order agreeing with Mr. Woodnick's position. As a result, the court denied Ms. Owens' second motion for confidentiality in its entirety. RJN Ex. 59.

This led to a third request from Ms. Owens (via her prior counsel) in the form of a verbal request for reconsideration. On February 21, 2024, that request was denied in the same order the bar now claims Respondent violated; "IT IS FURTHER ORDERED denying counsel for Petitioner's oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality." RJN Ex. 60 at 6.

These facts show several things. First, long before Respondent was involved in the case Ms. Owens made three separate requests asking—***indeed begging***—the court to limit any public sharing of information and/or sealing public access to court records. All three of those privacy requests were denied, in their entirety.

Second, Mr. Echard's counsel, Gregg Woodnick, *angrily* challenged the request for privacy, even arguing such a restriction would be illegal and unconstitutional. The court agreed and it denied, in writing and in its entirety, Ms. Owens' request for any sort of protection or privacy. RJN Ex. 59.

After this happened, perhaps to avoid an emergency special action, it appears counsel reached some sort of informal agreement that Mr. Woodnick would not publish medical records produced by Ms. Owens (Mr. Echard never produced any medical records). This appears to be the sole basis for the court's odd comment: "*LET THE RECORD FURTHER REFLECT* that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60. Notably, this line did not include the words "IT IS ORDERED" nor did it mention anything about sealing.

After that comment was included in the court's February 21 minute entry, Mr. Woodnick filed unsealed pleadings containing Ms. Owens' medical information and related documents disclosed between the parties. For instance, on March 11, 2024 (before Respondent appeared in the case), Mr. Woodnick filed a Motion to Compel. RJN Ex. 61. In that unsealed motion, Mr. Woodnick described medical information he received regarding Ms. Owens:

> Since the Status Conference, Respondent has received confirmation from nearly all providers that Petitioner was never a patient of theirs. Notably, the HIPAA releases for "Dr. Makhoul" revealed that Petitioner had never attended an appointment at his office ….

RJN Ex. 61 at 4.

Mr. Woodnick's motion also included copies of medical documents exchanged between the parties, including a letter to one of Ms. Owens' doctors. That letter clearly constituted: "medical or other documentation … disclosed between the parties", but Mr. Woodnick did not file it under seal. RJN Ex. 61, Ex. 1. The unsealed motion also included other private medical information disclosed between the parties including a list of Ms. Owens' doctors. RJN Ex. 61, Ex. 6.

Based on these facts, Respondent's position is simple – the bar has simply misconstrued the language in the February 21st order to make it appear the court issued either a protective order or an order requiring information to be filed under seal. In truth, the court did no such thing. It did NOT issue a protective order, nor a sealing order. In fact, it *denied* all such requests — not once, not twice, but three times in a row.

Mr. Woodnick's post-February 21st conduct confirms this view. It shows he understood (just as Respondent did) there was no requirement for medical information to be filed under seal, contrary to the bar's claim. This also shows even if the state bar's interpretation of the minute entry was correct, it has arbitrarily and unlawfully chosen to pursue discipline against Respondent, but not Mr. Woodnick.

In the context of a Rule 12(c) motion, this Court must accept Respondent's allegations as true, and it must construe all inferences in Respondent's favor. Based on that standard, material facts are clearly in dispute concerning the exact scope and meaning of the vague order Respondent allegedly violated. Those factual disputes preclude resolving the bar's motion on the pleadings.

ii. The Bar's Position Is Legally Incorrect

Even if the facts were not disputed, the bar's position (that the court issued a *valid* sealing order which Respondent violated) is legally incorrect for at least two other reasons. First, given the additional facts explained above, it is clear the court denied Ms. Owens' <u>multiple</u> requests for a sealing order, which apparently caused the parties to reach an informal agreement not to share Ms. Owens' medical records (an agreement Mr. Woodnick violated long before Respondent entered the case).

Construing these facts in a light most favorable to Respondent, the bar's argument fails as a matter of law. This is so because the Due Process Clause prohibits enforcement of vague or ambiguous court orders, even by contempt or otherwise. Any order that fails that test is simply not enforceable:

> The judicial contempt power is a potent weapon. When it is founded upon a decree <u>too vague to be understood</u>, it can be a deadly one. Congress responded to that danger by requiring that a … court frame its orders so that <u>those who must obey them will know what the court intends to require and what it means to forbid</u>.

Gates v. Shinn, 98 F.3d 463, 468 (9th Cir. 1996) (emphasis added) (quoting *International Longshoremen's Ass'n. v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967)).

Because this specificity requirement derives from the federal Due Process Clause, Arizona courts apply exactly the same restriction – if an order is vague, ambiguous, and does not clearly define the exact scope of prohibited conduct, that order violates the Fourteenth Amendment and is not enforceable. *See Whitmer v.*

Hilton Casitas Homeowners Ass'n, 2024 WL 338160, at *3 (Ariz.App. 2024) (explaining, "All injunctions must, inter alia, describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required. The requisite specificity will be found "only if the enjoined party can **ascertain from the four corners of the order precisely what acts are forbidden** or required.") (emphasis added) (quoting *Havens v. James*, 76 F.4th 103, 121 (2d Cir. 2023) (citing Ariz. R. Civ. P. 65(d)(1)).

Here, Respondent asserts even if the single sentence quoted by the bar (which does not contain the words "ORDER" or "SEAL") *appears* clear when read in isolation, when viewed in light of *other* facts (like the fact the court repeatedly denied any/all request for confidentiality made by Ms. Owens, and the fact Mr. Woodnick filed unsealed pleadings containing medical information *before* Respondent appeared in the case) the language used by the court is plainly too ambiguous to satisfy Due Process requirements. The court issued conflicting and confusing orders which, when viewed together, made it impossible for anyone to understand precisely what was required.

In addition, the state bar claims the single sentence in question constituted an *order* requiring him to file under seal any pleading that contained "medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." The bar's position is wrong because it ignores the specific Rule of Family Law Procedure that contains the legal requirements for this exact topic—Rule 17 (entitled "**Sealing, Redacting, and Unsealing Court Records**.")

Rule 17 is clear – a party can ask the court to "seal or allow the filing of a redacted court record". However, before such relief may be ordered, the court is required, among other things, to make specific "**written findings of fact** and conclusions that the specific sealing or redaction is justified." Ariz. R. Fam. L.P. 17(c). Those findings must show: "there exists an overriding interest that overcomes the right of public access to the record." Ariz. R. Fam. L.P. 17(c)(1).

Here, the trial court never made any of the findings required by Family Law Rule 17. Nor could it have done so given the facts.

Owens was an extremely high-profile case. As the case was pending, Mr. Woodnick aggressively published statements attacking Ms. Owens (in press releases and in pleadings which he knew were being widely shared on social media), while simultaneously opposing any effort by Ms. Owens to seek confidentiality/privacy. After the court purportedly ordered him not to do so, Mr. Woodnick filed multiple unsealed motions describing, in detail, information he received from Ms. Owens' medical records. *See* RJN Ex. 61 & 65.

Considering Mr. Woodnick's choice to file unsealed pleadings with Ms. Owens' medical information, Respondent simply followed the same practice by releasing Ms. Owens' own medical records to explain her side of the story. In that situation, any order purporting to prohibit Ms. Owens from using her own medical records to respond to public allegations made by Mr. Woodnick would have been unconstitutional, just as Mr. Woodnick successfully argued in opposing Ms. Owens' request for confidentiality. *See* RJN Ex. 43 at 1:22–23 (arguing, "Petitioner's requested relief under Rule 53 constitutes an impermissible prior restraint of protected speech."); *see also Yanez v. Sanchez*, 257 Ariz. 302, 306 (Ariz.App. 2024) (invalidating family court order which "prohibited both parents from posting on social media" and explaining: "The order here restricts future speech and is thus a prior restraint. That order is presumptively unconstitutional.")

iii. Respondent's Answer Raises Other Valid Defenses

The above issues aside, the bar's motion also fails because the existence of *any* viable defense will require the Court to Deny the bar's motion. This response will simply address one such defense: A.R.S. § 12–751 (the anti-SLAPP law), which the bar's motion never mentions.

A.R.S. § 12–751 is a newly expanded law (amended in late 2022) which protects the First Amendment by prohibiting any/all state agencies (including the state bar) from unlawfully or unfairly punishing protected speech and petitioning activities. The law does this by providing:

> In any legal action that involves a person's lawful exercise of the right of petition [or] the right of speech … pursuant to the United States Constitution or Arizona Constitution, the person other than a state actor or an intervenor may file a motion to dismiss or quash the action under this section.

The law defines "legal action" to include: "Any written investigative demand … or other compulsory legal process <u>or any regulatory or administrative action by a state actor</u>." A.R.S. § 12–751(J)(1)(a)(iii). This clearly includes the state bar.

When a proceeding is brought seeking to punish a person's exercise of First Amendment rights, the affected person can move to dismiss. If the moving party shows "the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right", the court is required to dismiss the action unless: "the responding party shows that the legal action on which the motion is based is justified by clearly established law **and** that the responding party did not act in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights." A.R.S. § 12–751(B)(1) (emphasis added).

When Respondent moves to dismiss under this section (as he intends to do shortly), to avoid dismissal the bar will need to show, *inter alia*, that its claims are justified by clearly established law AND, furthermore, that it "has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights." A.R.S. § 12–751(B)(1)(b).

Although this issue is not yet ripe for decision, Respondent's Answer clearly invokes the protection of A.R.S. § 12–751, and it alleges the bar is: "selectively seeking discipline against Respondent in a manner which arbitrarily violates the State Bar's own policies [and] [a]rbitrarily ignoring misconduct by others involved in the same matter." Answer at 67. That statement refers to the fact Mr. Woodnick appears to have violated the same court order in the same manner Respondent is accused of, but the bar has *not* pursued discipline against Mr. Woodnick.

Taking those allegations as true (which the Court must), it is clear the anti-SLAPP law would require dismissal of both claims at issue in the pending motion, absent some other explanation which the bar has not yet offered.

c. The State Bar Is Not Entitled To Judgment On Its Second Claim Accusing Respondent of Making "Disparaging" Statements About A Judge

i. Legal Standard

While rushing to impose punishment for what it deems "disparaging" comments Respondent made about Judge Mata, the state bar never explains the controlling legal standards for this claim. It is clear why—because the bar's position is directly contrary to law.

In short, when lawyers are engaged in public speech on public issues (at least outside a courtroom), they have the same First Amendment rights as everyone else. On that much, the United States Supreme Court has spoken loud and clear:

> At the very least, our cases recognize that disciplinary rules governing the legal profession **cannot punish activity protected by the First Amendment,** and that First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law.

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1054 (1991) (emphasis added) (citing *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977) (holding ethical rules cannot punish First Amendment protected speech)).

Although the Arizona Supreme Court has not published any decisions directly on this specific issue in the last 25 years, multiple courts around the country have done so. The rules established by those cases are clear – a lawyer who criticizes a judge cannot be punished unless the lawyer's statements were factually false: "we begin with the accepted legal principle that if an attorney's activity or speech is protected by the First Amendment, disciplinary rules governing the legal profession cannot punish the attorney's conduct." *In re Green*, 11 P.3d 1078, 1083 (Colo. 2000); *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995) (agreeing, "Attorneys who make statements impugning the integrity of a judge are, however, entitled to other First Amendment protections applicable in the defamation context. To begin with, <u>attorneys may be sanctioned for impugning the integrity of a judge</u> or the court <u>**only if their statements are false**</u>; truth is an absolute defense.") (emphasis added); *In re Olin*, 2024 WL 6881775, *9 (Cal. Bar Ct. 2024) (explaining, "The First Amendment does not protect intentionally false statements and false statements made with reckless disregard for the truth. <u>Truth is an absolute defense to any statement made by an attorney that impugns the honesty or integrity of a judge</u>.") (emphasis added).

In its motion, the state bar never discusses this critical issue of law. Instead, the bar cites authority (some of which is clearly no longer valid) as support for the requested relief. On inspection, none of these cases help the bar.

In re: Matter of James Lawrence Riley, 142 Ariz. 604, 691 P.2d 695 (1984) is a 42-year old case involving a lawyer campaigning to become a judge. During his campaign, the lawyer made statements criticizing his opponent (an incumbent judge). The Supreme Court found those comments violated a special rule (DR 8-103) applicable to judicial candidates. *See Riley*, 691 P.2d at 704. This rule has no application here because Respondent is not a candidate for judicial office.

In a passing comment in *Riley*, the Court noted: "Even if not a candidate for judicial office, <u>a lawyer is held to a narrower standard of free speech than a non-</u>

lawyer when discussing the judiciary." That aspect of *Riley* (for which the Court cited a *Missouri* case from 1957) is clearly no longer valid law, in light of more recent U.S. Supreme Court precedent such as *Gentile v. State Bar of Nevada*.

Indeed, the dissenting chief justice in *Riley* observed as much, "Under the freedom guaranteed by the Constitution, we must begin with the proposition that "[l]ike other citizens, attorneys are entitled to the full protection of the First Amendment, even as participants in the administration of justice.") *Riley*, 142 Ariz. at 608 (Holohan, C.J., *dissenting*) (emphasis added) (quoting *In re Hinds*, 90 N.J. 604, 614, 449 A.2d 483, 489 (1982)). As noted above, this more modern view has been fully adopted by the U.S. Supreme Court, and substantially every state and federal court that has considered similar issues.

The bar also cites *Matter of Ziman*, 174 Ariz. 61 (Ariz. 1993). That case involved a multitude of misconduct unrelated to the lawyer's speech. In addition, the lawyer engaged in *ex parte* communications with an arbitrator, "argued with him about his rulings and made a profane and insulting remark [to the arbitrator]." *Ziman*, 174 Ariz. at 63.

Ziman has no relevance here; Respondent is not accused of making any profane or insulting remarks directly to a judge.[2] Rather, the allegation is that

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[2] Respondent fully agrees that when a lawyer is standing in court, directly addressing a judge, jury, or a witness, the First Amendment *may* offer less protection than it does outside of court. *See United States v. Cooper*, 872 F.2d 1, 3 (1st Cir. 1989) ("an attorney is not free to say literally anything and everything imaginable in a courtroom under the pretext of protecting his client's rights ….") (emphasis added).

Respondent made certain "disparaging" public statements *about* a judge (which the bar has not shown were factually false).

In re: Douglas B. Levy, SB-21-0085-AP (PDJ 2019-9044) was a case involving private, not public, statements made by a lawyer to opposing counsel. Although the lawyer also made comments criticizing a judge, the respondent never claimed his comments were true, and he apparently chose not to invoke his rights under the First Amendment (the case never mentions the First Amendment). The case also does not mention Arizona's anti-SLAPP law (which did not exist in its current form at the time). Nothing in *Levy* supports the bar's position here.

In re: Vladimir Gagic, SB-22-0085-AP (PDJ 2022-9050) involved a variety of bizarre attorney misconduct. Unlike this case, the attorney in *Gagic* did not properly invoke the First Amendment and did not raise any factual/legal defenses; "in his response to the motion for summary judgment, Respondent does not controvert any portion of the State Bar's statement of facts, discuss the ethical rules at issue, or cite relevant legal authority." Because Mr. Gagic waived his defenses by failing to assert them, the case contains no analysis of the First Amendment. *Gagic* is of no help to the bar's position in this case.

However, a lawyer's critical statements made directly to a judge in a pleading still receive full First Amendment protection provided they are not factually false. *See In Re Green*, 11 P.3d at 1086–87 (agreeing First Amendment protected lawyer's speech even though his "statements were directed to a limited audience—the judge in question and opposing counsel—and not to the general public.")

ii. The Material Facts Are Disputed

With respect to the bar's claim that Respondent must be punished for statements he made criticizing Judge Mata, that position must be rejected for one simple reason – because Respondent has *never* admitted that any of his statements were false. On the contrary, ¶ 108 of the Amended Complaint alleges Respondent violated multiple rules "by making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity." (emphasis added). Respondent's Answer flatly denies that allegation, it its entirety, not merely "conditionally" as the bar claims.

As noted in the extensive legal authority cited above, a lawyer's criticism of a judge cannot be punished absent clear and convincing proof the lawyer's statements were factually false and the lawyer either knew the statement were false, or the lawyer acted with reckless disregard for the truth at the time the false statement was made. In this context, "reckless disregard" is a term of art; "reckless disregard means that a statement is unprotected if the speaker made it "with a 'high degree of awareness of ... probable falsity,' ... or ... 'entertained serious doubts as to the truth of his publication.'" *In Re Green*, 11 P.3d at 1083–84 (citing extensive authority).

Here, the Complaint alleges Respondent made false statements and acted with reckless disregard for the truth (without any well-pleaded factual support for those claims). *See* Amended Compl. ¶ 108. In his Answer, Respondent unequivocally denied that allegation, and further raised the First Amendment as a defense. In this posture, the material facts – was Respondent's speech false, and, if it was, did Respondent act with reckless disregard – are disputed.[3] As such, judgment on the pleadings *cannot* be granted.

iii. Respondent's Answer Raises Valid Defenses

This issue has been sufficiently covered, so Respondent simply reminds the Court – judgment on the pleadings cannot be granted unless the undisputed facts show the bar's claims are factually and legally correct, *and* that Respondent's Answer raises no potentially viable defense. Here, the Answer clearly raises multiple viable defenses, including that Respondent's speech was true (which is *not* a defense; it is an affirmative part of the bar's claim for which the bar bears the burden). Respondent also alleges his speech was protected the First Amendment and A.R.S. § 12–751, and that the bar's claims are based on rules which are unconstitutional. *See Bates v. State Bar of Arizona*, 433 U. S. 350 (1977) (holding ethical rules cannot punish First Amendment protected speech)).

This Court may ultimately either agree or disagree with each of these arguments. But the Court cannot reach that conclusion on an undeveloped evidentiary record, particularly one so filled with factual disputes. Accordingly, the bar's motion cannot be granted at this early stage.

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[3] Because the state bar appears to misunderstand this issue, Respondent will make this extremely clear – if a lawyer makes a statement which is factually *true*, it is irrelevant whether the lawyer acted with "reckless disregard" (a true statement *cannot* be made with reckless disregard for the truth). Put differently, true statements may *never* be punished, only "intentionally false statements and false statements made with reckless disregard for the truth." *Olin*, 2024 WL 6881775, *8.

IV. CONCLUSION

For the reasons stated above, the PDJ should either: 1.) deny the state bar's motion on the merits, by finding the material facts are disputed and/or that the bar has failed to show it is entitled to judgment as a matter of law, including because the bar has failed to show Respondent's Answer contains no viable defense; OR, in the alternative, 2.) the PDJ should find the bar's Rule 12(c) motion requires consideration of outside the pleadings. As such, the motion should be converted under Rule 56 and denied without prejudice. *See* Ariz. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or (c), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.")

Respectfully submitted March 18, 2026.

David S. Gingras, #021097
Gingras Law Office, PLLC
[redacted]
Phoenix, AZ 85044
Tel.: [redacted]
[redacted]
Respondent

CERTIFICATE OF SERVICE

COPY of the foregoing emailed
this 18th day of March 2026 to:
Jim Lee
[redacted]
Craig Henley
[redacted]
Senior Bar Counsel

Exhibit 5

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
03-18-2026

C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **DECLARATION OF DAVID S. GINGRAS IN SUPPORT OF HIS RESPONSE TO THE STATE BAR'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Respondent David S. Gingras ("Respondent" or "Gingras") respectfully submits the following declaration in support of his Response to the State Bar's Motion for Partial Judgment on the Pleadings:

1. My name is David S. Gingras. I am a United States citizen, a resident of the State of Arizona, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am an attorney licensed to practice law in the States of California (since 2002) and Arizona (since 2004).

3. I am an active member in good standing with the State Bars of Arizona and California and I am admitted to practice and in good standing with the United States Court of Appeals for the Sixth, Ninth and Tenth Circuits, the United States District Court for the District of Arizona and the United States District Courts for the Northern, Central, and Eastern Districts of California.

4. The origin of this dispute is a family court case called *Owens v. Echard* filed by petitioner Laura Owens against respondent Clayton Echard.

5. The details of *Owens v. Echard* are exceptionally complicated. However, understanding what occurred there is essential to understanding the bar's allegations in this case, so I will try to explain the basic background facts.

6. *Owens v. Echard* began with a petition filed by Ms. Owens on August 1, 2023. RJN Ex. 1. In her *pro se* petition, Ms. Owens claimed she had a sexual encounter with Mr. Echard in May 2023, and that she became pregnant as a result. In his response, RJN Ex. 9, Mr. Echard denied paternity and accused Ms. Owens of "fabricating" the pregnancy.

7. I did not file the petition in *Owens v. Echard*. I did not know Ms. Owens at the time, and had no involvement of any kind in the matter until I was retained and first appeared in the case on March 25, 2024. RJN Ex.66.

8. Months before I appeared in the case, several key things happened. First, on September 14, 2023, Ms. Owens filed a pleading entitled "Expedited Motion to Seal Court Record". RJN Ex. 17. In that pleading, Ms. Owens explained the respondent, Mr. Echard, was a celebrity who had appeared on an extremely popular reality TV dating show called *The Bachelor*.

9. Ms. Owens expressed concern that due to Mr. Echard's celebrity status: "media outlets New York Post and Page Six have expressed interest in publicizing the case." Fearing this publicity, Ms. Owens pleaded with the court to: "seal the case

(all that has been submitted so far and everything that will be filed in the future) so that the general public may not access it." RJN Ex. 17 at 1.

10. Ms. Owens' motion noted Rule 17(c)(1) of the Rules of Family Law Procedure allowed courts to seal their records if "there exists an overriding interest that overcomes the right of public access to the record." Ms. Owens then asserted that due to the sensitive, but sensational, nature of the case, "Public disclosure serves neither the best interest of the parties nor public access to judicial records."

11. According to my review of the docket, Mr. Echard never responded to or opposed Ms. Owens' Motion to Seal. Despite this, the court denied Ms. Owens' Motion to Seal on October 20, 2023. RJN Ex. 20.

12. In the interim, Ms. Owens and Mr. Echard made an agreement to submit samples for genetic testing. RJN Ex. 18. According to Ms. Owens, the results of that testing were "inconclusive". Ms. Owens then claimed she visited an OB/GYN facility called "MomDoc" on November 14, 2023, where she received two pregnancy tests, both of which were negative.

13. After learning she was not (or was no longer) pregnant, Ms. Owens filed nothing further in the case. Due to inactivity, on December 4, 2023, court administration issued an order placing the case on the dismissal calendar, with a dismissal date of February 2, 2024. RJN Ex. 21.

14. A short time later, on December 12, 2023, Mr. Echard retained counsel, Gregg R. Woodnick. Mr. Woodnick filed multiple pleadings seeking to avoid dismissal of the case including an "Affidavit of Non-Paternity", RJN Ex. 23, a

Motion for Leave to Amend Mr. Echard's response to the paternity petition, RJN Ex. 24, and a Motion to Extend Dismissal Date and Schedule An Evidentiary Hearing. RJN Ex. 26.

15. In these pleadings, Mr. Woodnick accused Ms. Owens of "fabricating" her pregnancy, and he asked the Court to declare Mr. Echard was not the father of any unborn children (even though by this point, Ms. Owens no longer was making that claim).

16. After Mr. Echard retained counsel, Ms. Owens did the same. Ms. Owens' first attorney (Alexis Lindvall) appeared in the case on December 22, 2023. RJN Ex. 27. Six days later, on December 28, 2023, Ms. Lindvall filed a Motion to Dismiss with Prejudice. RJN Ex. 28.

In the Motion to Dismiss, Ms. Lindvall explained:

> Petitioner is not now pregnant with Respondent's children. Under A.R.S. § 25-801, this Court has "jurisdiction…to establish maternity or paternity." Here, there is no paternity or maternity to establish, as Petitioner is no longer pregnant. Accordingly, this case must be dismissed.

RJN Ex. 28 at 1:19–23.

17. Despite Ms. Owens' efforts to dismiss the case with prejudice, on January 3, 2024, Mr. Woodnick filed a Motion for Sanctions under Family Law Rule 26 (the family court equivalent to Civil Procedure Rule 11). RJN Ex. 33.

18. It is undisputed that prior to filing the Rule 26 motion, Mr. Woodnick failed to comply with any of the "safe harbor" requirements of the rule.

19. Specifically, Mr. Woodnick failed to meet and confer with Ms. Owens (as required by Family Law Rule 26(c)(2)(A)). He failed to give her a written notice (as required by Family Law Rule 26(c)(2)(B)). And he failed to wait 10 business days to allow Ms. Owens an opportunity to "withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served…" (as required by Family Law Rule 26(c)(2)(B)).

20. Notwithstanding the fact that Mr. Woodnick's motion failed to comply with any part of Rule 26, the court eventually set the motion for a two-hour evidentiary hearing to occur on June 10, 2024. RJN Ex. 51 (setting initial hearing date of February 27, 2024). RJN Ex. 60 (moving hearing to June 10, 2024).

21. After Mr. Woodnick moved for sanctions, Ms. Owens' original attorney (Alexis Lindvall) withdrew, and new counsel (Cory Keith) appeared. RJN Ex. 38.

22. Immediately after appearing in the case, Ms. Owens' new counsel, Mr. Keith, filed a Motion for Confidentiality and Preliminary Protective Order. RJN Ex. 39. That motion invoked Family Law Rule 53(a), and it asked the trial court to issue a protective order which would provide: "relevant discoverable information which either party designates as confidential remains confidential and is not disseminated to anyone other than the parties and their respective counsel." RJN Ex. 39 at 4:12–14 (emphasis added).

23. On January 19, 2024, Mr. Woodnick filed a pleading angrily objecting to and opposing Ms. Owens' request for a protective order. RJN Ex. 43. In that pleading, Mr. Woodnick raised the following arguments against a protective order:

- "Petitioner's requested relief under Rule 53 constitutes an impermissible prior restraint of protected speech. Beyond that, it also represents tremendous overreach in the use of Rule 53 to diminish Respondent's rights as a litigant." RJN Ex. 43 at 1:21–25 (emphasis in original).

- "Apparently, Petitioner feels she is entitled to what is essentially a backdoor Motion to Seal after this Court already **denied** her attempt. RJN Ex. 43 at 1:27–28 (emphasis in original).

- "**The Court must begin with the presumption that prior restraint on protected speech is dubious and subject to the highest scrutiny.** Petitioner does not address, or even attempt to explain, why prohibiting Respondent from speaking about the issues she brought in this action would withstand Constitutional scrutiny." RJN Ex. 43 at 3:10–14 (emphasis in original).

- "Petitioner's demand would trigger a woefully unnecessary and inappropriate procedure overtly designed to thwart disclosure …. **The fact that discovery may annoy or embarrass Petitioner does not mean that sealing and confidentiality are appropriate remedies."** RJN Ex. 43 at 3:19–4:2 (emphasis in original).

- "Not only is Respondent entitled to the information and discovery necessary to defend against her claims, but he also has a fundamental Constitutional right to discuss the nature of those claims (just like any other litigant). Petitioner is requesting an order that would prohibit Respondent from defending his character in public view despite the fact that she made his character a matter of public interest and that she self-identifies as a public figure. The toothpaste cannot be put back in the tube." RJN Ex. 43 at 5:12–21 (first emphasis added; second emphasis in original).

- "**It is premature to designate as confidential documents, recordings, or records that do not exist and have not yet been produced.** To the extent a response to this assertion is warranted, there is nothing to be designated confidential." RJN Ex. 43 at 8:24–27 (emphasis in original).

24. Based on these angry, emphatic assertions, Mr. Woodnick's motion concluded with a demand for the court "Deny [Ms. Owens'] Motion for Confidentiality and Protective Order in its entirety." RJN Ex. 43 at 10:1–2.

25. On February 15, 2024, the trial court adopted Mr. Woodnick's arguments and denied, in its entirety, Ms. Owens' request for confidentiality and/or a protective order. RJN Ex. 59.

26. A short time later, a hearing was held on February 21, 2024. At that hearing, Ms. Owens' attorney, Mr. Keith, made a verbal motion asking the court to reconsider its denial of Ms. Owens' request for confidentiality.

27. On the record the court denied that request, again, *in its entirety*: "IT IS FURTHER ORDERED denying counsel for Petitioner's oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality." RJN Ex. 60 at 6.

28. After the court refused to grant any relief for a THIRD time, it appears Mr. Woodnick and Mr. Keith reached some sort of informal agreement regarding the sharing of medical records. I was not present at this hearing, was not privy to the discussions between counsel, and I did not represent Ms. Owens in any capacity.

29. My understanding is that based on this informal agreement between Mr. Keith and Mr. Woodnick, the court issued an observational note (not an order) which stated: "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60 at 7.

30. Several critically important events happened next. First, on March 11, 2024, Mr. Woodnick filed a Motion to Compel. RJN Ex. 61. In that motion, Mr. Woodnick made the following representations to the court:

> At Petitioner's Rule 57 deposition on March 1, 2024, Petitioner testified … She "miscarried" two (2) hand sized fetuses sometime in September/October and was seen by yet to be named tele-health providers but provided no records regarding the same nor confirmation on of the date of the alleged event; (3) When she "miscarried," she took photos of what would have been of 19-24 week twin fetuses, but she no longer had the photos (which she claimed she sent to her sister) because she had gotten a new phone, and (4) There is a fourth (4th) case in California where someone alleged that Petitioner fabricated a pregnancy.

RJN Ex. 61 at 1:22–2:6.

31. Mr. Woodnick further represented to the court: "Petitioner has willfully and wantonly failed to disclose information pursuant to Rule 49. After the Status Conference before this Court, Petitioner provided minimal disclosure after evading any compliance with Rule 49 for over eight (8) months." RJN Ex. 61 at 6:27–7:1.

32. Based on those representations, Mr. Woodnick asked the court to order Ms. Owens to produce five different categories of documents, including "the California paternity file from 2014 where she was first accused of faking a pregnancy …." RJN Ex. 61 at 8:5–6.

33. As it turns out, all of Mr. Woodnick's representations to the court were knowingly false. Ms. Owens made none of the statements Mr. Woodnick cited from her deposition. In addition, Mr. Woodnick lied to the court when he claimed Ms. Owens had failed to provide information required by Family Law Rule 49 "for over eight months." In reality, Ms. Owens fully complied with all Rule 49 disclosure obligations at all times.

34. On March 25, 2024, Mr. Woodnick filed a Motion for Relief from Judgment Based on Fraud in a related order of protection case, FC2023-052771 assigned to a different judge (Hon. John Doody). In that motion, Mr. Woodnick accused Ms. Owens of committing "fraud" in the order of protection hearing.

35. To support that request, Mr. Woodnick attached pages from Ms. Owens' deposition transcript and medical documents (including a sonogram) exchanged between the parties. Mr. Woodnick filed this pleading unsealed in the OOP case, and then moved for a joint hearing in the paternity case. *See* RJN Ex. 65.

36. In addition to filing unsealed, publicly-accessible pleadings containing medical information, on March 7, 2024, Mr. Woodnick also issued a press release which viciously attacked Ms. Owens. A copy of that press release is attached hereto as Exhibit A.

37. The press release also contained detailed discussions of medical information provided by Ms. Owens in her deposition. This occurred *after* the family court made the cryptic statement (on February 21, 2024): "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60 at 7.

38. I finally appeared in *Owens* on March 25, 2024. RJN Ex. 66.

39. Immediately after I appeared in *Owens*, one of the first things I did was ask the client if a protective order had been entered. She told me no.

40. In fact, Ms. Owens informed me she had moved for protective/sealing orders on three separate occasions, but that every such request had been denied.

41. When I first appeared in the case on March 25, 2024, Ms. Owens' response to Mr. Woodnick's Motion to Compel was not yet due (the response was due on April 1, 2024). However, Ms. Owens' prior attorney (Cory Keith) failed to provide Ms. Owens with a copy of her file when he withdrew, and Mr. Keith failed to promptly provide the file to me when I asked for it.

42. I quickly determined it was impossible to address the issues in the Motion to Compel without the client's file. For that reason, I initially asked Mr. Woodnick if he would provide an extension of time to respond.

43. Mr. Woodnick refused to grant an extension, without any valid explanation, even though Arizona Supreme Court Rule 41(c) (the Lawyer's Creed of Professionalism) states: "In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected …."

44. Because Mr. Woodnick would not agree to an extension, on April 1, 2024, I filed a motion seeking an extension of time to respond to the motion, RJN Ex. 67, supported by a detailed declaration explaining why a response was impossible since I did not have the client's file. RJN Ex. 68.

45. Two days later on April 3, 2024, the court issued an order denying the extension request. RJN Ex. 70. This occurred even though Mr. Woodnick did not oppose the motion, and even though good cause clearly existed for the request.

46. Several days later, I filed a motion informing the court Mr. Woodnick was refusing to speak with me by telephone, RJN Ex. 71, despite such personal conversations being required by multiple procedural and ethical rules. Because the case was so extremely complicated, and because I was new to the matter, Mr. Woodnick's refusal to talk by phone severely interfered with my ability to gather information and facts.

47. Despite this, on May 1, 2024, the court issued an order denying (without explanation) the motion seeking to require Mr. Woodnick to speak with me. RJN Ex. 82.

48. As those events were unfolding, on April 26, 2024, I filed a pleading entitled Petitioner's Response to Respondent's *Amended* Motion for Relief Based on Fraud. RJN Ex. 78. Attached to that motion were two expert witness reports – one from a medical expert (Dr. Michael Medchill) retained by Ms. Owens, and one from two experts retained by Mr. Echard (Dr. Deans and Dr. Faye Justicia-Linde). *Id*.

49. When Mr. Woodnick disclosed his expert witness report to me, he did not mark it as confidential, nor did he ever ask me to keep it confidential.

50. Based on my review of Mr. Echard's expert witness report, I saw nothing confidential in it that would justify sealing it.

51. I am extremely familiar with the legal standards controlling when/where/how a party may request leave to file a document under seal. Based on

my knowledge of those rules, I believed there was no good faith basis for me to ask the court to seal Mr. Echard's expert witness report.

52. In addition, at the time, I was aware that after Ms. Owens filed a second motion asking the court to issue a protective order, Mr. Woodnick opposed that request, arguing the court had already decided the issue (by repeatedly refusing to grant any form of protective/sealing order); "Apparently, Petitioner feels she is entitled to what is essentially a backdoor Motion to Seal after this Court already **denied** her attempt." RJN Ex. 43 at 1:27–28 (all emphasis in original).

53. The expert reports I filed with the court were submitted in response to Mr. Woodnick's claim that Ms. Owens had committed fraud by fabricating her pregnancy. I believed both reports were helpful to refute that allegation based on the information available to me at the time.

54. Of course, because Mr. Woodnick did not file his motion under seal, and because the trial court had repeatedly (three times) denied Ms. Owens' request for a sealing order, the response I filed was not sealed.

55. Based on my knowledge of the facts, I do not agree my actions violated any court order. On the contrary, the court made its position extremely clear by denying Ms. Owens' request for a protective/sealing order three separate times.

56. I understand on February 21, 2024, the court issued a lengthy minute entry order. Having reviewed that order, I understand the court DENIED Ms. Owens' third request for confidentiality. I also understand that later in the same order, the court made a passing observation: "LET THE RECORD FURTHER

REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60.

57. As a lawyer with 25 years of litigation experience, I have been involved in numerous cases where protective orders have been issued. In every single instance, those protective orders have been crystal clear, leaving no doubt of any kind as to what information is protected and what is not.

58. I have no idea what this statement means: "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties."

59. My understanding after reading this is that it reflected some sort of informal agreement made between Mr. Woodnick and Ms. Owens' former counsel, Cory Keith. My assumption was after the trial court refused to enter a protective order, Mr. Woodnick told Mr. Keith he (Woodnick) would agree not to publicly share any medical records that Mr. Keith produced, at least not unless and until they were filed as part of a pleading.

60. I was not present at the time that agreement was made, and unfortunately Mr. Keith was less than helpful when I contacted him to discuss the case. Also, because Mr. Woodnick refused to speak with me by phone, my ability to seek clarification on the meaning of the court's comment was severely limited.

61. I am aware the state bar has charged me with misconduct for "making public statements about Judge Mata's qualifications or integrity that were objectively false or made with reckless disregard as to their truth or falsity."

62. I absolutely deny any statements I have made regarding Judge Mata were false. On the contrary, I firmly believe every statement I have made about her is either 100% factually true, or constitutes a protected expression of opinion based on fully disclosed facts.

63. Many of the statements in question were discussed in a lengthy affidavit I filed on July 8, 2024 in support of a Notice of Change of Judge for Cause. RJN Ex. 105.

64. Every statement I made in my July 8th affidavit was true and correct to the best of my knowledge at the time I filed that affidavit. I reviewed this affidavit again today, and everything I said remains true and correct to the best of my knowledge with the only exception being ¶ 86 where I said that I had published a small number of comments (approximately 15 posts) regarding the *Owens* case. While that number was correct at the time, since then I have posted numerous additional times about the case, as have many others.

65. I have decades of experience litigating defamation claims and related First Amendment issues. Based on that experience, I know that in the context of the First Amendment, "reckless disregard" is a term of art with a highly specific meaning; i.e., it means the speaker knew he was making a false statement, or the speaker made a false statement which he did not know for certain was false, but

which was made with knowledge of facts that gave the speaker a high degree of awareness that his statement was likely false.

66. As no point did I make any statements with actual malice/reckless disregard for the truth. On the contrary, every statement about Judge Mata was either factually true or was made with a reasonable basis formed after a reasonable inquiry.

67. As just one example, one of the allegedly "objectively false" statements the bar claims I made about Judge Mata was that she had improper *ex parte* conversations about the *Owens* case with her father, a lawyer named Harry Howe.

68. That specific statement was made after multiple different people posted videos on YouTube claiming that they personally attended the trial in *Owens v. Echard*, they talked with Mr. Howe, and he told them he had, in fact, been discussing the case with his daughter, Judge Mata.

69. These recorded witness statements are available on my website here: https://gingraslaw.com/wp-content/uploads/2024/12/Video-Project.mp4?_=1

70. I understand that sometime people lie. For that reason, when I first learned that people were claiming Judge Mata's father attended the trial in *Owens* and that he told people he had been discussing the case with his daughter, I did not rush to accuse Judge Mata of misconduct. Instead, I did the only thing I felt was reasonable under the circumstances – on June 17, 2024, I sent an email to Judge Mata's division informing the court of these concerns and asking the judge to respond to several questions. A true and correct copy of this email is attached as Exhibit B to my affidavit contained in RJN Ex. 105 (*see* pages 50-51 of the PDF).

71. I took the unusual step of emailing Judge Mata to ensure that I did *not* make any statements about her integrity without first exercising reasonable diligence to verify the accuracy of the claims.

72. Judge Mata refused to answer any of the questions in my June 17, 2024 email. I interpreted her failure to respond as an admission the claims being made about her were true.

73. Instead of responding to my questions, just hours after my June 17, 2024 email was sent, Judge Mata issued a scathing ruling in favor of Mr. Echard and against Ms. Owens. RJN Ex. 103.

74. It is my opinion and belief that after I sent my email on June 17, 2024, Judge Mata was worried that I was going to move to disqualify her from the case based on the issue of her discussing the matter with he father. Based on that concern, I believe Judge Mata rushed to issue her decision before I could seek to remove her for cause. That belief is based on, among other things, the number of extremely basic factual errors in the ruling.

75. For instance, the very first factual finding in the ruling was wrong; "Laura Owens ("Petitioner") filed a pro per Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support on May 20, 2023." (emphasis added)

76. Laura's petition was filed on August 1, 2023, not May 20, 2023.

77. I found that level of basic error to be extremely suspicious because prior to trial, I provided the court with lengthy and detailed Proposed Findings of Fact and Conclusions of Law. RJN Ex. 97. In those proposed findings, I provided the

court with a detailed timeline of events (all of which were accurate) including ¶ 61 which stated; "Laura filed an establishment petition on August 1, 2023."

78. For these reasons, among many, many, many others, I believe every statement I have published about Judge Mata was either entirely true as a matter of fact, or at least substantially true.

79. I understand the state bar appears to take the position that I merely "*believed*" my statements were true, but that somehow I have since admitted my statements were false. This is 100% untrue.

80. While it is accurate to say that I *believed* my statements were true, at no point have I admitted anything I said was factually false. I remain completely open to the possibility future evidence may be provided showing something I said was incorrect. If that happened, I would <u>immediately</u> issue a written correction, and perhaps even an apology, if I said something inaccurate.

81. To date, despite nearly two years of investigation by the state bar, and despite my own efforts to continually seek any evidence that shows I made a mistake, I have not seen any evidence to show anything I said about Judge Mata was factually false.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America and the State of Arizona that the foregoing is true and correct.

David S. Gingras

Exhibit A

[redacted]

WL WOODNICK LAW PLLC

PRESS RELEASE:
Statement from Clayton Echard

March 7, 2024: In response to media inquiries, Mr. Echard has authorized the release of this statement:

Clayton Echard vehemently denies ever having intercourse with L.O. and her correspondence (part of the 500 pieces of communication that predicated the Maricopa County Superior Court granting an Injunction Against Harassment against L.O.) confirms the same. Clayton immediately realized he did not want a relationship shortly after a consensual non-intercourse encounter with L.O. He promptly attempted to distance himself from L.O. both personally and professionally. Five (5) days after their non-intercourse encounter, L.O. started suggesting she may be pregnant. Six (6) days after that she claimed she had confirmed she was pregnant. Within weeks, she claimed she was carrying twins (male and female).

Mr. Echard was beyond incredulous of the pregnancy because the performance of fellatio does not cause pregnancy. Her rapidly evolving yarn did not comport with obstetric timelines. Her claim of "twins" (with assigned genders less than 8 weeks into the "pregnancy") did not comport with medical science.

The consequence of Clayton ignoring communication with L.O., refusing to enter into her "dating contract" and demands to meet with him *privately* to discuss a parenting plan for the pretend "twins," was that she vindictively contacted *The Sun*, *Page Six*, and *NY Post*. *The Sun* first reported the apocryphal story without knowledge that L.O. has been accused of fabricating pregnancies and doctoring medical evidence as a means to extort relationships several times, dating back ten (10) years.

The byproduct of the media coverage L.O. initiated was the unification of some prior victims who have shared their experiences. The commonalities included medical images hijacked and photoshopped from the recesses of the internet and confounding attempts by L.O. to get them to agree to date her in exchange for her discontinuing sham pregnancies.

Clayton, confident he was being extorted as he did not have intercourse with L.O., demanded she produce evidence/disclosure. To avoid the anticipated claims about placing the imaginary twins up for pretend adoption, Clayton reached out to Arizona's Putative Father's Registry.

Boxed into her fable after being captured on camera jumping horses during her "high risk" pregnancy and then on court video weeks later with what appeared to be a fake moon bump claiming she was "24 weeks pregnant" by Clayton, this bizarre fish tale came to a head. In December 2023, L.O. cryptically claimed she was "no longer" pregnant and wanted to dismiss the action and avoid sharing any disclosure regarding her malignant faux pregnancy. After failing to appear at her deposition, the Court set a status hearing. At the status hearing the world learned that she claimed she miscarried before her November testimony. L.O. was deposed on 3/1/2024.

As the matter is being prepared for trial *and* these are both public persons, Clayton provides the following statement:

1. Private medical records will not be shared publicly. However, *some* "medical" records are already part of the public domain as L.O. sent what she claimed were her medical records to the media and shared the same on social media platforms.

2. L.O. has since denied that a sonogram (received from her and posted by her to the internet) is her medical record. Again, L.O. emailed the sonogram to multiple journalists in addition to Mr. Echard.

3. Records from Southwest Medical Imaging (SMIL) were tampered with by L.O. L.O. admitted that she altered medical records and falsely attributed them to SMIL. Southwest Medical Imaging did not image L.O. for pregnancy and their legal department is fully aware of the arts-and-crafts forgery that she circulated under their trademark. Use of this image was a fraud on the court to the extent the records were used in the collateral proceedings.

4. Despite L.O. testifying in the collateral proceedings to having attended appointments with various "high risk" pregnancy/obstetric providers, there will be no records confirming because no obstetric care was ever sought.

5. Claims of a doctor "confirming" the pregnancy are patently false. A tele-med (video) appointment with a neurologist is not pregnancy confirmation.

6. The Press has reached out regarding the identity of other individuals (in addition to the two who have had public cases involving similar allegations) who were victims of pregnancy fabrication. Clayton appreciates that the job of journalists (and the will of the lay army of investigators captivated by this saga) is not something he can control. He requests that journalists and investigators (professional and amateur) realize that Clayton and L.O. (a self-help podcaster and TEDx speaker) are public people. Others who have been impacted by her serial pregnancy fraud may not be public persons and understandably may not want their private matters discussed.

7. Clayton asks that the public refrain from any behavior that L.O. could claim is harassing or bullying.

Clayton trusts the legal process and is appreciative of his family and community (especially Bachelor Nation) who have continued to offer support.

Exhibit 6

James D. Lee, Bar No. 011586
Craig D. Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
[redacted]
Phoenix, Arizona 85016-6266
Telephone [redacted]
Email: [redacted]

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** **Bar No. 021097** Respondent.	**PDJ 2026-9010** **REPLY TO STATE BAR'S MOTION FOR JUDGMENT ON PLEADINGS** State Bar No. 24-1692, 24-1826, 24-2483, 24-2819, 24-3080 and 25-1230

The State Bar of Arizona, by undersigned bar counsel, submits this reply to the State Bar's Motion for Judgment on Pleadings.

I. INTRODUCTION.

A. Respondent's motion contains significant information wholly irrelevant to attorney discipline cases.

Arizona attorney discipline cases are *sui generis*. *See* Rule 48(a), Ariz. R. Sup. Ct. The proceedings are expedited and therefore, by necessity, limited to issues relevant to the allegations of *attorney misconduct*. *See* Rule 58(j), Ariz. R. Sup. Ct.

The pending motion identifies the pertinent admitted factual allegations and seeks findings for the related ethical violations. *See* Rule 12(c), Ariz. R. Civ. Pro. (specifically incorporated into attorney discipline proceedings pursuant to Rule 48(b), Ariz. R. Sup. Ct.).

As explained more fully below, Respondent failed to offer any relevant legal basis to defend his actions and instead argues that he would rather continue litigating the dismissed underlying state court case(s) in this *attorney discipline* matter. *See* Response at pg. 2-3.

II. FACTUAL BASIS REMAIN UNDISPUTED.

A. Respondent's knew that his admitted conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct.

Rule 42, Ariz. R. Sup. Ct., ERs 3.4(c) and 3.6(a), and Rule 54(c), Ariz. R. Sup. Ct. requires a "knowing" mental state. Rule 42, Ariz. R. Sup. Ct., ER 1.0 states that "'[k]nowing,' 'known,' or 'knows' denotes actual knowledge of the fact in question…and may be inferred from circumstances." *See also In re: Witt*, 257 Ariz. 12 (2024).

Respondent's response offers no legal dispute that:

1. He knew that the February 21, 2024 court order unambiguously stated: "**LET THE RECORD FURTHER REFLECT** that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." [*See* Amended Complaint and Amended Answer (jointly referred to as "C&A" ¶¶ 9, 24-25, 41, 49; *see also* Response at pg. 9][1]

2. Despite his actual knowledge of the court's prohibition, Respondent nevertheless:

   - Filed a motion attaching his signed declaration and including three medical records. [C&A ¶¶ 42-44]

   - Posted Sonora Quest Laboratories medical records online. [C&A ¶¶ 47]

---

[1] Respondent attempts to create a "strawman" alleging that the State Bar believes that the order required a protection order before filing medical records or other documents. While Respondent should have obtained a protective order, sought relief from the court, or taken some action(s) to ensure his compliance with the order, the order does not contain requirement(s) as to *how* the parties should comply with the plain language of the prohibition. *See also* Rule 60, Ariz. R. Civ. Pro.

3. Respondent also knew that opposing counsel informed him of his violations of the February 21, 2024 court order. [C&A ¶49]

4. Despite his admitted actual knowledge of the foregoing, Respondent repeatedly violated the unambiguous prohibition by:

   - Posting portions of another medical records online. [C&A ¶ 52]
   - Filing another document which included medical records and excerpts from expert medical reports prepared for the opposing party. [C&A ¶¶ 53, 55-58]
   - Posting a copy of his filed document as well as the attached medical records and excerpts from the expert reports online. [C&A ¶ 59]

Respondent's multiple violations of the court's prohibition by repeatedly disclosing medical records and other documents violated Rule 42, Ariz. R. Sup. Ct., ERs 3.4(c), 3.6(a), 4.4(a), and Rule 54(c), Ariz. R. Sup. Ct.

B. <u>Respondent violated Rule 41(b)(3) and (7), Ariz. R. Sup. Ct., and Rule 42, Ariz. R. Sup. Ct. ERs 8.2.</u>

> Respondent admits making certain statements regarding Judge Mata, the contents of which speak for themselves. Respondent affirmatively alleges every statement he made regarding Judge Mata was factually true, or was made with a good faith basis to believe it was true, or was

an opinion protected by the First Amendment to the United States Constitution and by the Arizona Constitution." [C&A ¶ 101]

While Respondent attempts to "justify" his unapologetic violations of his professionalism and ethical obligations, Respondent suggests that his misconduct is constitutionally protected. The Arizona Supreme Court disagrees:

1) <u>The First Amendment Rights of Attorneys</u>

In re: Matter of James Lawrence Riley, 142 Ariz. 604, 691 P.2d 695 (1984) ["…***a lawyer is held to a narrower standard of free speech that a non-lawyer when discussing the judiciary***:…***A member of the bar can, and will, be stopped at the point where he infringes our Canon of Ethics; and if he wishes to remain a member of the bar he will conduct himself in accordance therewith***… The dissent in this case notwithstanding, we believe that our opinion here today in no way diminishes the First Amendment freedoms enjoyed by lawyers."] (Emphasis added)

In re: Meyer L. Ziman, SB-12-0037-AP (PDJ2011-9067)[2] ["***In taking the Oath of Admission to the Bar, lawyers swear that they will abstain from offensive conduct***…Rude attacking comments reflect poorly on a self regulating profession….] (Emphasis added)

2) <u>The Objective Standard of Review Rendering Respondent's Subjective Opinion of Truth Irrelevant.</u>

In re: Douglas B. Levy, SB-21-0085-AP ["Although the [P]anel could consider Martinez's subjective motive in evaluating an ER 4.4(a) violation, ***ultimately it was required to apply an objective standard***," citing *In re*

---

[2] While Respondent's response mentions the reported *Ziman* case identifying similar unprofessional behavior, Respondent fails to address the factually unrelated *Ziman* attorney discipline case.

Alexander, 232 Ariz. 1, 7 ¶ 23 (2013). ***Likewise here, the Panel erred in determining that the subjective belief that abusive language is acceptable if it reflects the "honest opinion," and should have applied an objective standard to determine if the demeaning language constituted unprofessional conduct***..."] (Emphasis added)

3) Importance of Professionalism and Respect in Litigation.

In re: Vladimir Gagic, SB-22-0085-AP ["The Court is mindful that the purpose of professional discipline is to protect the public and deter similar conduct by others…However, ***a relentless campaign to malign and embarrass opposing counsel and the judiciary is clearly prohibited conduct.***"] (Emphasis added)

III. RESPONDENT'S GENERAL BELIEFS AND "REASONS".

A. Respondent suggests that the motion should fail for "three separate, independent reasons".

In his response, Respondent offers the following: 1) "multiple material facts are in dispute", 2) "the bar's position is directly contrary to controlling law", and 3) "the bar has moved for judgment offensively".

1. "[M]ultiple material facts are in dispute."

The opposite is true. All the relevant facts in support of this motion were unequivocally admitted in Respondent's Answer and Amended Answer.[3]

[3] See *Schwartz v. Schwerin*, 85 Ariz. 242, 249 (1959) ["An admission in an answer is binding on the party making it, and is conclusive as to the admitted fact. No evidence may be shown to contradict [an] admitted fact."]

Respondent erroneously believes that the previously adjudicated facts in the underlying state court cases and his relentless campaign to continue maligning the judiciary should be the subject of this attorney discipline case. *See* Rule 49(d), Ariz. R. Sup. Ct.; *see also* Rule 12(c), Ariz. R. Civ. Pro. and ICMC order at footnote 1.

2. "[T]he bar's position is directly contrary to controlling law."

Respondent repeats the following in various forms throughout his response:

- Prior requests for confidential orders in the underlying case (all of which predated his representation) were denied prior to the February 21, 2024 court order. *See* Response at pgs. 7-8, et. seq.
- The language of the order is too vague to be understood. *Id*. at pgs. 9-14.
- Opposing counsel also engaged in misconduct; the State Bar is violating the anti-SLAPP law. *Id*. at pgs. 11-15.

As to the first claim, courts are authorized and frequently do, alter, revoke, amend, affirm, overrule, clarify, and reverse orders throughout the pendency of lawsuits. Prior rulings (which were later negated by written order) do not provide a "defense" or other justification for Respondent's knowledge and repeated violations of the valid February 21, 2024 court order.

As to Respondent's second claim, ***incredibly***, Respondent (an Arizona attorney of almost 22 years) suggests that the plain and unambiguous language of the order is simply too vague to be understood as it did not contain the words "IT IS ORDERED" or use language specifically "sealing" the prohibited documents.

As to Respondent's third "catch all" claim of wrongdoing by others, the named Complainant(s) and the potential witnesses are not parties to this attorney discipline matters. *See* Rule 53(a), Ariz. R. Sup. Ct.; *see also* ABA *Standards* for Imposing Lawyer Sanctions 9.22(g).

None of these beliefs are accurate or state a legal dispute to the motion.

IV. CONCLUSION

Respondent has admitted the relevant actions and fails to provide a legal dispute that his actions complied with the Arizona Rules of the Supreme Court. Therefore, an evidentiary hearing on the admitted facts and resulting violations serves no purpose. Accordingly, the State Bar requests that the court enter a judgment against Respondent for his violation of the cited ethical rules.

DATED this 23rd day of March 2026.

STATE BAR OF ARIZONA

/s/ Craig D. Henley

Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 23rd day of March 2026.

Copy of the foregoing e-mailed
this 23rd day of March 2026, to:

Honorable Lisa A. VandenBerg
Presiding Disciplinary Judge
Supreme Court of Arizona
[redacted]
Phoenix, Arizona 85007
E-mail: [redacted]

David S. Gingras
Gingras Law Office, PLLC
[redacted]
Phoenix, Arizona 85044-6417
Email: [redacted]
Respondent

Lawyer Regulation Records Manager
State Bar of Arizona
[redacted]
Phoenix, Arizona 85016-6266
[redacted]

by:*/s/Melissa Duarte*
CDH/md

Exhibit 7

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
03-31-2026

C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **NOTICE OF FILING SUPPLEMENT AUTHORITY**

Respondent David S. Gingras ("Respondent" or "Gingras") respectfully gives notice to the PDJ of supplemental legal authority which bears on the issues raised by the bar's Motion for Partial Judgment on the Pleadings.

Specifically, on March 23, 2026, the bar filed a Reply in support of its Motion for Partial Judgment on the Pleadings. On page 5 of that Reply, citing a 1984 case from the Arizona Supreme Court, the bar presented the following legal argument:

> ***[A] lawyer is held to a narrower standard of free speech that a non-lawyer when discussing the judiciary:…A member of the bar can, and will, be stopped at the point where he infringes our Canon of Ethics; and if he wishes to remain a member of the bar he will conduct himself in accordance therewith***…(emphasis in original)

Today, March 31, 2026, the United States Supreme Court issued a new decision which directly rejects the state bar's argument. That case, *Chiles v. Salazar*, 607 U.S. ___ (2026) is attached as Exhibit A. The Court's opinion is also available here: https://www.supremecourt.gov/opinions/25pdf/24-539_fd9g.pdf

In *Chiles*, the U.S. Supreme Court expressly rejected the bar's argument that licensed professionals have different or lesser First Amendment rights than non-professionals; "[T]he First Amendment's protections extend to licensed professionals much as they do to everyone else." *Chiles*, 607 U.S. at 10 (emphasis added). The Court further reaffirmed its view that laws which "regulate only "professional speech" by state license holders" are *not* subject to lower First Amendment protection. This is so because the Court found there was no "persuasive reason for treating professional speech as a unique category . . . exempt from ordinary First Amendment principles." *Id*.

Respectfully submitted March 31, 2026.

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Tel.: (480) 264-1400
David@GingrasLaw.com
Respondent

CERTIFICATE OF SERVICE

COPY of the foregoing emailed
this 31th day of March 2026 to:
Jim Lee
[redacted]
Craig Henley
[redacted]
Senior Bar Counsel

Exhibit A

SUPREME COURT OF THE UNITED STATES

Syllabus

CHILES *v*. SALAZAR, EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF REGULATORY AGENCIES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 24–539. Argued October 7, 2025—Decided March 31, 2026

Kaley Chiles holds a master's degree in clinical mental health and a state counseling license in Colorado. Ms. Chiles does not begin counseling with any predetermined goals; instead, she sits down with clients, discusses their goals, and then formulates methods of counseling that will most benefit them, seeking throughout to respect her clients' fundamental right of self-determination. On matters of sexuality and gender, Ms. Chiles's clients, including young people, often have different goals: Some are content with their sexual orientation and gender identity and want help with social issues or family relationships, while others hope to reduce or eliminate unwanted sexual attractions, change sexual behaviors, or grow in the experience of harmony with their bodies. With all those clients, Ms. Chiles seeks to help them reach their stated objectives. And she employs only talk therapy.

In 2019, Colorado adopted a law prohibiting licensed counselors from engaging in "conversion therapy" with minors, Colo. Rev. Stat. §12–245–224(1)(t)(V), defining the term to include "any practice or treatment . . . that attempts . . . to change an individual's sexual orientation or gender identity," as well as any "effor[t] to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions toward individuals of the same sex," §12–245–202(3.5)(a). Yet the law explicitly allows counselors to provide "[a]cceptance, support, and understanding for . . . identity exploration and development," §12–245–202(3.5)(b)(I), and to assist persons "undergoing gender transition," §12–245–202(3.5)(b)(II). Ms. Chiles filed suit in federal court seeking a preliminary injunction, raising a First Amendment challenge to the law as it applies to her talk therapy.

Both the district court and the Tenth Circuit determined that Ms. Chiles had Article III standing to pursue her as-applied pre-enforcement challenge. On the merits, however, both courts denied Ms. Chiles's request for a preliminary injunction, reasoning that Colorado's law is best understood as regulating professional conduct and that it regulates speech only incidentally, thus triggering no more than rational-basis review under the First Amendment. This Court granted certiorari to resolve a circuit conflict over how the First Amendment interacts with laws like Colorado's when those laws are applied to talk therapy.

Held: Colorado's law banning conversion therapy, as applied to Ms. Chiles's talk therapy, regulates speech based on viewpoint, and the lower courts erred by failing to apply sufficiently rigorous First Amendment scrutiny. Pp. 7–23.

(a) The First Amendment protects the inalienable right of every individual to decide for himself "how best to speak," *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 791, and laws regulating speech based on its subject matter or "communicative content" are "presumptively unconstitutional," triggering "strict scrutiny" that requires the government to prove its restriction is "narrowly tailored to serve compelling state interests," *Reed* v. *Town of Gilbert*, 576 U. S. 155, 163. "Viewpoint discrimination" represents an even more "egregious form" of content regulation from which governments must nearly always "abstain." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829.

The Court has recognized only a "few historic and traditional categories of expression"—such as fraud, defamation, and "fighting words"—where content-based restrictions do not automatically trigger strict scrutiny. *United States* v. *Alvarez*, 567 U. S. 709, 717. These categories are narrowly drawn and share a long and well-recognized historical pedigree.

A law regulating the content of speech cannot avoid searching First Amendment review just because it mostly regulates non-expressive conduct. What matters is whether, in fact, the law regulates speech in the case at hand, as illustrated by *Cohen* v. *California*, 403 U. S. 15, and *Holder* v. *Humanitarian Law Project*, 561 U. S. 1. And the First Amendment's protections extend to licensed professionals much as they do everyone else. *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. 755, 766–767. Pp. 8–11.

(b) As applied to Ms. Chiles, Colorado's law regulates the content of her speech and goes further to prescribe what views she may and may not express, discriminating on the basis of viewpoint. The law permits her to express acceptance and support for clients exploring their identity or undergoing gender transition, §12–245–202(3.5)(b), but forbids her from saying anything that attempts to change a client's "sexual orientation or gender identity," including efforts to change "behaviors," "gender expressions," or "romantic attraction[s]," §12–245–202(3.5)(a). Her speech does not become "conduct" just because a government says so or because it may be described as a "treatment" or "therapeutic modality." The First Amendment is no word game, and "the exercise of constitutional rights" cannot be circumscribed "by mere labels." *NAACP* v. *Button*, 371 U. S. 415, 429.

The fact that the State's viewpoint regulation falls only on licensed health care professionals does not change the equation. The First Amendment protects the right of all to speak their minds, and *NIFLA* expressly rejected the notion that professional speech is subject to "'diminished constitutional protection.'" 585 U. S., at 767. History is littered with examples of governments that have sought to manipulate professional speech "to increase state power," "suppress minorities," and censor "'unpopular ideas.'" *Id.*, at 771.

Colorado's law does not implicate any recognized exception to the Court's usual First Amendment rules. It does not require disclosure of "factual, noncontroversial information in . . . 'commercial speech,'" *id.*, at 768, and as applied to Ms. Chiles, it does not regulate conduct in a way that only "incidentally burden[s] speech," *id.,* at 769. All she does is speak, and speech is all Colorado seeks to regulate.

Colorado's argument that the law regulates speech only incidentally fails because the Court's speech-incident-to-conduct doctrine asks whether the law restricts speech only because it is integrally related to unlawful conduct, or whether the law restricts expressive conduct only for reasons unrelated to its content. Colorado's law does neither: Ms. Chiles's speech does not bear a close causal connection to any separately unlawful conduct, and the State's law trains directly on the content of her speech, permitting some viewpoints but not others. Pp. 11–17.

(c) Colorado cannot establish that applying its law to Ms. Chiles falls within a long tradition of permissible content regulation.

Colorado's arguments proceed at far too high a level of generality, asking the Court to recognize a broad "'First Amendment Free Zone'" for speech the State considers "substandard care." *United States* v. *Stevens*, 559 U. S. 460, 469. The Court's precedents foreclose aggregating discrete traditions of content-based regulations to sustain some new and broader category of lesser-protected speech.

Even taking each of the traditions Colorado invokes on its own terms, none supports the State's position. Colorado's suggestion that the statute represents a traditional law licensing of medicine fails because the State has not presented persuasive evidence of a historic tradition—the first state "counselor-licensure bill" was adopted only in 1976—and because licensing laws have traditionally addressed qualifications, not dictated a professional's point of view. Colorado's analogy to informed-consent laws fails because such laws regulate speech only incident to separate physical conduct and usually require disclosure of only factual and uncontroversial information, whereas Colorado's law as applied to Ms. Chiles seeks to silence a viewpoint she wishes to express. Finally, Colorado's invocation of traditional tort claims for malpractice fails because malpractice actions require exacting proof of injury caused by breach of duty, "provid[ing] breathing room for protected speech," *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 U. S. 600, 620, whereas Colorado's law threatens fines, probation, and loss of license simply for expressing a particular view, and does not allow clients to consent to practices that depart from the prevailing standard of care. Pp. 18–22.

(d) The First Amendment stands as a bulwark against any effort to prescribe an orthodoxy of views, reflecting a belief that each American enjoys an inalienable right to speak his mind and a faith in the free marketplace of ideas as the best means for finding truth. Laws like Colorado's, which suppress speech based on viewpoint, represent an egregious assault on both commitments. P. 23.

116 F. 4th 1178, reversed and remanded.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, SOTOMAYOR, KAGAN, KAVANAUGH, and BARRETT, JJ., joined. KAGAN, J., filed a concurring opinion, in which SOTOMAYOR, J., joined. JACKSON, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 24–539

KALEY CHILES, PETITIONER *v.* PATTY SALAZAR, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF REGULATORY AGENCIES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[March 31, 2026]

JUSTICE GORSUCH delivered the opinion of the Court.

Kaley Chiles is a mental-health counselor in Colorado. In this case, we consider her First Amendment challenge to a state law regulating what she may say when speaking with her clients.

I

A

According to Ms. Chiles's verified complaint, she holds a master's degree in clinical mental health and a state counseling license. App. to Pet. for Cert. 212a (App.). Clients seek her help on a wide variety of mental-health issues, including trauma, addiction, "eating disorders, gender dysphoria[,] and sexuality." *Id.*, at 206a–207a, 215a. Ms. Chiles "does not begin counseling" on any topic "with any predetermined goals." *Id.*, at 207a. Nor does she seek to "impose her values or beliefs" on clients. *Id.*, at 212a. Instead, she "sits down . . . and talks to them about their goals." *Id.*, at 207a; see also *id.*, at 213a. Only after clients have identified their own aspirations does Ms. Chiles begin "formulat[ing] methods of counseling that will most benefit" them. *Id.*, at 207a. In any counseling that follows, as well, Ms. Chiles seeks to respect her "clients' fundamental right of self-determination." *Ibid.*

On matters of sexuality and gender, Ms. Chiles's clients, including minors, come to her with different goals in mind. Some "are content with" their sexual orientation and gender identity and seek assistance only with "social issues, family relationships," and the like. *Id.*, at 207a, 213a–214a. In cases like those, Ms. Chiles does not try to persuade her clients to "change their attractions, behavior, or identity," but aims instead to help them address their stated goals. *Id.*, at 214a; see also *id.*, at 207a. Other clients, however, come to her hoping to "reduce or eliminate unwanted sexual attractions, change sexual behaviors, or grow in the experience of harmony with [their] bod[ies]." *Ibid.* And in these cases, too, Ms. Chiles seeks to help her clients reach their own stated objectives. *Ibid.* In doing so, she does not prescribe any medicines, perform any physical treatments, or engage in any coercive or aversive practices. *Id.*, at 205a–207a. All Ms. Chiles offers is talk therapy. *Ibid.*

B

In 2019, Colorado adopted a law prohibiting licensed counselors from engaging in "conversion therapy" with minors. Colo. Rev. Stat. §12–245–224(1)(t)(V) (2025). The State reports that it adopted the law "in response to a growing mental health crisis among Colorado teenagers and mounting evidence that conversion therapy is associated with increased depression, anxiety, suicidal thoughts, and suicide attempts." Brief for Respondents 11–12. Any Coloradan who thinks a licensed counselor is engaging in conversion therapy may file a complaint with a regulatory board. See §12–245–226(1)(a)(II)(B). A complaint, in turn, triggers a disciplinary review process that can yield a fine, probation, or the loss of a license. See §12–245–225; Brief for Respondents 9.

The term "conversion therapy" may evoke physical techniques such as "'electric shoc[k]'" therapy aimed at changing an individual's sexual orientation or gender identity. *Id.*, at 4. But Colorado's ban on conversion therapy reaches further, forbidding "*any* practice or treatment . . . that attempts . . . to change an individual's sexual orientation or gender identity." §12–245–202(3.5)(a) (emphasis added). The law forbids as well any "effor[t] to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." *Ibid*. At the same time, the law explicitly allows counselors to engage in "practices" that provide "[a]cceptance, support, and understanding for the facilitation of an individual's . . . identity exploration and development." §12–245–202(3.5)(b)(I). Likewise, the law allows counselors to provide "[a]ssistance to a person undergoing gender transition." §12–245–202(3.5)(b)(II).

After Colorado adopted its new law, Ms. Chiles filed suit in federal court and sought a preliminary injunction prohibiting the State from enforcing it against her. She did not dispute that the statute has many valid applications. Indeed, Ms. Chiles did not take issue with Colorado's effort to ban what she herself calls "long-abandoned, aversive" physical interventions. Brief for Petitioner 10. Instead, Ms. Chiles objected to Colorado's law only as it applies to her talk therapy, therapy that involves no physical interventions or medications, only the spoken word. Motion for Preliminary Injunction in No. 22–cv–2287 (D Colo.), ECF Doc. 29, pp. 2–3, 15.

Ms. Chiles's as-applied challenge ran this way. With respect to gender identity, she claimed, the law permits her to speak in ways that encourage a client "'undergoing gender transition,'" but the law prohibits her from speaking in ways that help a client "realign [his] identity with [his] sex."

Brief for Petitioner 11; see ECF Doc. 29, at 17–20. With respect to sexual orientation, Ms. Chiles continued, Colorado's law similarly allows her to affirm a client's sexual orientation, but prohibits her from speaking in any way that helps a client "change" his sexual attractions or behaviors. Brief for Petitioner 11; see ECF Doc. 29, at 17–20. Even though Colorado's law surely has other constitutional applications, she insisted, these constraints strip her of her First Amendment right to speak freely with her clients in ways she believes might help them meet "their own goals." Brief for Petitioner 12; see ECF Doc. 29, at 2–3.

C

Both the district court and the Tenth Circuit determined that Ms. Chiles had Article III standing to pursue her as-applied pre-enforcement challenge. 116 F. 4th 1178, 1199, 1201 (2024); Civ. Action No. 1:22–cv–2287 (D Colo., Dec. 19, 2022), App. 139a.

In support of their conclusion, both courts read Colorado's law as prohibiting licensed counselors like Ms. Chiles from engaging in any attempt—including through speech—to help a minor client change his gender identity or sexual orientation. 116 F. 4th, at 1197; App. 141a–142a. Both courts understood this prohibition as extending to any attempt—including through speech—to change a client's "behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." §12–245–202(3.5)(a); see 116 F. 4th, at 1197; App. 141a–142a. As both courts saw it, too, Ms. Chiles had previously spoken in ways the law now forbids, and she would continue speaking the same way but for Colorado's new law. 116 F. 4th, at 1196–1198; App. 141a–142a. Finally, both courts concluded that Ms. Chiles had alleged a "credible threat" that the State would enforce its law against her if she continued speaking as she had in the past and wished to do in the future. Indeed, both courts observed, Colorado authorities had refused to disavow bringing enforcement actions against her. 116 F. 4th, at 1198–1199; App. 142a–144a.

Under these circumstances, the courts held, Ms. Chiles faced an "ongoing injury resulting from the statute's chilling effect" on her speech. 116 F. 4th, at 1195 (internal quotation marks omitted); see App. 140a–141a. Satisfied as well that Ms. Chiles's injury was traceable to Colorado's law and redressable by an as-applied constitutional ruling in her favor, both courts held that she possessed Article III standing to bring suit. 116 F. 4th, at 1194, 1199; App. 145a, n. 5. In coming to this conclusion, the lower courts joined others that have found standing in similar cases involving similar statutes. See, *e.g.*, *Tingley* v. *Ferguson*, 47 F. 4th 1055, 1066 (CA9 2022); *Catholic Charities of Jackson, Lenawee and Hillsdale Ctys.* v. *Whitmer*, 162 F. 4th 686, 691 (CA6 2025).*

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*We, too, agree that Ms. Chiles has standing. Before us, Colorado only halfheartedly contests the point, suggesting Ms. Chiles cannot establish a present "intention" to speak in a way the law forbids. Brief for Respondents 23, n. 18. But the State's argument is based not on some new insight about Ms. Chiles's state of mind, only a new and narrowed construction of the statute that the State advances for the first time in this Court. *Id.*, at 18–19. Colorado's late-breaking construction of its law, however, would render much of the law's language superfluous. Reply Brief 2–6; *People* v. *Rodriguez-Morelos*, 562 P. 3d 71, 73 (Colo. 2025) (reciting the presumption against surplusage when construing state statutes). The State's new interpretation also seemingly stands at odds with how the State itself understood its law in proceedings below. See, *e.g.*, Motion to Dismiss Complaint in No. 22–cv–2287 (D Colo.), ECF Doc. 52, p. 5, n. 3. Separately, Colorado suggests that Ms. Chiles has not shown a credible threat that the State will enforce its law against her. Brief for Respondents 23, n. 18. But Colorado has fought this suit through three courts over three years and, at argument here, expressly declined to disavow enforcement against Ms. Chiles. Tr. of Oral Arg. 80–81. As the lower courts held, no more is required under this Court's precedents. 116 F. 4th, at 1199; App. 145a; see *Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 159 (2014).

Turning to the merits, both the district court and the Tenth Circuit denied Ms. Chiles's request for a preliminary injunction. The courts recognized that Ms. Chiles provides only "talk therapy." 116 F. 4th, at 1193; see App. 152a. And they acknowledged that Colorado's law regulates the "verbal language" she may use. 116 F. 4th, at 1208; see App. 152a. But, the courts held, the main thrust of the State's law is to delineate which "treatments" and "therapeutic modalit[ies]" are permissible. 116 F. 4th, at 1208, 1210; see App. 151a. Accordingly, the courts reasoned that Colorado's law is best understood as regulating "professional conduct." 116 F. 4th, at 1206, 1208, 1214; see App. 151a, 155a. At most, they continued, Colorado's law regulates speech only "incidentally" to professional conduct. 116 F. 4th, at 1204; see App. 155a. As a result, the courts concluded, Colorado's law triggers no more than "rational basis review" under the First Amendment, requiring the State to show merely that its law is rationally related to a legitimate governmental interest. 116 F. 4th, at 1215; App. 156a. Because the State satisfied that standard, the courts held that Ms. Chiles was not entitled to the relief she sought. 116 F. 4th, at 1220–1221; App. 157a.

At the Tenth Circuit, Judge Hartz dissented. As he saw it, the majority committed "several fundamental errors." 116 F. 4th, at 1227. While Colorado's law may ban conduct in other applications, he observed, with respect to Ms. Chiles it regulates only what she may and may not say. *Id.*, at 1231. And under this Court's precedents, he argued, that kind of speech regulation triggers far more demanding scrutiny than mere rational-basis review. *Id.*, at 1226–1229. Nor, Judge Hartz continued, does the fact that Ms. Chiles happens to hold a professional license change the equation. *Id.*, at 1229–1230. To the contrary, he said, the majority's effort to recast Ms. Chiles's speech as "professional conduct" amounted to little more "than a labeling game." *Id.*, at 1231 (internal quotation marks omitted).

After the Tenth Circuit ruled, Ms. Chiles sought certiorari. In doing so, she argued that the Tenth Circuit's decision "worsened a circuit conflict" over how the First Amendment interacts with laws like Colorado's. Pet. for Cert. 16; compare 116 F. 4th, at 1221, and *Tingley*, 47 F. 4th, at 1077, with *Catholic Charities of Jackson*, 162 F. 4th, at 696; *Otto* v. *Boca Raton*, 981 F. 3d 854, 868–870 (CA11 2020); *King* v. *Governor of New Jersey*, 767 F. 3d 216, 229 (CA3 2014), abrogated in part by *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. 755, 767–769 (2018) (*NIFLA*); *Tingley* v. *Ferguson*, 57 F. 4th 1072, 1083–1085 (CA9 2023) (Bumatay, J., dissenting from denial of rehearing en banc).

We agreed to hear the case. 604 U. S. 1193 (2024).

II

The question before us is a narrow one. Ms. Chiles does not question that Colorado's law banning conversion therapy has some constitutionally sound applications. See Brief for Petitioner 53. She does not take issue with the State's effort to prohibit what she herself calls "long-abandoned, aversive" physical interventions. *Id*., at 10. Instead, Ms. Chiles stresses that she provides only talk therapy, employing no physical techniques or medications. Yet, she argues, Colorado's law still applies to her, prescribing what she may say in "voluntary counseling conversations" with her clients. *Id*., at 50. And because that application of the law strikes at the heart of the First Amendment's protections for free speech, she contends, it warrants considerably more searching scrutiny than the rational-basis review the Tenth Circuit applied in this case or the intermediate-scrutiny review some other lower courts have employed in cases like hers. *Id.,* at 38; see, *e.g*., *King*, 767 F. 3d, at 237. We agree. To explain why, we begin by outlining the relevant First Amendment principles that govern us before discussing how they apply here.

A

The First Amendment "envisions the United States as a rich and complex place" where all enjoy the "'freedom to think as you will and to speak as you think.'" *303 Creative LLC* v. *Elenis*, 600 U. S. 570, 584, 603 (2023) (quoting *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 660–661 (2000)). Often, speech may prove illuminating and inspiring. Sometimes, it can be misguided, offensive, or cause "incalculable grief." *Snyder* v. *Phelps*, 562 U. S. 443, 456 (2011). But either way, the First Amendment protects the inalienable right of every individual to decide for himself "how best to speak." *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 791 (1988). In this Nation, no official—"high or petty"—may command our tongues or silence our voices. *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943).

Consistent with the First Amendment's jealous protections for the individual's right to think and speak freely, this Court has long held that laws regulating speech based on its subject matter or "communicative content" are "presumptively unconstitutional." *Reed* v. *Town of Gilbert*, 576 U. S. 155, 163 (2015). As a general rule, such "content-based" restrictions trigger "strict scrutiny," a demanding standard that requires the government to prove its restriction on speech is "narrowly tailored to serve compelling state interests." *Ibid.* Under that test, it is "'rare that a regulation . . . will ever be permissible.'" *Brown* v. *Entertainment Merchants Assn.*, 564 U. S. 786, 799 (2011) (quoting *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 818 (2000)).

We have recognized, as well, the even greater dangers associated with regulations that discriminate based on the speaker's point of view. When the government seeks not just to restrict speech based on its subject matter, but also seeks to dictate what particular "opinion or perspective" individuals may express on that subject, "the violation of the

First Amendment is all the more blatant." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). "Viewpoint discrimination," as we have put it, represents "an egregious form" of content regulation, and governments in this country must nearly always "abstain" from it. *Ibid.*; see also *Iancu* v. *Brunetti*, 588 U. S. 388, 393 (2019) (describing "the bedrock First Amendment principle that the government cannot discriminate" based on viewpoint (internal quotation marks omitted)); *Good News Club* v. *Milford Central School*, 533 U. S. 98, 112–113 (2001); *Barnette*, 319 U. S., at 642.

Of course, with almost any rule comes exceptions. And this Court has recognized a "few historic and traditional categories of expression long familiar to the bar" where content-based restrictions on speech will not automatically trigger strict scrutiny—categories that include fraud, defamation, and "fighting words." *United States* v. *Alvarez*, 567 U. S. 709, 717 (2012) (plurality opinion) (alterations and internal quotation marks omitted). But, as we have taken pains to emphasize, these exceptional categories are few and narrowly drawn, and all share a long and well-recognized historical pedigree. *Ibid.*; see *NIFLA*, 585 U. S., at 767. Indeed, even within these categories we have sometimes still applied strict scrutiny when governments have sought to regulate speech based on viewpoint. See, *e.g.*, *R. A. V.* v. *St. Paul*, 505 U. S. 377, 392, 395–396 (1992) (addressing an ordinance that barred certain "fighting words" based on viewpoint).

From these general principles, other more specific ones follow. So, for example, a law regulating the content of speech cannot avoid searching First Amendment review just because it mostly regulates non-expressive conduct. Take a classic illustration: *Cohen* v. *California*, 403 U. S. 15 (1971). There, the State of California charged Paul Cohen with "maliciously and willfully disturb[ing] the peace." *Id.*, at 16 (internal quotation marks omitted). Often, of course, a person disturbs the peace through conduct alone (say, by brawling at a city council meeting). But that is not always true. And in Mr. Cohen's case, California charged him for disturbing the peace because he wore a jacket bearing the words "'Fuck the Draft'" in the corridor of a municipal courthouse. *Ibid*. As applied to him, the Court recognized, the law implicated core First Amendment concerns because the only "'conduct'" he engaged in was the speech he displayed. *Id*., at 18. And, we held, California could not constitutionally punish him because of the "content" of his message. *Ibid*.

We repeated the point in *Holder* v. *Humanitarian Law Project*, 561 U. S. 1 (2010). That case involved a federal law banning the provision of "'material support'" to certain foreign terrorist organizations. *Id*., at 8–9. Much as California had in *Cohen*, the federal government in *Holder* argued that the law did not trigger strict scrutiny because it addressed "conduct, not speech." 561 U. S., at 26. We disagreed. True, we acknowledged, the law often might regulate conduct. But, we observed, in the case before us the government threatened to prosecute lawyers, doctors, and others for providing spoken training and expert advice (such as "'how to use humanitarian and international law to peacefully resolve disputes'") to certain groups. *Id*., at 16, 21–22. And that application of the law, we held, sought to "regulat[e] speech on the basis of its content" and thus demanded strict-scrutiny review. *Id*., at 27–28.

As *Holder* indicates, too, the First Amendment's protections extend to licensed professionals much as they do to everyone else. It's a point we have since discussed at length in *NIFLA*. There, California sought to require crisis pregnancy clinics to make certain statements to their clients. The State argued that its law did not trigger demanding First Amendment review because it sought to regulate only "'professional speech'" by state license holders. 585 U. S., at 766–767. We rejected that move. By compelling clinics to speak the State's message, the law regulated speech based on its content. *Id.*, at 766. And, we held, California had failed to "identif[y] a persuasive reason for treating professional speech as a unique category . . . exempt from ordinary First Amendment principles." *Id.*, at 773.

In reaching that conclusion, to be sure, we acknowledged two kinds of content-based restrictions that can apply to professional speech without triggering strict scrutiny. First, courts generally deploy less searching review when faced with laws that require speakers to disclose only factual, noncontroversial information in "'commercial speech.'" *Id.*, at 768; *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 650–653 (1985). Second, laws regulating conduct in ways that incidentally sweep in speech may also generally avoid strict scrutiny. *NIFLA*, 585 U. S., at 769. As with laws addressing fraud, defamation, and "fighting words," laws regulating speech along these two lines enjoy a long historical tradition. *Id.*, at 767. But, we stressed, neither "turn[s] on the fact" that a licensed professional happens to be speaking. *Id.*, at 768. Nor, we emphasized, do these narrow categories of lesser-protected speech warrant a new rule exempting a broader "category called 'professional speech'" from demanding First Amendment review. *Ibid.*

B

Applying these principles, we conclude that the courts below failed to apply sufficiently rigorous First Amendment scrutiny in this case.

Start with the most obvious point. While the First Amendment protects many and varied forms of expression, the spoken word is perhaps the quintessential form of protected speech. And that is exactly the kind of expression in which Ms. Chiles seeks to engage. As a talk therapist, all Ms. Chiles does is speak with clients; she does not prescribe medication, use medical devices, or employ any physical methods. App. 205a–207a.

Next, and nearly as clear to our eyes, Colorado seeks to regulate the content of Ms. Chiles's speech. When it comes to issues of human sexuality, some of her clients "are content with" their sexual identity and orientation and want help only "with social issues [or] family relationships." *Id.*, at 207a, 214a. But other clients seek her counsel on how to "reduce or eliminate unwanted sexual attractions, change sexual behaviors, or grow in the experience of harmony with [their] bod[ies]." *Id.*, at 207a. And in those cases, Colorado regulates how Ms. Chiles may respond. Under its law, she may not speak in any way that attempts to change a client's "sexual orientation or gender identity"—including a client's "behaviors or gender expressions"—or in any way that seeks to "eliminate or reduce" a client's "sexual or romantic attraction or feelings toward individuals of the same sex." §12–245–202(3.5)(a).

Doubtless, Colorado sees things differently. The State insists, and the Tenth Circuit agreed, that its law does not "regulate expression" at all, only "conduct," "treatment," or a "therapeutic modality." Brief for Respondents 2, 36–37, 47; 116 F. 4th, at 1208. As a result, Colorado reasons, its law triggers no more than rational-basis or intermediate-scrutiny review. Brief for Respondents 42–44. But the State's premise is simply mistaken. In many applications, the State's law banning "conversion therapy" may address conduct—such as aversive physical interventions. But here, Ms. Chiles seeks to engage only in speech, and as applied to her the law regulates what she may say. Her speech does not become conduct just because the State may call it that. Nor does her speech become conduct just because it can also be described as a "treatment," a "therapeutic modality," or anything else. The First Amendment is no word game. And the rights it protects cannot be renamed away or their protections nullified by "mere labels." *NAACP* v. *Button*, 371 U. S. 415, 429 (1963).

Our precedents have long made that much clear. California faulted Mr. Cohen for the "conduct" of wearing an offensive jacket. *Cohen*, 403 U. S., at 16. The federal government insisted that its law banning support to terrorists regulated "conduct" even as applied to the written and spoken advice of professionals like lawyers and doctors. *Holder*, 561 U. S., at 10, 26. But the effort to recast speech as conduct failed in those cases—and it must here too. Under the First Amendment, what matters is not how a government describes its law or whether the law may regulate conduct in other circumstances. What matters is whether, in fact, the law regulates speech in the case at hand.

As applied here, Colorado's law does not just regulate the content of Ms. Chiles's speech. It goes a step further, prescribing what views she may and may not express. For a gay client, Ms. Chiles may express "[a]cceptance, support, and understanding for the facilitation of . . . identity exploration." §12–245–202(3.5)(b)(I). For a client "undergoing gender transition," Ms. Chiles may likewise offer words of "[a]ssistance." §12–245–202(3.5)(b)(II). But if a gay or transgender client seeks her counsel in the hope of changing his sexual orientation or gender identity, Ms. Chiles cannot provide it. The law forbids her from saying anything that "attempts . . . to change" a client's "sexual orientation or gender identity," including anything that might represent an "effor[t] to change [her client's] behaviors or gender expressions or . . . romantic attraction[s]." §12–245–202(3.5)(a). Colorado disputes none of this; neither does the dissent. See *post*, at 20–21 (opinion of JACKSON, J.) (acknowledging that Colorado has engaged in viewpoint discrimination).

Of course, Ms. Chiles remains free to say other things. As Colorado and the dissent emphasize, she may "shar[e] information" about sexual orientation or gender identity.

Brief for Respondents 20. She can "criticiz[e] Colorado's law." *Ibid.* She can "writ[e] papers" espousing her views. *Post*, at 20 (opinion of JACKSON, J.). She may even encourage a client to seek advice from someone else who doesn't hold a state license. Brief for Respondents 20. But true as all that may be, it is also true that she cannot voice certain "perspective[s]" the State disfavors when speaking with consenting clients. *Rosenberger*, 515 U. S., at 829. And, under our precedents, viewpoint restrictions like that are not subject to mere rational-basis review or intermediate scrutiny. Rather, they represent "an egregious form of content discrimination" where First Amendment concerns are at their most "blatant." *Ibid.*; see also *Reed*, 576 U. S., at 168–169; contra, *post*, at 8, 20–21 (JACKSON, J., dissenting) (contending that "heightened scrutiny . . . is not warranted" even while admitting that Colorado's law discriminates based on viewpoint).

The fact that the State's viewpoint regulation targets only licensed healthcare professionals like Ms. Chiles changes nothing. Colorado and the dissent may believe that the First Amendment should carry "far less salience" for the Nation's millions of "medical professionals" than for everyone else. *Post*, at 2 (opinion of JACKSON, J.); *post*, at 17–26; Brief for Respondents 23. They may believe that state-imposed orthodoxies in speech pose few dangers and many benefits in this field (and who knows what others). But their policy is not the First Amendment's. The Constitution does not protect the right of some to speak freely; it protects the right of all. It safeguards not only popular ideas; it secures, even and especially, the right to voice dissenting views. Consistent with these principles, our precedents have expressly rejected the State and dissent's notion that "professional speech" represents some "separate category of speech" subject to "diminished constitutional protection." *NIFLA*, 585 U. S., at 767 (internal quotation marks omitted). History is littered with examples of official efforts to manipulate and control professional speech—including "the content of doctor-patient discourse"—in ways designed "to increase state power," "suppress minorities," and muzzle "unpopular ideas." *Id.*, at 771 (internal quotation marks omitted) (recounting examples). And the "dangers associated with" censorship, we have recognized, are no less acute "in the fields of medicine and public health" than they are anywhere else. *Ibid.* (internal quotation marks omitted).

Nor does Colorado's law implicate any recognized exception to our usual First Amendment rules. As we have seen, some laws regulating speech based on its content—like ones addressing fraud, defamation, and "fighting words"—do not generally trigger heightened scrutiny because of their long historical pedigree. See Part II–A, *supra*. As we have seen, too, *NIFLA* recognized that two kinds of such laws sometimes apply to professionals. See 585 U. S., at 768. But Colorado's law fits in neither category. The State does not require professionals to disclose "factual, noncontroversial information in their commercial speech." *Ibid.* (internal quotation marks omitted). Instead, Colorado seeks to suppress views Ms. Chiles wishes to express. Nor, with respect to Ms. Chiles, does Colorado's law regulate conduct in a way that only "incidentally burden[s] speech." *Id.*, at 769. All Ms. Chiles does is speak—and, as far as she is concerned, speech is all Colorado seeks to regulate.

Resisting this conclusion, Colorado and the dissent try to shoehorn the State's statute into the latter category. See, *e.g.*, Brief for Respondents 37. By defining prohibited "conversion therapy" broadly, Colorado observes, its law proscribes a "wide range" of "treatments." *Id.*, at 18. Any activity that seeks to change a client's gender identity or sexual orientation—whether it involves "electric shocks" or consists of "words only"—is banned. *Ibid.* And considering the full scope of the law's many applications, the State submits, it seeks to regulate mostly conduct and reaches speech only incidentally. *Ibid.* The dissent pursues a similar theme, insisting that Colorado has only incidentally prohibited Ms. Chiles's speech because the law's "primary objective" is to regulate medical treatments. *Post*, at 8–26 (Opinion of JACKSON, J.).

This argument echoes Colorado's claim that it seeks to regulate only conduct, and they falter for similar reasons. If a government could reclassify talk therapy as speech incident to conduct, it might just as easily do the same for speech incident to "teaching or protesting." *Otto*, 981 F. 3d, at 865. "[B]oth are activities, after all." *Ibid*. Were that the rule, "[w]hat an opportunity for [the] suppression of dissent this would offer." 116 F. 4th, at 1228 (Hartz, J., dissenting). Governments could easily wield all manner of laws regulating some conduct to silence speech they disfavor. It is a result that would not "compor[t] with the First Amendment's animating principles" so much as betray them. Contra, *post*, at 17 (JACKSON, J., dissenting).

Recognizing as much, our precedents in *Cohen* and *Holder* already foreclose exactly this move. California prosecuted Mr. Cohen under a law banning disturbances of the peace. *Cohen*, 403 U. S., at 16. The federal government threatened lawyers and doctors with prosecution under a law prohibiting support for terrorists. *Holder*, 561 U. S., at 10, 14–15, 25. In both cases, the government defended its actions on the ground that the law in question was generally aimed at certain types of conduct. But in both cases, we emphatically rejected that argument. Just because a law may "*generally* functio[n] as a regulation of conduct," we held, does not exempt it from demanding First Amendment review when a government seeks to apply that law to speech alone. *Id*., at 27–28.

At bottom, Colorado and the dissent fundamentally misconceive this Court's speech-incident-to-conduct precedents. In these cases, the question is not whether a law mostly addresses conduct and only sometimes sweeps in speech. Instead, the focus lies on two entirely different questions: whether the law in question restricts speech only because it is integrally related to unlawful conduct—or whether the law restricts expressive conduct only for reasons unrelated to its content. Illustrative of the first category, this Court has held that strict scrutiny does not apply to regulations aimed at speech promoting the sale of contraband because such speech is often bound up with traditional criminal conduct. *United States* v. *Williams*, 553 U. S. 285, 297–298 (2008); see also *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502 (1949); Brief for Eugene Volokh as *Amicus Curiae* 3–11. Illustrative of the second category, "an ordinance against outdoor fires" would not require a court to apply strict scrutiny even if it prohibited burning a flag in protest, because the law forbids conduct without regard to the message it may convey. *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 567 (2011).

Colorado's law does not regulate speech incident to conduct under either test. The State does not dictate what Ms. Chiles may say because her speech bears a close causal connection to some separately unlawful conduct like a traditional crime. Rather, Ms. Chiles seeks to speak with interested clients about steps they might take to change unwanted behaviors, expressions, or attractions related to sexual orientation or gender identity—conduct Colorado itself does not dispute those clients (or anyone else) may lawfully undertake. Cf. Tr. of Oral Arg. 58 (conceding that "life coaches" and other non-licensees can lawfully convey the advice Ms. Chiles seeks to offer). Nor does Colorado seek to regulate Ms. Chiles's speech for reasons unrelated to its content, like a ban on outdoor fires that happens to sweep in flag burning. Instead, the State's law trains directly on the content of her speech and permits her to express some viewpoints but not others. Colorado does not regulate speech incident to conduct; it regulates "speech as speech." *NIFLA*, 585 U. S., at 770.

C

Perhaps sensing that this Court's existing precedents offer it little support, Colorado ultimately pivots, urging us to reshape our doctrine. In doing so, the State begins by pointing again to *NIFLA*. There, recall, the Court observed that our cases have identified "two circumstances" in which speech by professionals may warrant "diminished" First Amendment protection: when a law seeks to compel disclosure of factual, noncontroversial information in commercial speech; and when a law regulates speech only incidentally to conduct. *Id.*, at 767–768 (internal quotation marks omitted). Still, Colorado emphasizes, *NIFLA* left open the possibility that a future party might present "persuasive evidence . . . of a long (if heretofore unrecognized) tradition" of content regulation regarding additional categories of professional (or other) speech that might likewise warrant only "diminished" First Amendment protection. *Id.*, at 767 (internal quotation marks omitted); see also *United States* v. *Stevens*, 559 U. S. 460, 472 (2010).

Seeking to take up this challenge, Colorado contends that its law falls within a long tradition of permissible content regulation. It's a line of argument that comes with a daunting burden. Under our precedents, the State must present "persuasive" historical evidence in order to overcome our "especia[l]" "reluctan[ce] to mark off new categories of speech for diminished constitutional protection." *NIFLA*, 585 U. S., at 767 (internal quotation marks omitted). Still, Colorado insists, it can carry that burden in this case because States have traditionally enjoyed wide latitude to proscribe "substandard care" even when that involves regulating the content of speech. Brief for Respondents 16. As evidence, Colorado points to the history of state laws licensing the practice of medicine, regulating informed consent, and permitting tort suits for medical malpractice. *Id.*, at 23–36. The dissent pursues the same point citing the same authorities. See *post*, at 9–11, 26–31, 35 (opinion of

JACKSON, J.) (suggesting that States may ban "substandard care" provided "via speech" in light of licensing, informed consent, and malpractice laws).

This argument stumbles out of the gate, for it proceeds at far too high a level of generality. From three specific sets of laws, Colorado and the dissent ask us to recognize a cavernous "First Amendment Free Zone," *Stevens*, 559 U. S., at 469 (internal quotation marks omitted), one in which States may censor almost any speech they consider "substandard care." It is, once more, an approach our precedents already foreclose.

Consider a couple examples. In *Alvarez*, the federal government pointed to specific, historical laws proscribing fraud and defamation and asked us to extrapolate from them a much broader rule allowing it to enforce content-based restrictions on any "false statements." In *NIFLA,* California suggested that informed-consent laws and our speech-incident-to-conduct doctrine might be cobbled together to sustain the recognition of a field of "professional speech" subject only to rational-basis review. We rejected both efforts, stressing instead that discrete traditions of content-based regulations cannot be aggregated together to sustain some new and broader category of lesser-protected speech. *Alvarez*, 567 U. S., at 718–722 (plurality opinion); *id.*, at 736 (Breyer, J., concurring in judgment); *NIFLA*, 585 U. S., at 767–768; see also *Button*, 371 U. S., at 439–440 (distinguishing State's law from laws proscribing accepted "common-law offenses"); *Florida Star* v. *B. J. F.*, 491 U. S. 524, 539 (1989) (similar). And Colorado's similar effort can succeed no more than others like it have in the past.

Beyond that problem lies another. Taking each of the three traditions Colorado and the dissent invoke on its own terms—as we must—none delivers the support they suppose.

Start with Colorado's suggestion, endorsed by the dissent, that the State's statute represents nothing more than a traditional law licensing the practice of medicine. See Brief for Respondents 27–28; *post*, at 26–27 (opinion of JACKSON, J.). We cannot agree for at least two reasons. First, the State has not presented persuasive evidence that its law is part of a historical tradition. When assessed at the level of generality our precedents demand, what Colorado describes turns out to be a relatively recent innovation. Indeed, the briefing before us suggests that the very first state "counselor-licensure bill" was adopted only in 1976. National Academies, Institute of Medicine, Provision of Mental Health Counseling Services Under TRICARE 94 (2010); D. Bergman, The Role of Government and Lobbying in the Creation of a Health Profession: The Legal Foundations of Counseling, 91 J. Counseling & Development 61 (2013) (Bergman); see also Brief for Petitioner 42. And that is far from the sort of "persuasive evidence" of a historically grounded practice our precedents require. *NIFLA*, 585 U. S., at 767 (internal quotation marks omitted).

Second, licensing laws have traditionally addressed what qualifications an individual must possess before practicing a particular profession. See Bergman 62 (licensing laws generally "establis[h] minimum standards of preparation and ensur[e] the professional is qualified"); R. Kry, The "Watchman for Truth": Professional Licensing and the First Amendment, 23 Seattle U. L. Rev. 885, 887 (2000) (a "licensure scheme typically sets out certain requirements that the professional must fulfill before practicing"). And whatever traditional interest a State may have in ensuring a professional possesses a particular set of qualifications, that interest does not automatically entail a right to dictate a professional's point of view. *NIFLA*, 585 U. S., at 773.

Turn now to Colorado's effort, again echoed by the dissent, to compare its statute to informed-consent laws. See Brief for Respondents 34–36; *post*, at 9–11 (opinion of JACKSON, J.). Those laws generally require a doctor to inform a patient about "the nature of [a proposed] procedure" and its attendant "risks." *NIFLA*, 585 U. S., at 769–770 (internal quotation marks omitted). As such, informed-consent laws do not usually trigger strict scrutiny because they regulate speech only incident to separate physical conduct that would, "without [the] patient's consent," amount to "an assault." *Id.*, at 770 (internal quotation marks omitted). Usually, too, informed-consent laws require practitioners to disclose only factual and uncontroversial information. See *id.*, at 769–770. But all that is a far cry from how Colorado's law operates here. As applied to Ms. Chiles, the State seeks neither to regulate her speech incident to any conduct, nor does it seek to compel disclosure of factual and uncontroversial information. Instead, it seeks to silence a viewpoint she wishes to express.

Colorado and the dissent close by asking us to analogize the State's law to traditional tort malpractice claims. See Brief for Respondents 25–26; *post*, at 27–29 (opinion of JACKSON, J.). But here again the differences are impossible to ignore. In a traditional malpractice action, liability attaches only if the plaintiff shows, among other things, that he has suffered an injury caused by the defendant's breach of the applicable duty of care. See, *e.g.*, *Day* v. *Johnson*, 255 P. 3d 1064, 1068–1069 (Colo. 2011). Those kinds of "[e]xacting proof requirements," we have observed, may "provide sufficient breathing room for protected speech." *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 U. S. 600, 620 (2003). Yet Colorado's law contains nothing like them, instead threatening individuals with fines, probation, and the loss of their licenses simply for expressing a particular view. See §§12–245–202(3.5), 12–245–224(1)(t), 12–245–225. Nor does Colorado's law allow clients to consent to practices that depart from the prevailing standard of care, while malpractice law sometimes does. See Restatement (Third) of Torts: Medical Malpractice §11 (2024); *Schneider* v. *Revici*, 817 F. 2d 987, 995 (CA2 1987).

Consider, too, where the State and dissent's logic leads. Not long ago, many medical experts and organizations, including the American Psychiatric Association, considered homosexuality a mental disorder. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 38–39 (1952); cf. American Psychiatric Association, Position Statement on Homosexuality and Civil Rights, 131 Am. J. Psychiatry 497 (1974). On the view Colorado and the dissent advance, a law adopted during that era prohibiting counselors from engaging in the "substandard care" of affirming their clients' homosexuality would have been subject to only rational-basis or intermediate-scrutiny review—and likely upheld. See 116 F. 4th, at 1237–1238 (Hartz, J., dissenting). Today, tomorrow, and forever, too, any professional speech that deviates from "current beliefs about the safety and efficacy of various medical treatments" could be silenced with relative ease. *Post*, at 24 (opinion of JACKSON, J.). It is a consequence Colorado freely acknowledges. Tr. of Oral Arg. 61–63. And one the dissent embraces. *Post*, at 23–26, and n. 9 (opinion of JACKSON, J.). So what if that kind of reflexive deference to currently prevailing professional views may not always end well? Cf. *Buck* v. *Bell*, 274 U. S. 200, 205–207 (1927).

Fortunately, that is not the world the First Amendment envisions for us. Licensed professionals "have a host of good-faith disagreements" about the "prudence" and "ethics" of various practices in their fields. *NIFLA*, 585 U. S., at 772. Medical consensus, too, is not static; it evolves and always has. A prevailing standard of care may reflect what most practitioners believe today, but it cannot mark the outer boundary of what they may say tomorrow. Far from a test of professional consensus, the First Amendment rests instead on a simple truth: "[T]he people lose" whenever the government transforms prevailing opinion into enforced conformity. *Ibid.*

III

We do not doubt that the question "how best to help minors" struggling with issues of gender identity or sexual orientation is presently a subject of "fierce public debate." *Tingley* v. *Ferguson*, 601 U. S. ___, ___ (2023) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 1). But Colorado's law addressing conversion therapy does not just ban physical interventions. In cases like this, it censors speech based on viewpoint. Colorado may regard its policy as essential to public health and safety. Certainly, censorious governments throughout history have believed the same. But the First Amendment stands as a shield against any effort to enforce orthodoxy in thought or speech in this country. It reflects instead a judgment that every American possesses an inalienable right to think and speak freely, and a faith in the free marketplace of ideas as the best means for discovering truth. However well-intentioned, any law that suppresses speech based on viewpoint represents an "egregious" assault on both of those commitments. *Rosenberger*, 515 U. S., at 829.

The judgment of the Tenth Circuit is reversed, and the case remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 24–539

KALEY CHILES, PETITIONER *v.* PATTY SALAZAR, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF REGULATORY AGENCIES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[March 31, 2026]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR joins, concurring.

The Court today decides that the Colorado law challenged here, as applied to talk therapy, conflicts with core First Amendment principles because it regulates speech based on viewpoint. See *ante*, at 23. I agree. I write only to note that if Colorado had instead enacted a content-based but viewpoint-neutral law, it would raise a different and more difficult question.

As the Court states, governments must "nearly always" abstain from adopting viewpoint-based restrictions. *Ante*, at 9. Those laws represent a particularly "egregious form" of content-based regulation, implicating First Amendment concerns to the highest possible degree. *Ibid.*; see *Iancu* v. *Brunetti*, 588 U. S. 388, 393 (2019). A law drawing a line based on the "ideology" of the speaker—disadvantaging one view and advantaging another—skews the marketplace of ideas our society depends on to discover truth. *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). And such a law suggests an impermissible motive—that the government is regulating speech because of its own "hostility" toward the targeted messages. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 386 (1992). If the First Amendment prohibits anything, it is the "official suppression of ideas." *Id.*, at 390; see *Reed* v. *Town of Gilbert*, 576 U. S. 155, 181–183 (2015) (KAGAN, J., concurring in judgment). Because viewpoint-based laws always raise that specter, they are the most suspect of all speech regulations. So much so that this Court has refused to permit viewpoint discrimination even within unprotected categories of speech, like fighting words or obscenity. See *R. A. V.*, 505 U. S., at 384–390.

Colorado's law, as applied to talk therapy, regulates based on viewpoint, for the reasons the Court gives. See *ante*, at 13–14. The law forbids a counselor to provide therapy designed to "change [a minor's] sexual orientation or gender identity." Colo. Rev. Stat. §12–245–202(3.5)(a) (2025); see §12–245–224(1)(t)(V). At the same time, the law specifically allows a counselor to offer therapy expressing "[a]cceptance, support," and other affirmation of the minor's "identity exploration." §12–245–202(3.5)(b)(I)–(II). So, for example, the law prevents a therapist from saying she can help a minor change his same-sex orientation, but permits her to say that such a goal is impossible and so she will help him accept his gay identity. Colorado does not dispute that point. See Tr. of Oral Arg. 78. Nor does it dispute that under normal First Amendment principles, that difference constitutes viewpoint discrimination. See *ibid*. Indeed, the case is textbook. The law "distinguishes between two opposed sets of ideas"—the one resisting, the other reflecting, the State's own view of how to speak with minors about sexual orientation and gender identity. *Iancu*, 588 U. S., at 394. Or said just a bit differently, the law draws a line based on the speaker's "opinion or perspective," and thus enables "speech on only one side"—the State's preferred side—of an ideologically charged issue. *Rosenberger*, 515 U. S., at 829; *McCullen* v. *Coakley*, 573 U. S. 464, 485 (2014).

Of course, it does not matter what the State's preferred side *is*. Consider a hypothetical law that is the mirror image of Colorado's. Instead of barring talk therapy designed to change a minor's sexual orientation or gender identity, this law bars therapy affirming those things. As Ms. Chiles readily acknowledges, the First Amendment would apply in the identical way. See Tr. of Oral Arg. 25–26; see also *id.*, at 37–38 (United States as *amicus curiae* agreeing). Once again, because the State has suppressed one side of a debate, while aiding the other, the constitutional issue is straightforward.

It would, however, be less so if the law under review was content based but viewpoint neutral. Such content-based laws, as the Court explains, trigger strict scrutiny "[a]s a general rule." *Ante*, at 8. But our precedents respecting those laws recognize complexity and nuance. We apply our most demanding standard when there is any "realistic possibility that official suppression of ideas is afoot"—when, that is, a (merely) content-based law may reasonably be thought to pose the dangers that viewpoint-based laws always do. *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 189 (2007); see *supra*, at 1–2. But when that is not the case—when a law, though based on content, raises no real concern that the government is censoring disfavored ideas—then we have not infrequently "relax[ed] our guard." *Reed*, 576 U. S., at 183 (opinion of KAGAN, J.); see *Davenport*, 551 U. S., at 188 (noting the "numerous situations in which [the] risk" of a content-based law "driv[ing] certain ideas or viewpoints from the marketplace" is "attenuated" or "inconsequential, so that strict scrutiny is unwarranted"). Just two Terms ago, for example, the Court declined to apply strict scrutiny to a content-based but viewpoint-neutral trademark restriction. See *Vidal* v. *Elster*, 602 U. S. 286, 295 (2024); *id.*, at 312 (BARRETT, J., concurring in part); *id.*, at 329–330 (SOTOMAYOR, J., concurring in judgment). In the trademark context, as in some others, experience and reason alike showed "no significant danger of idea or viewpoint" bias. *R. A. V.*, 505 U. S., at 388.

The same may well be true of content-based but viewpoint-neutral laws regulating speech in doctors' and counselors' offices.* Medical care typically involves speech, so the regulation of medical care (which is, of course, pervasive) may involve speech restrictions. And those restrictions will generally refer to the speech's content. Cf. *Reed*, 576 U. S., at 177 (Breyer, J., concurring in judgment) (noting that "[r]egulatory programs" addressing speech "inevitably involve content discrimination"). But laws of that kind may not pose the risk of censorship—of "official suppression of ideas"—that appropriately triggers our most rigorous review. *R. A. V.*, 505 U. S., at 390. And that means the "difference between viewpoint-based and viewpoint-neutral content discrimination" in the health-care context could prove "decisive." *Vidal*, 602 U. S., at 330 (opinion of SOTOMAYOR, J.). Fuller consideration of that question, though, can wait for another day. We need not here decide how to assess viewpoint-neutral laws regulating health providers' expression because, as the Court holds, Colorado's is not one.

*JUSTICE JACKSON's dissenting opinion claims that this is a small, or even nonexistent, category. See *post*, at 21–22, n. 8. But even her own opinion, when listing laws supposedly put at risk today, offers quite a few examples. See *post*, at 32–33, and n. 13. Her view to the contrary rests on reimagining—and in that way collapsing—the well-settled distinction between viewpoint-based and other content-based speech restrictions. See, *e.g.*, *Vidal* v. *Elster*, 602 U. S. 286, 292–293 (2024) (explaining the difference).

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[March 31, 2026]

JUSTICE JACKSON, dissenting.

"[T]here is no right to practice medicine which is not subordinate to the police power of the States." *Lambert* v. *Yellowley*, 272 U. S. 581, 596 (1926). This was true 100 years ago, and it should be true today.

Many States have now chosen to exercise their police powers to ban "conversion therapy" based on the medical profession's broad consensus that this medical treatment (which seeks to change a gay or transgender person's sexual orientation or gender identity) is ineffective and harmful. This case involves the Colorado Legislature's policy decision to prohibit licensed medical professionals from offering or providing conversion therapy to minors in that State.

Petitioner Kaley Chiles is a licensed counselor who works in the State of Colorado. She does not dispute that conversion therapy can be harmful to minors in certain circumstances. Nor does she contest that Colorado has a significant interest in protecting minors from harm. Chiles complains nevertheless that, because the particular form of conversion therapy she wants to offer clients utilizes only speech, the First Amendment prevents Colorado from prohibiting that treatment. But "[t]he power of government to regulate the professions is not lost whenever the practice of a profession entails speech." *Lowe* v. *SEC*, 472 U. S. 181, 228 (1985) (White, J., concurring in result). And "[m]edical professionals do not, generally speaking, have a right to use the Constitution as a weapon allowing them rigorously to control the content of . . . reasonable conditions" that a State imposes on licensed healthcare providers for the protection of its residents. *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. 755, 785 (2018) (Breyer, J., dissenting) (*NIFLA*).

So, I respectfully dissent. Stated simply, the majority has failed to appreciate the crucial context in which Chiles's constitutional claims have arisen. Chiles is not speaking in the ether; she is providing therapy to minors as a licensed healthcare professional. The Tenth Circuit was correct to observe that "[t]here is a long-established history of states regulating the healthcare professions." 116 F. 4th 1178, 1206 (2024). And, until today, the First Amendment has not blocked their way. For good reason: Under our precedents, bedrock First Amendment principles have far less salience when the speakers are medical professionals and their treatment-related speech is being restricted incidentally to the State's regulation of the provision of medical care.

No one directly disputes that Colorado has the power to regulate the medical treatments that state-licensed professionals provide to patients. Nor is it asserted that, when doing so, a State always runs afoul of the Constitution. So, in my view, it cannot also be the case that Colorado's decision to restrict a dangerous therapy modality that, incidentally, involves provider speech is presumptively unconstitutional. In concluding otherwise, the Court's opinion misreads our precedents, is unprincipled and unworkable, and will eventually prove untenable for those who rely upon the long-recognized responsibility of States to regulate the medical profession for the protection of public health.

I

To properly evaluate the First Amendment claim at issue in this case, one must first understand the impetus for Colorado's regulation, what that law requires, and the nature of the speech it implicates.

A

Conversion therapy is designed to "convert" a person's sexual orientation or gender identity, so that the person will become heterosexual or cisgender. Generally speaking, conversion therapy began as an attempt to "cure" gay and transgender people of their "nonconforming" orientations or identities. Brief for American Psychological Association et al. as *Amici Curiae* 13.

Conversion-therapy efforts have historically included aversive therapeutic modalities. Those ranged from inducing nausea, vomiting, or paralysis in patients or subjecting them to severe electric shocks to telling patients to snap an elastic band on their wrists in response to nonconforming thoughts. Aversive therapies have now fallen out of fashion; nonaversive treatments—primarily, talk therapy—are currently the predominant form of conversion therapy. All such therapies seek to encourage patients to change their behavior in an attempt to "change" their identity.

Over the past few decades, however, the premise of conversion therapy (in whatever form) has been widely discredited within the medical and scientific community. Conversion therapy is, at bottom, "based on a view of gender diversity that runs counter to scientific consensus." Substance Abuse and Mental Health Services Administration (SAMHSA) Report, 2 App. 570. That is, contrary to the core beliefs that undergird conversion therapy, a robust professional consensus now acknowledges that sexual orientations and gender identities range widely. And it no longer regards nonheterosexual orientations or noncisgender identities as "nonconforming."

Because people's identities are simply "a part of the normal spectrum of human diversity," *id*., at 535, the medical community has determined that efforts to change a patient's sexual orientation or gender identity will necessarily be ineffective. The American Psychological Association (APA), for example, has found "no empirical evidence that providing any type of therapy in childhood can alter adult same-sex sexual orientation." APA Report, 1 App. 360. And "[n]o research has been published in the peer-reviewed literature that demonstrates the efficacy of conversion therapy efforts with gender minority youth, nor any benefits of such interventions to children and their families." SAMHSA Report, 2 App. 569.

Not only is conversion therapy ineffective, former participants of conversion therapy report that it causes lasting psychological harm. Gay and transgender children who underwent nonaversive conversion therapy say they were taught to feel shame and self-hatred. See Brief for Conversion Therapy Survivor Network et al. as *Amici Curiae* 11–14. And survivors of conversion therapy continue to suffer from PTSD, anxiety, and suicidal ideation. *Id*., at 19–22. As one survivor put it, conversion therapy "'came close to killing me.'" *Id*., at 17.[1]

[1] Consider a specific example: An *amicus* who received conversion therapy as a child, Mathew Shurka, was told that his sexual orientation was a disorder either rooted in childhood trauma or stemming from an overbearing mother or absent father. Brief for Mathew Shurka as *Amicus Curiae* 6. In the course of this therapy, Mathew's therapist said that being gay was a mental illness that could be cured and that, unless he was cured, he could never live a happy and fulfilled life. *Id*., at 3. Mathew's conversion therapists eventually hypothesized that his mother was the source of his sexual orientation and instructed him to avoid speaking with her. *Id*., at 8. For three years, he had barely any contact with his mother. *Ibid.* The years of conversion therapy brought Mathew nothing but increased isolation from his family, worsening depression, and suicidal ideation. *Id*., at 11. Thus, as Mathew's experience illustrates, the harm from conversion therapy extends to the patient's family. See also Brief for Parents of Conversion-Therapy Participants et al. as

The scientific literature confirms what anecdotal experiences suggest: Conversion therapy has harmed patients, particularly minors. The APA found that "the reported negative social and emotional consequences [of conversion therapy] include self-reports of anger, anxiety, confusion, depression, grief, guilt, hopelessness, deteriorated relationships with family, loss of social support, loss of faith, poor self-image, social isolation, intimacy difficulties, intrusive imagery, suicidal ideation, self-hatred, and sexual dysfunction." APA Report, 1 App. 253–254. Even for those study participants who reported positive effects initially, many described experiencing the negative effects later. *Id.*, at 254. Moreover, studies show that children often feel the effects of the shame and stigma from conversion therapy even more vividly than adults due to their "increased emotional vulnerability and less developed capacity to cope effectively with the harm of discrimination." Glassgold Decl., 1 App. 53–54, ¶ 50.

Ultimately, scientific evidence supports the conclusion that the anticipated harms from conversion therapy are twofold. First, conversion therapy stigmatizes the patient, telling them that their gender identity or sexual orientation is something to be fixed, rather than accepted. This rejection can lead to shame and guilt, which in turn can cause long-term emotional distress. Second, conversion therapy sets patients up to fail by giving them an unattainable goal. Some patients have described that experience of failure "as a significant cause of emotional and spiritual distress and negative self-image." *Id.*, at 63, ¶ 66.

B

In 2019, Colorado joined 25 other States in banning the practice of conversion therapy for minors. Colorado's law—titled the Minor Conversion Therapy Law (MCTL)—

Amici Curiae 9–19 (describing the impact of conversion therapy on *amici*'s families, including the loss of loved ones to suicide).

prohibits licensed healthcare professionals from practicing conversion therapy with children. It defines conversion therapy as "any practice or treatment" that "attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." Colo. Rev. Stat. §12–245–202(3.5)(a) (2025).[2]

Not all therapeutic discussions of sexuality and gender identity are prohibited by the MCTL. The law allows

> "practices or treatments that provide:
>
> "(I) Acceptance, support, and understanding for the facilitation of an individual's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change sexual orientation or gender identity; or
>
> "(II) Assistance to a person undergoing gender transition." §12–245–202(3.5)(b).

The Colorado Legislature made these allowances after crediting witness testimony and the professional consensus about conversion therapy—namely, that it is harmful, and that the preferred treatment for minors relating to their sexual orientation and gender identity is affirming care (*i.e.*, medical care that helps minors focus on acceptance, support, coping, and identity exploration and development). Prohibit Conversion Therapy for a Minor: Hearing on H. B.

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[2] The MCTL primarily applies to licensed healthcare professionals; such professionals are already subject to a number of other restrictions on their professional practice. Most relevant here, under Colorado law, licensed therapists must provide therapy that is consistent with the standard of care, defined as "the standards of practice generally recognized by state and national associations of practitioners in the field of the person's professional discipline." Colo. Rev. Stat. §12–245–224(1)(g)(I).

19–1129 before the House Committee on Public Health Care & Hum. Servs., 2019 Leg., 72d Gen. Sess. (Colo., Feb. 13, 2019).

C

Chiles insists that, although she is a counselor licensed by Colorado, she has a constitutional right to flout Colorado's statute and the standard of care it incorporates if a client asks her to do so. Never mind that medical professionals—including counselors like Chiles—are generally bound to follow medical standards and state licensing requirements when they provide medical care to patients. Chiles wants to offer patients conversion therapy despite the MCTL and the medical consensus it reflects. So she has invoked the First Amendment, arguing that, because talk therapy is speech, no State can impose treatment standards like the MCTL on licensed talk therapists without first satisfying heightened scrutiny.

As applied to Chiles, the MCTL treats the talk-therapy form of conversion therapy as a prohibited medical treatment. But Chiles is free to express her opinion about the efficacy of conversion therapy or her disagreement with Colorado's conclusion that such therapy is harmful to minors. Colorado's law does not target or prohibit the expression of such views by anyone in any form—including by licensed healthcare providers in discussions with patients and their families. All that Colorado's law proscribes is the provision of such therapy to minors. This means that, while Chiles can freely promote conversion therapy and vociferously decry the State's prohibition, she cannot practice that therapy without being subject to professional discipline under Colorado law.

II

I begin my analysis with a simple observation: Our First Amendment jurisprudence does not treat speech as existing in a vacuum. Instead, how the First Amendment applies to a State's power to regulate speech depends upon the context in which the regulation of speech occurs. See, *e.g.*, *Vidal* v. *Elster*, 602 U. S. 286 (2024) (trademark context); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503 (1969) (school context). We have not mechanically held that the First Amendment protects *all* communicative content; rather, we have evaluated First Amendment claims in a nuanced way, sensitive to both core principles and the specific circumstances under which the claim arises. See, *e.g.*, *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 758, 762–770 (1976) (considering First Amendment principles in the commercial speech context).

In my view, then, it matters for First Amendment purposes that the MCTL restricts treatment-related speech uttered by medical professionals only as part of a larger regulatory scheme aimed at ensuring that providers tender high-quality medical care to patients.

In Part II–A, I explain that this way of conceptualizing the question before us is not novel—we have long understood that States have the power to regulate medical professionals. And our precedents demonstrate that, when a healthcare provider's speech is incidentally restricted as part of a state-law scheme regulating the provision of medical treatments, the heightened scrutiny we reflexively apply in other situations is not warranted. In Part II–B, I show that First Amendment principles are not offended when lesser scrutiny is applied to a state law regulating medical treatments in a manner that incidentally restricts a provider's professional medical speech.

A

1

A case that we decided in 2018—*NIFLA*—shows us the way to determine the appropriate level of constitutional scrutiny here. 585 U. S. 755. In that case, we began by explaining that "[s]peech is not unprotected merely because it is uttered by 'professionals.'" *Id.*, at 767; see also *ante*, at 10–11, 14. But, critically, we also acknowledged that the Court has afforded less protection for professional speech in two circumstances—one of which occurs when a State "regulate[s] professional conduct, even though that conduct incidentally involves speech." *NIFLA*, 585 U. S., at 768; see *ante*, at 11. This acknowledgement was grounded in an already well-established principle: "[T]he First Amendment does not prevent restrictions directed at . . . conduct from imposing incidental burdens on speech." *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 567 (2011).

To further explain the contours of this presumptively permissible speech restriction, *NIFLA* cited *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). In *Casey*, the Court assessed "an asserted First Amendment right of a physician not to provide information about the risks of abortion, and childbirth, in a manner mandated by the State." *Id.*, at 884 (joint opinion of O'Connor, Kennedy, and Souter, JJ.). More specifically, *Casey* involved a challenge to a Pennsylvania law requiring that "a doctor give a woman certain information as part of obtaining her consent to an abortion." *Ibid.*[3] We held that Pennsylvania's informed-consent mandate did *not* violate the First Amendment. "To be sure, the physician's First Amendment rights not to speak [were] implicated" by Pennsylvania's law. *Ibid.* But we emphasized that those rights were implicated "only *as part of the practice of medicine*, subject to reasonable licensing and regulation by the State." *Ibid.* (emphasis added). Thus, there was "no constitutional

[3] The First Amendment challenge to Pennsylvania's law in *Casey* was effectively the flipside of the one Chiles brings here: While the doctors in *Casey* complained that Pennsylvania was forcing them to speak when they did not want to, Chiles asserts that Colorado is preventing her from saying what she wants to say.

infirmity in the requirement that the physician provide the information mandated by the State." *Ibid.*

In *NIFLA*, we reaffirmed the principle from *Casey* that the First Amendment inquiry requires consideration of whether the regulated speech was made during the provision of medical care. *NIFLA* involved a challenge to a California law that required certain crisis pregnancy centers to post notices in their waiting rooms informing low-income patients that California paid for qualifying abortions. 585 U. S., at 762–763. We asked whether, on the one hand, this law was regulating the clinics' speech *qua* speech, or whether, on the other, the notice requirement was actually regulating the clinics' professional conduct and only incidentally restricting speech. If the latter, the *NIFLA* Court explained, California's notice requirement would fit into the category of cases that *Casey* illustrated; namely, those in which "this Court has upheld regulations of professional conduct that incidentally burden speech." 585 U. S., at 769.

Relying in part on *Casey*'s analytical framework, the *NIFLA* Court held that California's law regulated "speech as speech." 585 U. S., at 770. We explained this conclusion by contrasting the Pennsylvania regulation at issue in *Casey*: While the notice requirement in *Casey* restricted doctors' speech, it did so "only 'as part of the *practice* of medicine.'" 585 U. S., at 770. The notice requirement at issue in *NIFLA*, by contrast, was "not an informed-consent requirement or any other regulation of professional conduct." *Ibid.* "In fact," California's notice was *"not tied to a procedure at all.* It applie[d] to all interactions between a covered facility and its clients, regardless of whether a medical procedure [was] ever sought, offered, or performed." *Ibid.* (emphasis added). So, we reasoned, unlike Pennsylvania's informed-consent requirement in *Casey*, California's notice mandate warranted heightened scrutiny because it "regulate[d] speech as speech." 585 U. S., at 770.

The takeaway from *NIFLA* is that *Casey* applied a lower level of scrutiny *because* the law in *Casey* restricted speech uttered in the course of—and as a part of—providing professional medical care. By contrast, the notice requirement in *NIFLA* was not "tied to a procedure at all" and was therefore meaningfully different: That law restricted "speech as speech." 585 U. S., at 770. Thus, the key distinction, as the *NIFLA* Court saw it, was whether the challenged law was a regulation of speech *as such* or a regulation of "professional conduct that incidentally burden[ed] speech." *Id*., at 769.

2

Given all this, one might think today's majority would make more of an effort to explain why the MCTL does not likewise qualify as a regulation of "professional conduct that incidentally burden[s] speech." *Ibid.*; see *ante*, at 14–17. Such an inquiry would entail evaluating whether the MCTL's restriction on Chiles's therapy only "incidentally" restricts Chiles's speech by virtue of the fact that the medical care she provides is delivered orally. It would also require acknowledging that the MCTL's restriction on Chiles *is* plainly "tied to [the provision of] a [medical] procedure," *NIFLA*, 585 U. S., at 770—one that, but for Colorado's law, a licensed counselor like Chiles might offer to minors.

In my view, it is obvious that the MCTL is regulating professional conduct insofar as it prohibits providing a particular therapy; the aim of the statute is not suppressing speech. Indeed, Chiles's claim that her (otherwise protected) speech is being swept up by Colorado's (otherwise valid) treatment prohibition proves that very point. This set of circumstances seems to fit *NIFLA*'s idea of permissible state "regulation of professional conduct" that "incidentally burdens speech" to a "T."

Yet, the majority strangely suggests otherwise with the opinion it hands down today. *Ante*, at 14–17. The majority does this primarily by eschewing serious engagement with the interaction between *NIFLA* and *Casey*. Its workaround seems to be: The First Amendment applies full bore here because Chiles's *speech* is being impacted; after all, she is a *talk* therapy provider. *Ante*, at 12–17. But when *NIFLA*'s teachings are properly understood, this comeback is no answer. Yes, Chiles happens to be talking when she's providing therapy to patients, but the MCTL regulates the provision of medical treatments by licensed medical professionals, which States are fully empowered to do. That Chiles's kind of medical care involves talk therapy is, in *NIFLA*'s words, merely "incidenta[l]." 585 U. S., at 769.

I am the first to admit that, as applied to talk therapists like Chiles, the MCTL restricts speech—I do not argue that this law *really* just limits Chiles's professional conduct. See *ante*, at 12–13, 16 (characterizing Colorado's argument). Similarly, I do not maintain that, because this law primarily regulates talk-therapists' professional conduct, it should not be conceived of as a *speech* restriction. See *ante*, at 16. I agree with the majority that, in cases like *Cohen* v. *California*, 403 U. S. 15 (1971), we firmly rejected a State's attempt to suppress free speech by calling the restricted expression "conduct." *Ante*, at 16. But, here, the observation that the MCTL indeed restricts Chiles's "speech" (not reformulated as conduct) just raises the question that this case presents: Whether the MCTL is restricting Chiles's speech "incidentally" to its regulation of medical professionals' treatment-related conduct, such that the law warrants less scrutiny under the First Amendment than a law that restricts her speech "as speech." *NIFLA*, 585 U. S., at 769–770.

The majority's failure to acknowledge that *this* is the actual issue here—not just whether Chiles's "speech" or "conduct" is being restricted, but what the State is doing—ignores what has always been true under our precedents. The real lesson of *NIFLA*'s discussion of *Casey* is this: When a healthcare professional's speech is not being targeted "as speech" (because it conveys an idea) but is instead "incidentally" restricted due to a State's otherwise legitimate regulation of the medical treatments being offered to patients, heightened scrutiny is not warranted. 585 U. S., at 769–770; *Casey*, 505 U. S., at 884 (joint opinion of O'Connor, Kennedy, and Souter, JJ.).

3

NIFLA's focus on a State's regulation of medical treatments also undermines the position the United States has taken on today's First Amendment question. The United States, joining this case as *amicus curiae*, insists, in essence, that when the *NIFLA* Court acknowledged that States can regulate professional conduct while "incidentally" restricting speech, it was blessing only two circumstances: (1) where the speech that is being restricted is inextricably tied to an act of the speaker (so, speech-only therapists are never included), or (2) where speech is being regulated in a manner entirely unrelated to its content. Brief for United States as *Amicus Curiae* 17–21; see *ante*, at 11, 15–16. But, under *NIFLA*'s reasoning, that cannot be so—at least not logically.

With respect to the first category, the United States mistakenly swaps "integral" (*i.e.*, whether the restricted speech is bound up with the regulated conduct) for "incidental"—but these are two completely different concepts.[4] Given

[4] Under the reading the United States advocates, the line between permissible and impermissible state regulation seems to turn on the relationship between the restricted speech and *a physical act of the speaker*. See Tr. of Oral Arg. 35–36. So, the argument goes, the First Amendment allows state regulation if the speech restriction is "incidental" to a physical act of the healthcare provider, but prohibits it if there is no physical act for the speech to be "incidental" to because the provider treats patients solely with speech. See *id.*, at 35 ("[T]his Court hasn't drawn a particularly clear line about when speech is close enough to conduct to be viewed as incidental, but, here, again, this is an easy case because

NIFLA's focus on the "incidental" nature of the challenged speech restriction, *the State's objective* is the actual fulcrum: We ask whether, on the one hand, the State's law is restricting the provider's speech "incidentally" (meaning in the course of the State's pursuit of its primary objective of regulating the provision of medical care), or whether, on the other, the State's law is restricting her speech "as speech" (primarily to suppress its message or expressive content). 585 U. S., at 769–770. The appropriate scrutiny level logically follows: Incidentally restricting speech needs less scrutiny because we view the State as generally regulating the provision of medical care, while restricting "speech as speech" receives heightened scrutiny because the State is aiming at professional speech *qua* speech.

The second "speech incident to conduct" category the United States advances—whether the restriction on speech is unrelated to its content—is also fatally flawed. It ignores what *NIFLA* plainly recognizes: that States *can* regulate the medical treatments healthcare professionals provide to patients without running afoul of the First Amendment, even if the regulation applies to and restricts speech based on its content. 585 U. S., at 769–770. In other words, what mattered to *NIFLA*'s analysis was *not* that the regulation was content-based, but instead that the speech was being restricted incidentally.

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there is no conduct"); *id*., at 33 (emphasizing that, because Chiles is a talk therapist, "[t]here's no separate non-speech conduct being regulated here"); see also Brief for United States as *Amicus Curiae* 24, 26 (noting that "regulations of the mental-health profession are less likely to qualify as 'incidental' burdens on speech . . . because much mental-health treatment is conducted using only speech"). This logic rests upon the *integral* nature of the speech to the conduct that is being regulated. But that is different from—and says nothing about—whether the speech is being regulated "incidentally," which is the line that *NIFLA* draws. See *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. 755, 769–770 (2018).

So it is here. Talk therapy is a medical treatment. 116 F. 4th, at 1206, 1208–1210. So, why wouldn't such speech-based medical treatments be subject to reasonable state regulation like any other kind of medical care? The United States and the majority just insist that a law that undertakes to regulate speech-based medical treatments is presumptively unconstitutional because the treatment is being administered solely through speech. But that reasoning is maddeningly circular, and it is based on happenstance, not logic. Even more important, it is not the rationale upon which *NIFLA*'s analysis relies. To the contrary, with its description of *Casey*, *NIFLA* recognizes precisely the opposite—a State *can* regulate professionals' treatment-related conduct *even if* doing so impacts treatment-related speech.

Again, what distinguished *NIFLA* from *Casey* was the fact that Pennsylvania's speech-related mandate was aimed at regulating the provision of medical treatments to patients; the fact that the particular medical treatment at issue in *Casey* involved a physical (instead of a verbal) act was of no moment. *NIFLA*, 585 U. S., at 769–770. The reading of *NIFLA* the United States favors—which the majority appears to endorse in part, see *ante*, at 16–17—is irrational because, for purposes the State's regulation of harmful professional conduct, treatments administered *through words* versus treatments administered *through acts* are not meaningfully different.[5]

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[5] The majority appears to adopt a theory of the "speech incident to conduct" doctrine that is analytically similar to, but ultimately narrower than, the recitation adopted by the United States. *Ante*, at 16–17. But, just like the United States, the majority fails to account for *NIFLA*'s conceptualization of the doctrine as turning on the State's objectives. Indeed, the majority's analysis offers no cohesive narrative to explain either why this exception to heightened scrutiny exists or how—like all exceptions—it operates to consistently effect a balance of the public's interests (here, free speech and the personal safety that medical standards secure).

By contrast, *NIFLA*'s actual line marks a real, constitutionally relevant distinction: Restrictions of speech that occur when a State undertakes to regulate the treatments that professionals provide to patients are merely "incidental"; they are materially different from speech restrictions that are not "tied to a [medical] procedure at all." 585 U. S., at 769–770; cf. Black's Law Dictionary 686 (5th ed. 1979) (defining "incidental" as "[d]epending upon or appertaining to something else as primary," such as "something incidental to the main purpose"). The latter warrants strict scrutiny since the State is regulating "speech as speech," while in the former case—where the State is merely restricting speech due to its regulation of medical treatments—heightened scrutiny is not needed. 585 U. S., at 770.

The "speech incident to conduct" doctrine thus ably balances the interests at stake by accommodating a State's traditional police power to regulate the practice of medicine for the protection of its residents while also ensuring that speech is not being targeted. As we explained in *NIFLA*, that doctrine recognizes that the treatments provided by licensed medical professionals can be prohibited even if, by doing so, the State incidentally restricts those providers' speech. *Id.*, at 769–770. This is constitutionally permissible precisely because the restricted speech is not being regulated "as speech"—*i.e.*, based on or due to its message or expressive content. Rather, the speech restriction is a mere byproduct of the State's healthcare regulation.

So, at the end of the day, I think what we have here is what *Casey* involved and *NIFLA* did not: a State restricting a medical provider's speech only as part of its regulation of the provision of medical treatments to individual patients. See *NIFLA*, 585 U. S., at 769–770; *Casey*, 505 U. S., at 884 (joint opinion of O'Connor, Kennedy, and Souter, JJ.). And it is precisely because the MCTL is restricting Chiles's speech "only as part of [her] practice of medicine" that the

First Amendment is not particularly bothered despite the impact on her speech. *Casey*, 505 U. S., at 884 (same). Accordingly, talk therapists like Chiles—just like any other healthcare provider seeking to treat patients—can presumptively be "subject[ed] to reasonable licensing and regulation by the State." *Ibid*.

B

The conclusion that a State can regulate the provision of medical care even if, in so doing, it incidentally restricts the speech of some providers, fully comports with the First Amendment's animating principles. These principles include the well-settled notion that context matters when evaluating First Amendment challenges to state regulation. See *Virginia Bd. of Pharmacy*, 425 U. S., at 762–768 (analyzing the First Amendment protections due speech in the commercial context); cf. *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 564, n. 6 (1980) (explaining how the context and characteristics of commercial speech justify less scrutiny).

The context that frames today's debate is the kind of speech that is at issue here—what I am calling (as shorthand) "professional medical speech." This is the only type of speech the MCTL restricts.

1

Properly defined, "professional medical speech" is a narrow category. It is not *all* speech "uttered by 'professionals.'" *NIFLA*, 585 U. S., at 767. Rather, it is speech by healthcare professionals made as part of their provision of medical care to patients. To be even more specific, professional medical speech occurs when a medical professional speaks to a client (1) in the context of the professional-patient relationship; (2) on matters within the provider's professional expertise as defined by the medical community; (3) for the purpose of providing medical care. See C. Haupt, Professional Speech, 125 Yale L. J. 1238, 1247–1248 (2016); R. Post, Informed Consent to Abortion: A First Amendment Analysis of Compelled Physician Speech, 2007 U. Ill. L. Rev. 939, 947; D. Halberstam, Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions, 147 U. Pa. L. Rev. 771, 834 (1999).

First, professional medical speech is speech uttered within the bounds of the professional-patient relationship. See, *e.g.*, Haupt, 125 Yale L. J., at 1254–1255. That relationship imposes certain duties and restrictions on the medical professional. For example, medical providers are bound by the twin duties of beneficence (the obligation to act for the benefit of the patient) and nonmaleficence (the obligation not to harm the patient). B. Varkey, Principles of Clinical Ethics and Their Application to Practice, 2020 Med. Principles and Prac. 17, 18.[6]

Second, professional medical speech is speech within the healthcare provider's area of expertise as a member of the medical community. Haupt, 125 Yale L. J., at 1248–1251. Within the professional-patient relationship, the professional has knowledge that the patient does not have, including knowledge of which medical treatments are appropriate and how to administer them. The patient comes to the provider to access that expertise, which is informed by—and constrained by—what the medical community knows. See *id.*, at 1243.

Finally, and most importantly, professional medical speech is made for the purpose of providing the patient with

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[6] This means, of course, that a provider is *not* employing professional medical speech when speaking outside of the professional-patient relationship. The provider who gives a speech touting the benefits of conversion therapy, or writes a paper criticizing those who do not practice conversion therapy, or even expresses to a patient her general (non-treatment-related) views about conversion therapy does not have the duties that arise in the context of the professional-patient relationship and, accordingly, is not engaging in professional medical speech.

medical care. See *id.*, at 1255. This speech is a tool employed to treat patients. In this sense, professional medical speech facilitates the professional's goal of providing the patient with the treatment, procedure, or healthcare that is within her expertise and that forms the basis of the professional-patient relationship.

2

Keeping in mind these characteristics of professional medical speech, consider the First Amendment principles that serve as guideposts for determining the level of scrutiny that a government restriction of such speech deserves.

First, and most fundamentally, is preservation of the marketplace of ideas. See *Abrams* v. *United States*, 250 U. S. 616, 630 (1919) (Holmes, J., dissenting); *Meyer* v. *Grant*, 486 U. S. 414, 421 (1988). Indeed, the "whole project of the First Amendment" stemmed from the Founders' desire to protect the "critically important" goal of having "a well-functioning sphere of expression, in which citizens have access to information from many sources." *Moody* v. *NetChoice, LLC*, 603 U. S. 707, 732 (2024). Within the marketplace of ideas, speech that is expressive of the speaker's thoughts and views is, generally speaking, highly valued. See *Leathers* v. *Medlock*, 499 U. S. 439, 447 (1991); *Ashcroft* v. *American Civil Liberties Union*, 535 U. S. 564, 573–574 (2002).

But professional medical speech does not intersect with the marketplace of ideas: "[I]n the context of medical practice we insist upon competence, not debate." Post, 2007 U. Ill. L. Rev., at 950. The degree to which medical providers speaking within the boundaries of providing patient care can express themselves is limited because their interactions with patients are constrained by their well-established duties to those patients and the requirement that they meet the standard of care. Moreover, given these limits, professional medical speech does not necessarily involve the expression of ideas or messages, so it does not provide significant value to the general marketplace. See *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 758–759 (1985) (plurality opinion).

That's not to say that there isn't a robust marketplace of ideas *within* the medical community. Medical professionals contribute to that particular marketplace by writing papers, giving speeches, and pushing the bounds of the community's knowledge through experimentation. And, indeed, the standard of care for a medical treatment can be greatly influenced and changed by virtue of such speech. It is there that truth competes for "accept[ance] in the . . . market." *Abrams*, 250 U. S., at 630 (Holmes, J., dissenting). But *that* marketplace exists *outside* the confines of the professional-patient relationship. See Haupt, 125 Yale L. J., at 1243–1244 (discussing the epistemic marketplace among medical professionals).

Within the confines of the professional-patient relationship, treatment-related "truths" are a given—they are set by licensing and malpractice standards, and it is not uncommon that such regulation incidentally restricts provider speech. Moreover, regulation of the practice of medicine is *pervasively* and *unavoidably* viewpoint based. The majority and the concurrence both resist this: They relentlessly deride Colorado for engaging in "viewpoint discrimination" by banning conversion therapy but permitting affirming care. *Ante*, at 13–14 (majority opinion); *ante*, at 1–2 (KAGAN, J., concurring). But context makes that point ring hollow.

When a State establishes a standard of care, or punishes a doctor for providing care outside of that standard, it necessarily limits what medical professionals can say and do on the basis of viewpoint. A State can permissibly "prohibi[t] the administration of specific drugs for particular medical uses" but not for others. *United States* v. *Skrmetti*, 605 U. S. 495, 516 (2025).[7] So, too, may it prohibit a doctor from encouraging a patient to commit suicide, see Tr. of Oral Arg. 43–45, or a dietician from telling an anorexic patient to eat less, see *id.*, at 22–23. Likewise, no one would bat an eye if a State required its doctors to discourage, but not encourage, smoking tobacco.

Even though these kinds of regulations are inherently viewpoint based, in the context of medical care, a State can certainly require the medical professionals it licenses to stand on one side of an issue. See *Collins* v. *Texas*, 223 U. S. 288, 297–298 (1912) (recognizing the "right of the State to adopt a policy even upon medical matters concerning which there is difference of opinion and dispute"). Though these proscriptions certainly promote a viewpoint, in this context, that alone does not suffice to establish a presumptive First Amendment violation. Instead, under the "speech incident to conduct" doctrine, the challenged laws must also operate as speech-suppression tools, designed to vanquish free expression.

But, here, Colorado's clear aim is enforcement of a standard of care that is indisputably applicable to the State's licensed healthcare professionals. Taking a position as to how those providers should handle a medical issue is the very essence of standard-setting—once again, this kind of viewpoint-based regulation ensures "competence, not debate." Post, 2007 U. Ill. L. Rev., at 950. My colleagues' contrary conclusions are puzzling, for a standards-based healthcare scheme cannot function unless its regulators are permitted to choose sides.[8]

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[7] Of course, when the State discriminates "on the basis of sex and transgender status" with respect to the administration of specific drugs, that discrimination implicates the Equal Protection Clause and requires heightened scrutiny for purposes of the Fourteenth Amendment. See *Skrmetti*, 605 U. S., at 579 (SOTOMAYOR, J., dissenting).

[8] Faulting Colorado for legislating based on its view that conversion therapy is harmful for minors and that affirming care is the better

A second and corollary First Amendment principle is the listener's interest in receiving information. See *Murthy* v. *Missouri*, 603 U. S. 43, 75 (2024); accord, *Kleindienst* v. *Mandel*, 408 U. S. 753, 762 (1972). In the professional medical context, however, informational asymmetry shapes the listener's interest. To be sure, "[r]espect for patients' autonomy is a cornerstone of medical ethics." American Medical Association Code of Medical Ethics, Opinion 11.2.4: Transparency in Health Care (2026). But that interest is not served by receiving *all* existing opinions—only information about treatments that are within the standard of care advances patients' interests. *Ibid.* ("[P]hysicians have

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treatment, the concurrence purports to save "for another day" the question whether "content-based but viewpoint-neutral laws regulating speech in doctors' and counselors' offices" comport with the First Amendment. *Ante*, at 4 (opinion of KAGAN, J.). But that magnanimity is a mirage. Standards-based regulations exist in the medical context *precisely because* the State has a view about safety or efficacy; regulation is a State's police-power prerogative to promote those views (as the standard of care) while simultaneously rejecting all others.

The laws I reference in Part IV, *infra*, are not examples of content-based, viewpoint-neutral laws, as the concurrence maintains. Contra, *ante*, at 4, n.*. Rather, when properly analyzed, those laws are either facially viewpoint based—see, *e.g.*, the requirement that the medical professional must not provide care "in a cruel manner," Kan. Admin. Regs. 102–3–12a(b)(11) (2022)—or unavoidably viewpoint based in application. Consider, for example, a therapist disciplined for failing to provide care that promotes the "best interests" of her client. See Ga. Comp. Rules & Regs., Rule 135–7–.01(1) (2026). Punishment for a violation of that standard requires the State to impose its view of what a therapist should have said or done, and would necessarily "reflect the [State's] disapproval" of the speech the therapist actually employed. See *Matal* v. *Tam*, 582 U. S. 218, 249 (2017) (Kennedy, J., concurring in part and concurring in judgment). But, of course, imposing the State's view of what is appropriate is the entire point of standards-based regulation. The First Amendment allows this because the State is regulating professional conduct and this professional's speech is only being incidentally restricted; the analysis does not turn on whether the State's regulation is viewpoint neutral. Neutrality is not—and cannot be—the touchstone of the laws that govern the quality of care that professionals provide to patients.

an obligation to inform patients about all *appropriate* treatment options" (emphasis added)). Patients are not in a position to wade through medical discourse and independently evaluate the best treatment for their circumstances. Their interests as listeners are thus limited by the nature and purpose of the professional-patient relationship.

Third, and finally, the First Amendment protects a speaker's autonomy. "'[T]he fundamental rule of protection under the First Amendment [is] that a speaker has the autonomy to choose the content of his own message.'" *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 63–64 (2006) (quoting *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 573 (1995)). But, here again, with respect to professional medical speech, healthcare providers do not have autonomy; when it comes to providing treatments for their patients, they are bound by the standard of care and are not generally free to "choose the content" of their message. See Haupt, 125 Yale L. J., at 1272; Halberstam, 147 U. Pa. L. Rev., at 867. Put differently, although medical professionals do have an autonomy interest in communicating their ideas to the patients they are treating, that interest only extends to treatment-related advice and information that is consistent with the standard of care.

In my view, the majority is mistaken to equate treatment-related speech rendered in the context of providing medical care with any spoken words uttered by any other speaker. See, *e.g.*, *ante*, at 11 ("While the First Amendment protects many and varied forms of expression, the spoken word is perhaps the quintessential form of protected speech. And that is exactly the kind of expression in which Ms. Chiles seeks to engage"). The majority is also wrong to insist that it is antithetical to the First Amendment for a State to incidentally restrict a healthcare provider's treatment-related speech based on a "prevailing 'standard of care'" because "[m]edical consensus . . . is not static; it evolves and always has." *Ante*, at 22. The mutability of medical standards tells us little about the First Amendment's scope in a country where medical standards are enforceable by law and govern the treatment-related conduct of professional healthcare providers.

Like it or not, treatment standards exist in America. And those standards necessarily reflect the expert medical community's current beliefs about the safety and efficacy of various medical treatments, whatever those beliefs might be. Medical standards are driven by science (objective facts and data), but, naturally, they are not viewpoint neutral. Consequently, the people *win*—not lose—when a State incorporates medical profession's viewpoint into laws that require licensed treatment providers to conform to prevailing standards of care. Contra, *ante*, at 22 (suggesting otherwise). For this reason, the Court has long recognized a State's power to regulate to protect its residents even in the face of uncertainty. Cf. *Gonzales* v. *Carhart*, 550 U. S. 124, 163 (2007) (collecting cases and noting the "wide discretion" afforded state legislatures to "pass legislation in areas where there is medical and scientific uncertainty").[9]

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[9] The majority laments that, because medical consensus is "not static," a law like the MCTL might operate to "silenc[e]" professional speech going forward even if medical consensus swings the other way. *Ante*, at 22. Illustrating this problem, the majority points to shameful parts of this country's past to show the dangers that can come from regulation that relies on outdated medical practices. *Ibid*. (citing *Buck* v. *Bell*, 274 U. S. 200, 205–207 (1927)). But the majority does not mention that, if the standard of care *does* change, the state legislature has the power to change the law in response to that evidence. The majority's point seems to be that States should not be permitted to enact (rigid) laws based on current scientific thought because expert opinions might shift over time. But those uncertainties—which have always existed—are no reason to abandon medical standards or to alter how the law has traditionally accommodated scientific discoveries. The potential that medical consensus may change *in the future* does not mean that the Constitution prevents

Put differently, States impose treatment standards incorporating the current consensus of medical experts to protect state residents from harm. And they do this to ensure that professionals provide patients with high-quality care. A State that, alternatively, pursues an agenda of purposefully silencing critics, muzzling opponents, or targeting views it considers threatening would, of course, violate the First Amendment. But it behooves us all (and especially courts) to see and know the difference.

Ultimately, then, no traditional First Amendment principle justifies preventing a State from regulating medical care simply and solely because its law happens to restrict treatment-related speech. And in this case, there is zero evidence that Colorado has engaged in the corrosive and illicit suppression of ideas that the First Amendment valiantly repels. The record here does not show that Chiles is being "target[ed]" or "muzzle[d]" or "silenced" or "censor[ed]," as the majority suggests. *Ante*, at 14, 15, 22, 23. Instead, as a healthcare provider licensed by the State of Colorado, she is simply being held to the same standard of care that all other licensed medical professionals in that State must follow.[10] The MCTL's conversion-therapy ban

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a State from acting *today* to protect its residents from what medical experts currently believe is a harmful medical treatment.

[10] Under my analysis, evidence of speech targeting or suppression could include the fact that the challenged state regulation does not, in fact, reflect current medical consensus. See *ante*, at 22 (noting the mutability of the medical consensus). If a State enacts a treatment prohibition that substantially diverges from the medical community's present beliefs, the law might well be a pretext for illicit speech-targeting objectives. Far from requiring "reflexive deference," *ibid.*, proof of such motivation would be unearthed, and carefully examined, as part and parcel of a court's proper "speech incident to conduct" inquiry, since the doctrine is only applicable to *reasonable* State regulations. See *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 884 (1992) (joint opinion of O'Connor, Kennedy, and Souter, JJ.) (noting that medical professionals are "subject to reasonable licensing and regulation by the State"); *NIFLA*, 585 U. S., at 785 (Breyer, J., dissenting) (stating that

only incidentally restricts professional medical speech as a result of Colorado's regulation of a harmful medical treatment; nothing compels the conclusion that a state regulation that operates to restrict this kind of communication in this way is targeting speech *qua* speech.

III

The centuries-long tradition of States using their police powers to establish and enforce the standards of care that bind medical professionals—including those who use speech to administer treatments—is another indication that heightened scrutiny does not and need not apply here. The majority's opinion largely omits this broader historical record. But, when consulted, that history demonstrates unequivocally that the MCTL is neither unusual nor inherently suspect.

States have *always* had "broad power to establish standards for licensing practitioners and regulating the practice of professions." *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 792 (1975). With respect to the medical profession in particular, States have used that power to control how medicine is practiced "from time immemorial." *Dent* v. *West Virginia*, 129 U. S. 114, 122 (1889).

States have historically regulated the medical profession in two complementary ways: licensing schemes and medical-malpractice liability. Both necessarily encompass restrictions on professional medical speech through the regulation of the provision of medical care.

Medical licensing began as early as 1639, before this country was founded. R. Horowitz, In the Public Interest: Medical Licensing and the Disciplinary Process 39 (2013). Many States deregulated in the mid-1800s by abolishing their licensing schemes. *Id.*, at 40. But regulation through licensing was not abandoned for long: By the turn of the

the First Amendment yields to "reasonable conditions" that States impose on medical providers).

20th century, 12 States had adopted licensing laws. D. Johnson & H. Chaudhry, Medical Licensing and Discipline in America: A History of the Federation of State Medical Boards 23 (2012). We held that such laws were a permissible exercise of a State's traditional police powers, declaring that "[t]he power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud." *Dent*, 129 U. S., at 122; see also *Watson* v. *Maryland*, 218 U. S. 173, 176 (1910) (rejecting challenge to medical-licensing law).

Today, every State has a medical-licensing scheme. See App. to Brief for Health Law Scholars as *Amici Curiae*. In practice, medical licensing serves two functions, both essential to patient safety. First, as the majority emphasizes, licensing sets limits on who may practice medicine. See P. Larkin, M. Fishpaw, & L. McCarthy, Telemedicine and Occupational Licensing, 73 Admin. L. Rev. 747, 774 (2021); *ante*, at 20. But the second function is more important for this case: State licensing laws also regulate *how* those professionals may practice, by requiring them to adhere to a standard of care. See Brief for Respondents 27; see also App. to *id*., at 1a–8a (listing state laws that require medical and mental health professionals to be licensed and to comply with professional standards).

While licensing regulates medical professionals *ex ante*, medical-malpractice lawsuits enforce those standards *ex post*. And just like medical licensing, the tort of medical malpractice has a long pedigree.

English common law held doctors liable for harm caused by their negligent medical treatment. 3 W. Blackstone, Commentaries on the Laws of England *122 (W. Lewis ed. 1922) (1768). The English tradition carried forward; this legal claim has been available in our country since the founding. See K. De Ville, Medical Malpractice in

Nineteenth-Century America: Origins and Legacy 3, 5 (1990) (De Ville). In the mid-1800s, the number of malpractice cases skyrocketed, filling the void left by the States' temporary deregulation of medical licensing. See *id.*, at 25–34; see also *id.*, at 115–137; *Graham* v. *Gautier*, 21 Tex. 111, 117–118 (1858) (observing that the lack of a licensing scheme demanded enforcement of a corresponding standard of care).

Historically, the medical-malpractice tort generally required the plaintiff to prove three things: (1) that there was a professional-patient relationship, (2) that the medical professional had caused him harm, and (3) that the provider had departed from a standard of care. De Ville 46–50. The majority focuses on the requirement to show harm. *Ante*, at 21. But the entire point of the third element was to reinforce the standards that govern medical practitioners. For that reason, the harmed plaintiff was required to establish that the accused physician had not practiced with "ordinary care, diligence, and skill." See De Ville 49 (emphasis deleted).

State enforcement of the standard of care—*i.e.*, "the care, skill, and knowledge regarded as competent among similar medical providers in the same or similar circumstances," Restatement (Third) of Torts: Medical Malpractice §5 (Tent. Draft No. 2, Mar. 2024)—has continued over time and still serves as the touchstone for both licensing schemes and medical-malpractice lawsuits. Brief for Respondents 25–26, and App. to *id.*, at 1a–8a. That is, States have consistently regulated medical professionals' conduct to ensure that modern healthcare practices conform to the standard of care through both medical-malpractice law and professional licensing.

Note, too, that such state regulation has not been limited to medical *procedures*: Physicians have historically been held liable for what they *said* when administering those procedures as well. See *Graham*, 21 Tex., at 119–120 (imposing liability for medical advice); *Edwards* v. *Lamb*, 69 N. H. 599, 45 A. 480 (1899); *Skillings* v. *Allen*, 143 Minn. 323, 173 N. W. 663 (1919). Moreover, in the past, States have—as part of their licensing regulations—defined the "practice of medicine" to cover practitioner speech. See, *e.g.*, *Smith* v. *People*, 51 Colo. 270, 272, 117 P. 612, 613 (1911) (noting that the "practice of medicine" as regulated by Colorado's licensing law included "suggestion[s or] recommendation[s] . . . of treatment").

In short, States have regulated professional conduct related to the provision of all kinds of medical care—and incidentally restricted speech—without constitutional affront for eons. Though the majority averts its gaze, even a cursory glance at the broader historical record is illuminating, for it reveals that States have traditionally played a significant role in setting the standards that govern the medical profession. See *Washington* v. *Glucksberg*, 521 U. S. 702, 731 (1997) (emphasizing the state interest "in protecting the integrity and ethics of the medical profession"); *Barsky* v. *Board of Regents of Univ. of N. Y.*, 347 U. S. 442, 451 (1954) (same).

With the MCTL, Colorado has merely taken up that same mantle. That law operates by prohibiting a particular medical treatment the State considers harmful, and nothing about it implicates Chiles's First Amendment rights in a markedly different fashion than other States' traditional efforts to regulate and enforce the standard of care.[11]

[11] The majority's observation that "counselor-licensure bill[s]" are a relatively recent innovation, *ante*, at 20, is an interesting diversion. But that is all. The relevant historical question is whether States have historically regulated the medical care that licensed professionals provide to patients, including treatments that are delivered via speech. The answer is yes; the fact that counselors have only recently been included in the regulated category of "licensed medical professionals" is beside the point.

One more thought on this: The majority rigidly imposes a history-and-tradition test that treats the plethora of historical examples as insufficient. See *ante*, at 18–22. But it should instead find the long tradition of state laws setting standards of care by regulating the professional conduct of medical providers—including those who treat with speech—doubly reassuring.

For one thing, this history helps us to be confident that what Colorado is doing here is actually regulating medical care, not suppressing messages. The record shows that States have routinely enacted laws that establish and enforce the standard of care, and that serves as a backdrop for an understanding of how States have acted historically to protect their residents from harm. The majority is right about one thing, however: A State will always *say* that its law just regulates the provision of medical treatments, while the challenger will inevitably argue that the State's law nefariously targets speech *qua* speech. See *ante*, at 16. A lengthy tradition of similar regulatory efforts by States—or the absence of one—helps courts to ferret out who has the better of *that* argument.

The history also helpfully demonstrates that a lower level of scrutiny is appropriate here, despite the impact of the MCTL on Chiles's speech. We can rest easy, comforted by the fact that this law is not actually operating to suppress the expression of thoughts, messages, or ideas about conversion therapy; instead, the MCTL restricts talk therapists in the same way and to the same extent as other healthcare professionals have historically been limited when treating patients. Like other valid licensing restrictions, the MCTL does not prevent Chiles from speaking out in favor of conversion therapy, promoting conversion therapy, or otherwise lending credence to efforts to validate that therapy. All this law does is prohibit Chiles from *providing* this treatment to minor patients—no different than what Colorado and other States have been doing in the indisputably valid exercise of their police powers for centuries.[12]

All things considered, then, I reach a different conclusion in this case than the majority does because precedent, principles, and history point in the same direction: No heightened scrutiny is warranted here. The First Amendment cares about government efforts to suppress "speech as speech" (based on its expressive content), not laws that, like the MCTL, restrict speech "incidentally," due to the government's traditional, garden-variety regulation of such speakers' professional conduct.

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[12] Suggesting otherwise, the majority places great stock in our decision in *Holder* v. *Humanitarian Law Project*, 561 U. S. 1 (2010). See *ante*, at 10, 16. *Holder* involved a law that prevented lawyers and doctors from providing "'material support'" for others' terrorist activities by word or deed. 561 U. S., at 8–9. We subjected the law to strict scrutiny because, as applied to the plaintiffs, the law was aimed at preventing professionals from "communicating a message." *Id.*, at 28. Such a regulation plainly raised the specter of suppression—*i.e.*, that what the United States was really aiming to do was prevent those professionals from expressing support for something the United States found distasteful. In other words, the challenged law sought to punish the plaintiffs based on the expressive content of their speech. That is not what we have here. The MCTL—which follows in a long line of state regulation of healthcare providers' treatment-related conduct—does not restrict or punish medical professionals because of the expressive content of their communications. Rather, the speech restriction happens only incidentally; the MCTL's indisputable objective is prohibiting a harmful medical treatment. To put a finer point on this: The equivalent of Chiles's First Amendment claim, transported to the *Holder* context, would be as if the United States in *Holder* had said: "you professionals are prohibited from committing acts of terrorism," and the lawyers among them responded, "it is unconstitutional to apply your 'no terrorist acts' prohibition to us because we want to commit the prohibited terrorist acts with our speech." But, of course, the First Amendment would not prevent the United States from prohibiting all terrorist acts even if, by doing so, it incidentally restricts the speech that some actors might otherwise have used to behave in the manner the law prohibits. In my view, that is how Chiles's constitutional claim works (and also why it fails).

IV

Ultimately, because the majority plays with fire in this case, I fear that the people of this country will get burned. Before now, licensed medical professionals had to adhere to standards when treating patients: They could neither do nor say *whatever they want*. Largely due to such State regulation, Americans have been privileged to enjoy a long and successful tradition of high-quality medical care.

Today, the Court turns its back on that tradition. And, to be completely frank, no one knows what will happen now. This decision might make speech-only therapies and other medical treatments involving practitioner speech effectively unregulatable—not to be reached via licensing standards, medical-malpractice liability, or any other means of state control. Who knows? Certainly not the majority. It appears to have made this momentous decision without adequately grappling with the potential long-term and disastrous implications of this ruling.

The fallout could be catastrophic. Many regulations impact the speech of medical professionals in the context of their provision of healthcare to patients; the possibilities go far beyond talk therapy and informed consent. For example, many States require that medical professionals "make every reasonable effort to promote the welfare, autonomy and best interests of" the client. Ga. Comp. Rules & Regs., Rule 135–7–.01(1) (2026); see Ind. Admin. Code, tit. 839, §1–§5–5(1) (2026); Conn. Gen. Stat. §17a–542 (requiring "[h]umane and dignified treatment") (2025); Ala. Admin. Code Rule 255–X–11–.01 (Supp. 2016) (requiring that the professional "assure client welfare and protection" during medical care). Some States further prohibit medical professionals from treating a patient "in a cruel manner." Kan. Admin. Regs. 102–3–12a(b)(11) (2022). Similarly, some licensing boards can discipline a provider who "is incompetent." Alaska Stat. §08.29.400(4) (2025).[13]

On the majority's view, these kinds of regulations become unenforceable if the healthcare provider risks harming patients with their speech rather than an operation. Providers who offer "cruel" speech-only therapies or who use speech to (intentionally or incompetently) harm the welfare of patients, for example, can now assert a First Amendment right to carry on, regardless of these standards.

So, to put it bluntly, the Court could be ushering in an era of unprofessional and unsafe medical care administered by effectively unsupervised healthcare providers. A state license used to *mean* something to the patients who entrust their care to licensed professionals—*i.e.*, that the person is certified to be one who provides treatments that are consistent with the standard of care.

That stops today. Indeed, it is not at all clear how, or to what extent, state regulation of medical care involving practitioner speech can survive this holding. We are on a slippery slope now: For the first time, the Supreme Court has interpreted the First Amendment to bless a risk of therapeutic harm to children by limiting the State's ability to regulate medical providers who treat patients with speech. What's next? In the worst-case scenario, our medical system unravels as various licensed healthcare professionals—talk therapists, psychiatrists, and presumably anyone else who claims to utilize speech when administering

[13] Those are not the only restrictions that constrain the speech of medical professionals. Some States require that a counselor make a treatment plan specifying goals and methods, and ensure that such plan is "viab[le] and effectiv[e]." Ariz. Admin. Code, Rule R4–6–1102 (Sept. 2025). Others prohibit "making claims of professional superiority that one cannot substantiate" or "guaranteeing that satisfaction or a cure will result from the performance of professional services." Kan. Admin. Regs. 102–3–12a(b)(31), (32). Still others prohibit the professional from "exercis[ing] undue influence on the client." Colo. Rev. Stat. §12–245–224(j).

treatments to patients—start broadly wielding their newfound constitutional right to provide substandard medical care.

It is baffling that we could now be standing on the edge of a precipitous drop in the quality of healthcare services in America. But the Court sees fit to bring us one step closer to that fate today. Stranger still is the fact that this possibility looms *in the 21st century*—given what science now enables us to know about medical conditions and treatments, what our cases say, and what we all should have learned by now from history. Somehow, Justices from eras past have always understood that (as I stated at the outset) "there is no right to practice medicine which is not subordinate to the police power of the States." *Lambert*, 272 U. S., at 596. They correctly applied that simple but powerful understanding of our Constitution across the board—to *all* healthcare professionals, including those with practices that happen to involve treatment-related speech. We do harm to both the Nation's medical system and our First Amendment jurisprudence by ignoring that wisdom today.

* * *

The First Amendment requires heightened scrutiny when States regulate "speech as speech" but not when speech is restricted "incidentally." *NIFLA*, 585 U. S., at 769–770. The latter occurs where, as here, a State seeks to prohibit healthcare professionals from providing a dangerous medical treatment in all of its forms, including the speech-related variety. States have traditionally regulated the provision of medical care through licensing schemes and malpractice regimes without constitutional incident. And no core principle of our First Amendment jurisprudence leads inexorably to the conclusion that it violates the Constitution for a State to prevent its licensed talk therapists from using speech to harm the minors in their care. Holding otherwise, as the majority does now, flouts centuries of state-standardized regulation of medical care and is, ultimately, nonsensical. The Constitution does not pose a barrier to reasonable regulation of harmful medical treatments just because substandard care comes via speech instead of scalpel.

Accordingly, I cannot agree with the majority's analysis or its conclusions in this case. The majority finds, at bottom, that Colorado likely cannot legislate to protect the children of its State if, by doing so, it happens to keep state-licensed healthcare providers from saying what they want to say to minors. And the majority's holding means, in effect, that just because Chiles is a talk therapist—and not, say, a surgeon—a State can be prevented from incidentally imposing reasonable restrictions on the treatments she provides. Our precedents do not compel this conclusion. In fact, *NIFLA* draws a different line, and the correct course of action here is to hold it: Speech uttered for purposes of providing medical treatment may be restricted incidentally when the State reasonably regulates the speaker's provision of medical treatments to patients. *Id.*, at 769–770.

To do anything else opens a dangerous can of worms. It threatens to impair States' ability to regulate the provision of medical care in any respect. It extends the Constitution into uncharted territory in an utterly irrational fashion. And it ultimately risks grave harm to Americans' health and wellbeing.

Exhibit 8

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** **Bar No. 021097** **Respondent.**	**No. PDJ 2026-9010** **MOTION TO DISMISS AND, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

Pursuant to A.R.S. § 12–751 (Arizona's "anti-SLAPP" law), Respondent David S. Gingras ("Respondent" or "Gingras") respectfully moves for an order dismissing this matter with prejudice. Dismissal is required because the Complaint contains claims which arise from state and federally constitutionally protected speech and petitioning activity and the state bar cannot meet the burdens required by A.R.S. § 12–751(B). Respondent further moves for an award of costs including attorney's fees and damages including lost income, in an amount to be established by affidavit, pursuant to A.R.S. §§ 12–751(F) and 12–353.

In the alternative, and solely if the Court finds A.R.S. § 12–751 inapplicable for any reason, Respondent moves for summary judgment pursuant to Ariz. R. Civ. P. 56. Summary judgment is proper because no material facts are disputed and Respondent is entitled to judgment as a matter of law.

Respondent is aware the PDJ recently issued an order granting judgment on the pleadings with respect to a single issue. That order did not mention, nor did it resolve, Respondent's defenses under A.R.S. § 12–751 or the Arizona/U.S. Constitutions. To preserve those issues, this motion will raise those arguments, even though the Court may consider them to have been resolved by the prior ruling.

RANDAZZA | LEGAL GROUP

I. INTRODUCTION

In this case, the Arizona Bar seeks to discipline David Gingras for activities that are protected under the right to free speech and the right to petition. The Bar's position is inconsistent with the First Amendment, but even if it were, the Arizona Constitution would not tolerate the Bar's positions. The Arizona Constitution provides broader guarantees than the First Amendment. *See Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm'n,* 160 Ariz. 350, 354-55, 773 P.2d 455 (1989). "The words of the Arizona Constitution are too plain for equivocation. The right of every person to freely speak, write[,] and publish may not be limited . . . ." *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 259, 418 P.2d 594, 596 (1966) (rejecting a gag order of the type prohibited in *Nebraska Press Ass'n v. Stewart*, 427 U.S. 539 (1976) but 10 years before that decision was decided).

Nevertheless, even if this Tribunal were to ignore the Arizona Constitution's higher levels of speech protection, the First Amendment and *Gentile v. State Bar of Nevada* and its progeny would roundly reject the Bar's positions in this matter.

This case arises from a high-profile paternity matter called *Owens v. Echard*. This case drew immense public attention, because the Respondent in that case, Clayton Echard, is a former TV celebrity who appeared on the reality TV dating show, *The Bachelor*. As is common in such high-profile cases, it drew an army of spectators – not just in person, but online. This online morass of attention and harassment created a bit of a circus, and appears to have excited the judge, who did not appear to handle the public attention with the greatest degree of care. *See* Request for Judicial Notice ("RJN") Ex. 105 at pp. 17–37 (Affidavit of David S. Gingras In Support of Petitioner's Notice of Change of Judge for Cause (describing pre-trial and post-trial issues).

Respondent, in representing his client, determined some of the judge's actions were tainted. For example, the judge made a finding of fact that was not based on any trial evidence, but was raised on social media after the trial ended. *See* RJN Ex. 105 at 33-34, ¶¶ 79–85. And the great amount of attention by anonymous trolls on Reddit, a notorious online cesspool, led Respondent to describe them as "fucking assholes" – not in court, but in a private email.

In what has become a proceeding Kafka would consider too far-fetched to believe, the Bar charges Respondent with six different acts of misconduct during *Owens:*

1.) Violating an order which allegedly required information to be filed under seal;

2.) Asking law enforcement to enforce a valid restraining order issued by a California court;

3.) Making disparaging comments about the trial judge, Julie A. Mata;

4.) Making disparaging comments referring to a group as "fucking assholes";

5.) Pursuing "meritless claims", presenting "false information in an affidavit" and presenting Ms. Owens' "False testimony/Changing Version of Events"; and

6.) Pursing a "non-meritorious appeal".

None of these claims have merit. First, claims 1–4 arise from speech and conduct[1] which is protected by the First Amendment and the Arizona Constitution's Free Speech

[1] Reports to law enforcement are protected "petitioning" activity; "[S]ubmission of complaints … to … a police department constitutes petitioning activity protected by the petition clause [of the First Amendment]." *Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir.

Clause, Ariz. Const. art. II, § 6. Claims 5-6 are demonstrably factually false, and prosecuting Respondent for Claim 6 is a violation of the right to petition. The State Bar cannot impose discipline for constitutionally protected speech/conduct absent narrow circumstances which are not present here.

Second, the state bar has misconstrued the facts relating to claim 1. Viewed in full context, the material facts show Respondent did not violate any court order requiring information to be *filed under seal*, because no such order was ever issued.

Third, even if Respondent unintentionally violated a court order (because the order was so vague and ambiguous it was impossible to understand), that aspect of the case must be dismissed under A.R.S. § 12–751 because the state bar has arbitrarily refused to discipline opposing counsel in *Owens* (Gregg R. Woodnick) for violating the same order in the same manner as Respondent, which occurred *before* Respondent ever appeared in the case. Arizona's anti-SLAPP law and the Due Process Clause forbid state actors from arbitrarily enforcing vague laws/orders in this manner. So, even if the bar's first claim was otherwise factually and legally correct, which it is not, dismissal of the claim is still mandatory.

Fourth, the Complaint accuses Respondent of *knowingly* presenting false testimony from Ms. Owens. That allegation is false, and the Bar has no admissible evidence to support it.

2000) (citing *California Transport v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)); *see also Ruiz v. Hall*, 191 Ariz. 441, 453 (Ariz. 1998).

In short, the bar's theory appears to be:

- Ms. Owens offered one version of events (before Respondent was involved);
- Later, Ms. Owens changed her story slightly;
- Therefore, Respondent must have known the first version was true and the second was false.

This argument fails for an obvious reason of logic – just because a witness *changes* a prior statement does <u>not automatically</u> show the first statement was true and the second was false. It is equally possible the witness realized the first statement was inaccurate and corrected it (which is not only proper, but mandatory). In that situation, absent clear and convincing evidence showing the lawyer *knew* which version was true and which was false, the rules do not permit discipline simply because a witness changed their story.

The bar's theory also ignores the fact the opposing party (Clayton Echard) did exactly the same thing – while the case was pending, he changed his version of events in several ways. Yet again, the bar has selectively chosen *not* to pursue discipline against Mr. Woodnick for that conduct. Such arbitrary enforcement of the rules violates the Arizona anti-SLAPP law and the federal Due Process Clause and the State due process clause Ariz. Const. art. II, § 4.

Fifth and finally, the bar's arguments with respect to Respondent pursuing a "non-meritorious" appeal are groundless. The appeal involved a matter of first impression concerning a new law, and Respondent cited extensive legal authority which showed his argument was not just meritorious, but legally and factually correct. The Court of Appeals may have disagreed with that position, but it did not find Respondent's arguments were frivolous (because they were not). While a lawyer could, and perhaps should, be disciplined for bringing a *frivolous* appeal, that standard is not so low as to encompass "non meritorious" appeals, otherwise 50% of the appellate lawyers in Arizona must now all face bar charges, since someone has to lose and someone has to win.

Based on these undisputed facts, this case must be resolved as a matter of law. Under the anti-SLAPP law, the bar cannot meet its burden of showing all claims are "justified by **clearly established law**" nor can the bar show it "did not act in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights." A.R.S § 12–751(B)(1). Because the bar cannot meet its burden, this action must be dismissed, and Respondent must be awarded fees, costs and damages pursuant to A.R.S. § 12–751(F).

II. PRELIMINARY DISCUSSION OF A.R.S. § 12–751

In 2022, Arizona amended A.R.S. § 12–751 (entitled "Strategic Actions Against Public Participation"), also known as the "anti-SLAPP" law. The term SLAPP was originally adopted by California as part of its effort to curb meritless lawsuits used to punish protected speech; "The Legislature enacted the anti-SLAPP statute 'to protect defendants from meritless lawsuits that might chill the exercise of their rights to speak and petition on matters of public concern.'" *Doe v. California Ass'n of Directors of Activities*, 117 Cal.App.5th 796, 809 (Cal. App. 6th Dist. 2025) (quoting *Wilson v. Cable News Network, Inc.*, 7 Cal.5th 871, 883–84 (Cal. 2019)).

Like California, Arizona's anti-SLAPP law allows any person to bring a special form of motion "[i]n any legal action that involves a person's lawful exercise of the right of petition [or] the right of speech … pursuant to the United States Constitution or Arizona

Constitution." A.R.S. § 12–751(A). The statute defines "legal action" to include "Any written investigative demand … or other compulsory legal process or any regulatory or administrative action by a state actor." A.R.S. § 12–751(J)(iii) (emphasis added).

When an anti-SLAPP motion is filed, "A person who files a motion pursuant to subsection A of this section has the burden of establishing prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right." A.R.S. § 12–751. If that showing is made, the Court is required to dismiss the action *unless* "the responding party shows that the legal action on which the motion is based is justified by clearly established law *and* that the responding party did not act in order to deter, prevent or retaliate against the moving party's exercise of constitutional rights." A.R.S. §12–751(B)(1) (emphasis added).

Since the Arizona anti-SLAPP law was amended in 2022, there have been no published decisions applying it in state bar discipline cases. However, other states with similar laws agree such laws apply in discipline cases. *See*, *e.g.*, *Commission for Lawyer Discipline v. Rosales*, 577 S.W.3d 305, 308 (Tex. App. 2019) (holding the Texas Citizen Participation Act or "TCPA", a law similar to A.R.S. § 12–751, "applies to the Commission's disciplinary proceeding against [an attorney]", but finding the Commission met its burden of showing its claims did not violate the TCPA); *Robins v. Commission for Lawyer Discipline,* 2020 WL 101921, at *8 (Tex. App. 2020) (agreeing TCPA applies in lawyer discipline cases, because "The TCPA was enacted to safeguard the constitutional rights to petition, speak freely, associate freely, 'and otherwise participate in government' from infringement by meritless lawsuits."); *see also* In re Discipline of Att'y, 442 Mass.

660, 673–74, 815 N.E.2d 1072, 1082–83 (Mass. 2004) (Assuming without deciding that the anti-SLAPP statute applies to bar discipline cases, but finding law was not violated under the facts of that case).

This case involves a "regulatory or administrative action by a state actor", and the case plainly arises from Respondent's speech and petitioning activity under the First Amendment and the Arizona constitution. In addition, the bar's claims *plainly* seek to punish Respondent for his speech and conduct, thereby deterring and retaliating against the exercise of protected rights. Thus, this is a textbook SLAPP action which is governed by A.R.S. § 12–751.

Because a prima facie showing has been made, this Court must dismiss the case unless the Bar proves each claim is "is justified by **clearly established law**" <u>and</u> that this case was *not* brought to deter, prevent or retaliate against Respondent's exercise of constitutional rights. For the reasons explained below, the Bar cannot meet its burden as to either showing, much less both. Accordingly, this matter must be dismissed.

III. ARGUMENT

The Amended Complaint contains six claims. Each will be discussed in order.

a. Violation of February 21, 2024 "Sealing" Order

i. Summary of Material Facts

The material facts relating to the first claim are all undisputed:

- On September 14, 2023, Ms. Owens filed a *pro se* "Expedited (!) Motion to Seal Court Record." That motion asked the Court to "seal the case (all that has been submitted so far and everything that will be filed in the future) so that the general public may not access it." RJN Ex. 17.

- On October 20, 2023, the Court denied Ms. Owens' Motion to Seal. RJN Ex. 20.
- On January 17, 2024, after Ms. Owens retained counsel, she filed a "Motion for Confidentiality and Preliminary Protective Order". RJN Ex. 39. That motion asked the Court to order; "that relevant discoverable information which either party designates as confidential remains confidential and is not disseminated to anyone other than the parties." RJN Ex. 39 at 4:12–13.
- On January 19, 2024, Mr. Echard's counsel, Gregg Woodnick, filed a motion *opposing* Ms. Owens' request for a protective order. RJN Ex. 43. Mr. Woodnick's pleading argued it would be an unconstitutional prior restraint for the Court to issue a protective order limiting the parties' ability to share information about their claims. Mr. Woodnick further argued: "Apparently, Petitioner feels she is entitled to what is essentially a backdoor Motion to Seal after this Court already **denied** her attempt." RJN Ex. 43 at 1:27–28 (all emphasis in original).
- On February 15, 2024 the trial judge issued an order agreeing with Mr. Woodnick's position. As a result, the court denied Ms. Owens' second motion for confidentiality in its entirety. RJN Ex. 59.
- A week later, on February 21, 2024, Ms. Owens' counsel made a third request for confidentiality in the form of an oral motion for reconsideration. That request was denied. RJN Ex. 60 at 6; "IT IS FURTHER ORDERED denying counsel for

Petitioner's oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality."

- After denying all three of Ms. Owens' requests for any form of confidentiality, and in the same order in which it denied Ms. Owens' request for reconsideration, on February 21, 2024, the court made an observational comment stating: "LET THE RECORD FURTHER REFLECT that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties." RJN Ex. 60.
- After the February 21, 2024 order was issued, Mr. Echard's counsel filed an unsealed Motion to Compel. RJN Ex. 61. The motion contained a description of Ms. Owens' medical records, and attached to the motion was "medical or other documentation" disclosed between the parties. This included a letter to one of Ms. Owens' doctors, RJN Ex. 61 at 13–14, and an email from Mr. Echard's counsel containing a list of Ms. Owens' medical providers. RJN Ex. 61 at 32.
- Respondent was retained by Ms. Owens on March 25, 2024 and he filed a Notice of Appearance in the case that same day. RJN Ex. 66.
- After Mr. Echard's counsel filed unsealed pleadings containing "medical or other documentation" exchanged between the parties, on April 1, 2024, Respondent filed a Motion for Extension of Time To Respond to Mr. Woodnick's Motion to Compel which was supported by a detailed affidavit. RJN Ex. 67; *see also* Amended Complaint ¶¶ 42–43.

- Attached to Respondent's affidavit were some of Ms. Owens' medical records including a payment receipt from Banner Urgent Care and a positive pregnancy test result from Banner. None of those records were disclosed to Ms. Owens *by* Mr. Echard; *those records were Ms. Owens' own medical records which were disclosed by Respondent with Ms. Owens' express permission*. RJN Ex. 67.
- On April 4, 2024, Mr. Echard's counsel sent an email to Respondent which stated in part: "I am also not certain why you are publishing *court documents* and your client's personal medical records contrary to court order." Amended Compl. ¶ 49.
- Immediately that same day, Respondent replied to Mr. Echard's counsel and stated, among other things:

> First, I am aware of no court order that would stop Laura from publishing her own medical records. Yes, I am aware there is a minute entry order dated 2/21/24 that says, among other things, "no party shall disclose outside of themselves [odd wording] any medical or other documentation … *disclosed between the parties*."
>
> I was obviously not present when that order was entered, so I may not have the full context, but my reading of this is if *Laura* discloses medical records to you, you can't share them publicly, and if Clayton shares records with us, we can't share them publicly. That's typical, and it is how I read the court's order. If my reading is correct, it does not prohibit Laura from posting her own medical records, which she did solely to rebut false claims from your side that no such records existed. There is nothing nefarious or improper about this.
>
> If you interpret the order to mean that Laura is somehow *enjoined from publishing her own records* for the purpose of responding to false statements other people are making (including Dave Neal, who Clayton is clearly working directly with), you need to let me know that immediately so I can take the issue up with the judge.

Gingras Aff. ¶ 35 (emphasis in original).

- Mr. Woodnick never responded to Respondent's request for further clarification of his position regarding Ms. Owens' ability to publish her own medical records, nor did he ever challenge Respondent's assertion that he was "aware of no court order that would stop Laura from publishing her own medical records." Gingras Aff. ¶ 36.
- On April 26, 2024, Respondent filed a pleading entitled Petitioner's Response to Respondent's Amended Motion for Relief Based on Fraud. RJN Ex. 78; *see also* Amended Compl. ¶ 53. That pleading contained certain medical information including a discussion of an expert witness report from Dr. Samantha Deans which was disclosed by Mr. Echard.
- Also attached to the pleading was a copy of Dr. Deans' curriculum vitae. RJN Ex. 78.
- On April 19, 2024, Respondent published a tweet which contained a document showing Ms. Owens' weight (133 lbs.) as of November 14, 2023 (during the alleged pregnancy). Amended Compl. ¶ 52.

ii. Discussion

Based on the above facts, the bar claims Respondent violated multiple rules including ER 3.4(c) (by knowingly violating a court order); ER 3.6(a) (by making statements that would have a substantial likelihood of prejudicing the paternity case); ER 4.4(a) (by using means that had no substantial purpose other than to embarrass, delay or burden another person), and Rule 54(c) (by knowingly violating a court order). None of these claims have merit.

1. Nothing In the February 21, 2024 Order Required Anything to be Filed Under Seal

The state bar's primary argument is that the February 21, 2024 order required any/all pleadings to be filed under seal *if* they contained "medical or other documentation" exchanged between the parties. This argument ignores at least SEVEN key problems.

First, the "order" says nothing about "sealing" anything, nor does it contain the words "IT IS ORDERED" with respect to limits imposed on the sharing of information. The language used is: "*LET THE RECORD REFLECT*" which is materially different than other parts of the documents which state: "IT IS ORDERED" as to specific issues. This text appears to simply *reflect* an informal, off-the-record agreement reached between counsel at a hearing where Respondent was not present and which took place more than a month before he was involved in the case.

Second, Ms. Owens made multiple requests asking for precisely the relief (confidentiality) the bar now claims was granted. But every single request by Ms. Owens was denied, in writing, and in its entirety.

Third, Mr. Woodnick *successfully* argued it would be an unlawful prior restraint on speech to prohibit the parties from publicly sharing their own side of the story, just as Mr. Woodnick did in the press release he issued on March 7, 2024. That argument was, in fact, legally correct. *See Yanez v. Sanchez*, 257 Ariz. 302, 306 (Ariz.App. 2024) (invalidating family court order which "prohibited both parents from posting on social media" and explaining: "The order here restricts future speech and is thus a prior restraint. That order is presumptively unconstitutional.")

Fourth, viewed in **full** context (meaning in light of the court's *refusal* to grant *any* form of protective order in response to multiple request by Ms. Owens, including in the same February 21, 2024 order), it is clear the single sentence selectively adopted by the bar is unconstitutionally vague and ambiguous such that it violated Respondent's right to due process. *See Whitmer v. Hilton Casitas Homeowners Ass'n*, 2024 WL 338160, at *3 (Ariz.App. 2024) (explaining, "All injunctions must, inter alia, describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required. The requisite specificity will be found "only if the enjoined party can ascertain from the four corners of the order precisely what acts are forbidden or required.") (emphasis added) (quoting *Havens v. James*, 76 F.4th 103, 121 (2d Cir. 2023) (citing Ariz. R. Civ. P. 65(d)(1)).

The language in question contained no time limits, and no clear definition as to what it prohibited. Merely stating "no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties" seems to mean that if any party exchanged any document with the other party, that document could not be disclosed to *anyone, not even to the court*. If that is not what it means, then what does it mean? A person of even high intelligence cannot tell. Such a vague/ambiguous order is facially unconstitutional.

Fifth, the bar's position ignores the requirements of Family Law Rule 17 (entitled "**Sealing, Redacting, and Unsealing Court Records**.") That rule allows material to be filed under seal, but the rule contains multiple mandatory prerequisites. First, the court must make "written findings of fact and conclusions that the specific sealing or redaction is justified." Ariz. R. Fam. L.P. 17(c). Second, the court must find "there exists an overriding interest that overcomes the right of public access to the record." Ariz. R. Fam. L.P. 17(c)(1). Here, it is undisputed the February 21, 2024 order contained none of the findings required by Family Law Rule 17. Thus, the order did not meet the requirements for allowing (much less *requiring*) documents to be filed under seal.

Sixth, Mr. Woodnick interpreted the ambiguous order exactly the same way Respondent did – i.e., it had no impact on any party's ability to file unsealed pleadings which included "medical or other documentation" exchanged between the parties. We know this because after the February 21, 2024 order was issued, Mr. Woodnick filed unsealed pleadings containing "medical or other documentation" exchanged between the parties. *See* RJN Ex. 61.

This leads to the seventh and final problem – even if the bar's interpretation of the order was factual and legally correct (which it clearly is not), the anti-SLAPP law and the Due Process Clause prohibit the bar from arbitrarily choosing to punish Respondent while ignoring identical misconduct by Mr. Woodnick. Specifically, to prove the bar's conduct was *not* intended to unlawfully deter, prevent, or retaliate against Respondent, the bar must show: "a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights." A.R.S. § 12–751(B)(1)(b) (emphasis added).

Here, Mr. Woodnick is similarly situated to Respondent. Mr. Woodnick did *exactly* the same thing Respondent is accused of doing – filing an unsealed pleading containing "medical or other documentation" exchanged between the parties. But the bar has *not* pursued discipline against Mr. Woodnick.

That fact requires dismissal of the bar's first claim pursuant to the anti-SLAPP law. In addition, Respondent is also entitled to summary judgment because the undisputed facts show he did *not* violate any order.

2. Respondent's Public Comments Did Not Violate ER 3.6)

As a separate issue, the Bar claims by sharing information such as a document that reflected Ms. Owens' weight and an expert witness report, Respondent violated ER 3.6(a) which provides:

> (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

This claim is groundless for multiple reasons. First and foremost, ER 3.6(a) is primarily focused on safeguarding *jury trials* in criminal cases by limiting a lawyer's public statements before the jury is empaneled. When a case involves a jury trial, if a lawyer makes a public statement containing inadmissible evidence or facts, this creates a risk that a potential juror could hear that information resulting in prejudice.

That concern is simply not present in a case like *Owens* involving a <u>bench trial</u>. That reality is further reflected in comment 6 to ER 3.6 which states:

> Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding. (emphasis added).

Here, when Respondent published a tweet showing Ms. Owens' weight, that information could not possibly have caused any prejudice to the case because: A.) the case did not involve a criminal jury trial, and B.) the same information had already been provided to the court in an earlier filing.

Specifically, on April 26, 2024, Respondent filed a pleading entitled Petitioner's Response to Respondent's [Clayton Echard's] *Amended* Motion for Relief Based on Fraud. *See* RJN Ex. 78, also available:

https://www.appeals2.az.gov/APL2NewDocs1/COA/1061/3954137.PDF (Part 1)

https://www.appeals2.az.gov/APL2NewDocs1/COA/1061/3954138.PDF (Part 2)

https://www.appeals2.az.gov/APL2NewDocs1/COA/1061/3954139.PDF (Part 3)

Attached to that pleading were various medical records, including records of a visit to an OB/GYN facility called "MomDoc" on November 14, 2023. On page 65 of this pleading (https://www.appeals2.az.gov/APL2NewDocs1/COA/1061/3954139.PDF) was a record indicating that Ms. Owens' weight was 133 lbs. during that visit. This information is the "medical record" Respondent published on his website and on social media.

Under these circumstances – the "medical records" Respondent shared were not being viewed by members of a jury venire. Those records were provided to both the court and to the public, as part of Ms. Owens' response to Mr. Woodnick's claim that she had never seen an OB/GYN, and that she was wearing a fake "moon bump" belly in court (her weight was relevant to disprove that allegation). Given that *Owens* involved a <u>bench trial, and given that Judge Mata was ethically prohibited from considering ANY social media posts, it is literally not possible for Respondent's public statements to have any prejudicial effect on the case.</u>

Moreover, ER 3.6(b) specifically allows a lawyer to publicly state: "the claim, offense or defense involved", and a lawyer may always publish: "information contained in a public record …." Here, Ms. Owens' weight was part of her defense, and that information was also contained in a public record – the filings submitted in response to Mr. Woodnick's Motion for Relief Based on Fraud.

Under these circumstances, there is no factual or legal basis for the Bar to argue that by sharing the same harmless information publicly which had already been provided to the family court in filed pleadings, this somehow would or could cause prejudice to the outcome of the case. The trier of fact—Judge Mata—was not ethically permitted to review or consider *any* social media posts made regarding the case. *See* Code of Judicial Conduct Canon 2.9(c) (providing, "Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.") As such, Respondent's public comments about the case *could not* have had any impact on the outcome (and they were also specifically permitted by ER 3.6(b)). This claim is therefore groundless and must be dismissed.

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b. Michael Marraccini

The second issue involves an allegation Respondent improperly attempted to preclude a witness named Michael Marraccini from testifying at the June 10, 2024 trial in *Owens*. The bar's allegations regarding Mr. Marraccini are set forth in ¶¶ 65–99 of the Amended Complaint.

Although *most* of the bar's factual allegations are accurate, the Complaint omits significant other facts which shed light on what actually happened. Those additional facts show Respondent's conduct was lawful, ethical, and within the scope of the anti-SLAPP law (because making a truthful report to law enforcement is protected by both the First Amendment and by federal law).

i. Summary of Undisputed Facts

- Shortly after Respondent first appeared in *Owens*, he attempted to interview all disclosed witnesses, one of whom was a person named Michael Marraccini (an ex-boyfriend of Ms. Owens). Gingras Aff. ¶ 40.
- At the time, Ms. Owens had a valid domestic violence restraining order against Mr. Marraccini issued by the San Francisco County Superior Court which required him to remain at least 100 yards away from her at all times, without exception. *See* Compl. ¶¶ 66–67.
- Although Family Law Rule 49 required Mr. Woodnick to disclose the names **and addresses** of any witnesses he intended to call, the only contact information provided by Mr. Woodnick for Mr. Marraccini was a lawyer in California named Randy Sue Pollock. Gingras Aff. ¶ 41.

- In mid-April 2024, Respondent contacted Ms. Pollock to request an interview with Mr. Marraccini. During a telephone call, Ms. Pollack stated Mr. Marraccini would not testify at trial in *Owens*. Gingras Aff. ¶ 42.
- On April 19, 2024, Ms. Pollock sent an email to Respondent stating: "My client [Marraccini] will not be testifying." Gingras Aff. ¶ 43.
- A short time later, Mr. Woodnick disclosed new evidence suggesting Mr. Marraccini was going to testify at trial in *Owens*. Gingras Aff. ¶ 44.
- Upon receiving this new information, Respondent again contacted Randy Sue Pollock to discuss the matter and to request that Mr. Marraccini agree to an interview or, if necessary, a deposition. Gingras Aff. ¶ 45.
- During a telephone call, Ms. Pollock informed Respondent Mr. Marraccini was refusing to submit to either an interview or a deposition, and that he "may just show up at trial rather than participating as a subpoenaed witness". Gingras Aff. ¶ 48.
- In response to Ms. Pollock's statements, on May 6, 2024, Respondent sent an email to Ms. Pollock documenting their conversation. Gingras Aff. ¶ 50. In that message, Respondent informed Ms. Pollock that if Mr. Marraccini was going to testify at trial in *Owens*, he was required to submit to either an informal interview or a deposition. Respondent further stated: "On the phone, you suggested Mr. Marraccini may just "show up" at trial rather than participating as a subpoenaed witness (i.e., he would simply choose to be

there, either as a spectator, or as a non-subpoenaed witness). If that is his plan, I need to be clear about our position – if Mr. Marraccini shows up as *either* a spectator or as a non-subpoenaed witness, <u>Laura will ask the Phoenix Police to have Mr. Marraccini immediately arrested</u> for violating the restraining order issued against him." Gingras Aff. ¶ 50.

- In the same email, Respondent stated: "I am not, under any circumstances, suggesting Mr. Marraccini should *not* participate in the trial if he has relevant information. All I am saying is that if he WANTS to testify, he needs to do so in a manner that complies with the rules and the law. This is mandatory to ensure basic fairness to ALL sides." Gingras Aff. ¶ 50. Respondent further explained, "For avoidance of any doubt, nothing in this email should be construed as an attempt to cause Mr. Marraccini *not* to appear." Gingras Aff. Ex. D.
- The California court order issued against Mr. Marraccini contained the following warnings:

Warnings and Notices to the Restrained Person in ②

If You Do Not Obey This Order, You Can Be Arrested And Charged With a Crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

- On April 30, 2024, citing Family Law Rule 76.1(a) Respondent filed an *Emergency* request with the court in *Owens* asking to discuss the issue of Mr. Marraccini's testimony. RJN. Ex. 30.
- Despite the emergency nature of the request and the mandatory language of Family Law Rule 76.1 (which states a court must grant a hearing if requested), on May 22, 2024, the court issued an order denying Respondent's request for an emergency hearing without explanation. RJN Ex. 93.
- On June 10, 2024, Mr. Marraccini violated the California DVRO by traveling from California to Arizona and by coming within 100 yards of Ms. Owens in the parking lot outside the court. Gingras Aff. ¶ 55.
- After seeing Mr. Marraccini violate the order, Ms. Owens told Respondent she intended to leave unless Respondent contacted law enforcement to report the violation of the DVRO by Mr. Marraccini. Gingras Aff. ¶ 55.
- Respondent initially spoke with court security and provided them with a copy of the California DVRO and a copy of the specific federal statute (18 U.S.C. § 2262) which required Arizona to honor and enforce the California order. Gingras Aff. ¶ 56.
- Court security informed Respondent they could not help, and that the only option for enforcement of the order was to contact Phoenix Police. Gingras Aff. ¶ 56.

- Respondent then contacted Phoenix Police, provided them with a copy of the California order and a copy of 18 U.S.C. § 2262. Gingras Aff. ¶ 57.

ii. Discussion

The bar claims Respondent violated multiple rules including ER 3.4(a) and ER 8.4(a) by attempting to obstruct Mr. Echard's "access" to Mr. Marraccini's testimony (even though Mr. Marraccini did not testify because the court did not allow sufficient time for his testimony), ER 4.4(a) (by using means that had no substantial purpose other than embarrass, delay or burden Echard or his counsel), and ER 8.4(d) (by engaging in conduct prejudicial to the administration of justice). Each one of these claims is groundless.

These claims fail because Respondent did nothing to "obstruct" Mr. Echard's "access" to Mr. Marraccini's testimony. Mr. Marraccini appeared at trial and could have offered any testimony he wanted. He ultimately did not testify for one reason—because Mr. Woodnick never called him to the witness stand.

Prior to trial, Respondent merely asked Mr. Marraccini's counsel to comply with the Rules of Family Law Procedure which entitled Respondent to obtain disclosure from Mr. Marraccini (by deposition or otherwise) *before* trial. Respondent told Mr. Marraccini's counsel he *wanted* Mr. Marraccini to testify; the only restriction being that Mr. Marraccini must comply with the rules and the law. Asking Mr. Marraccini to comply with the law is not obstruction nor is it unethical.

Furthermore, Respondent's phone call to the police cannot form the basis for discipline because it is fully protected by the First Amendment. Making a *truthful* report to law enforcement is protected "petitioning" activity under the First Amendment;

"[S]ubmission of complaints … to … a police department constitutes petitioning activity protected by the petition clause [of the First Amendment]." *Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir. 2000) (citing *California Transport v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)); *see also Ruiz v. Hall*, 191 Ariz. 441, 453 (Ariz. 1998).

Not only does the First Amendment protect truthful reports made to law enforcement, it is also a crime for any person to *retaliate* against another for making such a report to law enforcement:

> Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C. § 1513(e) (emphasis added).

When Mr. Marraccini traveled from California to Arizona with the intent to violate the California court's order, he committed a federal crime by violating 18 U.S.C. § 2262. Respondent's choice to contact law enforcement (at Ms. Owens' insistence) to report the *possible* commission of a federal crime was protected by both the First Amendment *and* by 18 U.S.C. § 1513(e) (the bar does not allege any information Respondent provided to law enforcement was false).

The state bar has misconstrued these facts as an attempt to *prejudice the administration of justice*, when, in fact, exactly the opposite is true – as quoted in ¶ 96 of the Amended Complaint, Respondent asked the trial judge to order Mr. Marraccini to comply with the California DVRO because Ms. Owens stated "she is so terrified that she may not be able to sit here during this trial." That statement was a reference to the fact that Ms. Owens stated she intended to *leave the courtroom* and not participate in the trial unless Respondent did everything possible to enforce the California DVRO, as required by both federal law (VAWA) and Arizona law. *See* A.R.S. § 13–3602(V) (providing, "A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and s**hall be enforced** as if it were issued in this state for as long as the order is effective in the issuing jurisdiction.") (emphasis added).

If Ms. Owens had walked out of trial, this would have resulted in clear prejudice to the administration of justice. Rather than trying to cause that result, Respondent did everything he could to *avoid* it.

The state bar has also misconstrued the legal effect of the Arizona subpoena Mr. Woodnick allegedly obtained for Mr. Marraccini. First, an Arizona subpoena is *not enforceable* outside of the state, and thus could not have lawfully *compelled* Mr. Marraccini to travel from California for the trial in *Owens*; "It is well settled … that a state court's subpoena power is limited to the state's borders." *State v. Bennett*, 324 Conn. 744, 155 A.3d 188, 197 (Conn. 2017) (citing *Minder v. Georgia*, 183 U.S. 559, 562 (1902) (explaining, "it is not within the power of the Georgia courts to compel the attendance of witnesses *who are beyond the limits of the state*.") (emphasis added).

Second, if Mr. Woodnick actually intended to obtain Mr. Marraccini's testimony (rather than having him appear at trial solely to terrify and harass Ms. Owens), Arizona's Intestate Depositions and Discovery Act provided a lawful method for him to obtain that

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testimony *without* violating the California DVRO. Pursuant to Ariz. R. Civ. P. 45.1, Mr. Woodnick could easily have obtained a *California* subpoena using the process set forth in Ariz. R. Civ. P. 45.1(b)(1). This would have allowed Mr. Woodnick to obtain any needed testimony from Mr. Marraccini in California *without* requiring him to violate the California court's order by illegally engaging in interstate travel without permission from the California court that issued the order.

Third, the state bar's position is essentially this – a lawyer who obtains an Arizona subpoena using the bar's "self-serve" online process can literally overrule any lawful court order issued by any other court in the country, without the consent or knowledge of any judge or court. That position ignores VAWA (which requires domestic violence restraining orders to be given full faith and credit and enforced in all 50 states), and it also ignores the specific Arizona rule on this issue – Rule 28 of the Arizona Rules of Protective Order Procedure. That rule states: "When two parties have obtained conflicting protective orders, *both orders must be given full force and effect*, regardless of whether the orders were issued by courts of limited or general jurisdiction." (emphasis added).

Here, the state bar takes the position that a self-issued subpoena obtained by an Arizona lawyer is sufficient to trump a valid court order issued by a Superior Court judge in California. That position fails to meet the standards of A.R.S. § 12–751(B)(1) because it is *not* "justified by clearly established law". On the contrary, the bar's position is directly contrary to clearly established law (VAWA), as well as Arizona's criminal law which both say exactly the same thing.

Respondent never prevented, nor did he attempt to prevent, Mr. Marraccini from offering relevant testimony. Instead, Respondent merely asked Mr. Marraccini to comply with a valid court order and the rules of procedure. When Mr. Marraccini ignored that request and violated the law, Respondent made a truthful report to law enforcement.

Making a truthful report to the police is classic petitioning conduct that falls squarely within the protection of both the First Amendment and the anti-SLAPP law. Asking a witness to comply with the law is not a violation of any ethical rule. Because the bar cannot show its position is "justified by clearly established law", the second claim relating to Mr. Marraccini must be dismissed.

c. Disparaging Comments About The Public

The third issue involves allegedly disparaging comments regarding Judge Mata. However, because the PDJ may have disposed of that claim, and because it is perhaps the most legally complicated, that topic will be addressed last.

The next issue (which is thankfully simple) involves a claim Respondent made "disparaging comments about the public". This issue is described in four short paragraphs in the Complaint (¶110–113).

The bar accuses Respondent of sending a private email on his own behalf (not on behalf of any client) to a website called Reddit. In that email, Respondent informed Reddit that one of Ms. Owens' critics engaged in copyright infringement by copying content owned by Respondent and creating derivative works from that material.

While providing an explanation of the background to Reddit, Respondent used the terms "total fucking psychotic assholes" and "total fucking assholes" to describe certain unidentified fans of Mr. Echard's. The bar claims the use of such language in a private email violated Supreme Court Rule 41(b)(7).

The bar's position fails because coarse language like this is fully protected by the First Amendment. *See*, *e.g.*, *Leidholdt v. L.F.P., Inc.*, 860 F.2d 890, 894 (9th Cir. 1998) (holding First Amendment protected magazine's right to publish "Asshole of the Month" column which included article criticizing a plaintiff as a "pus bloated walking sphincter ….."); *Michino v. Lewis*, 2015 U.S. Dist. LEXIS 77614, *26 (D.Hawaii 2015) (holding First Amendment protected plaintiff's right to call police officer "a fucking asshole", and explaining, "As rude and sophomoric as Plaintiff's speech to Officer Lewis may have been, 'it represented an expression of disapproval toward a police officer' and, as such, 'fell squarely within the protective umbrella of the First Amendment." (cleaned up) (emphasis added) (quoting *Duran v. City of Douglas, Ariz.*, 904 F.2d 1372, 1378 (9th Cir. 1990)); *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461 (1987)); *Wood v. Eubanks*, 25 F.4th 414, 424 (6th Cir. 2022) (compiling cases, holding First Amendment protected plaintiff's right to use coarse language including, "motherfucker" and "asshole"; "We have held that similar speech is protected by the First Amendment when unaccompanied by other conduct, which is consistent with the rule that '[f]its of rudeness or lack of gratitude may violate the Golden Rule' but are not illegal ….") (emphasis added) (quoting *Green v. Barber*, 310 F.3d 889, 895 (6th Cir. 2002) (explaining, "Standards of decorum have changed dramatically since 1942, moreover, and indelicacy no longer places speech beyond the protection of the First Amendment."); *Kindred v. Colby*, 2015 N.Y. Misc. LEXIS 5105, *9, 50 N.Y.S.3d 26 (Monroe County, 2015) (holding First Amendment protected statement: "Gotta love assholes who hide behind group names like 'Friends of Northhampton Park'.") (emphasis added); *Tuvell v. Marshall*, 96 Mass. App. Ct. 1107; 137 N.E.3d 1090; 2019 WL 5654950 (Mass. App. 2019) (holding First Amendment protected speech criticizing Plaintiff by referring to him as "'special', a 'jerk,' 'a few cherries short of a sundae,' and 'an asshole,' and describing his posts as 'whiny' and 'bitching.'") (emphasis added); *Dillon v. City of New York*, 261 A.D.2d 34, 37 (App. 1st Div. 1999) (holding First Amendment protected statement referring to plaintiff as: "what a fucking asshole.") (emphasis added).

If a lawyer used profanity or expletives in court for the purpose of displaying contempt towards a judge, a witness, or anyone else, that would be a different situation. But no law supports the bar's position here – i.e., that a lawyer who is *not engaged in the practice of law* is forbidden from using otherwise constitutionally-protected expletives during private conversations, including private emails. The email Respondent sent to Reddit was not sent on behalf of any client. Rather, the issue involved Respondent's efforts to enforce and protect his own legal rights. In that context, Respondent was not engaged in the practice of law; "one who acts only for himself in legal matters is not … practicing law." *Munger Chadwick, P.L.C. v. Farwest Dev. & Const. of the Sw., LLC*, 235 Ariz. 125, 127 n.3, 329 P.3d 229, 231 n.3 (Ct. App. 2014) (quoting *State ex rel. Frohmiller v. Hendrix,* 59 Ariz. 184, 190, 124 P.2d 768, 772 (1942)); "In Arizona, one who acts only for himself in legal matters is not considered to be engaged in the practice of law." *Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (Ct. App. 1983) (citing *State ex rel. Frohmiller v. Hendrix,* 59 Ariz. 184, 190, 124 P.2d 768, 772 (1942)).

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Because Respondent was not engaged in the practice of law when he sent the email to Reddit, that speech receives full constitutional protection, regardless of its coarse nature. Again, this shows the bar's position is not "justified by clearly established law", requiring dismissal and/or summary judgment as to this claim.

d. Pursuing "meritless claims", presenting "false information in an affidavit" and presenting Ms. Owens' "False testimony/Changing Version of Events"

The fifth issue involves allegations that Ms. Owens offered false testimony, and that she changed her story slightly as the case was pending. These claims are described in some detail in ¶¶ 114–177 of the Complaint.

The disposition of this claim is extremely easy to resolve – because the bar has no evidence of any kind to support the alleged misconduct. This is so because in August 2025, the Arizona Supreme Court issued an order (No. R-25-0029)[2] amending comment 8 to ER 3.3 to clarify the standards that govern the presentation of false evidence. That comment explains, in detail, what a lawyer can and cannot do when faced with the possibility that a client has not been truthful.

The full comment 8 to ER 3.3 now states:

> <u>The prohibition against offering false evidence **only applies if the lawyer knows that the evidence is false**</u>. <u>A lawyer's reasonable belief that evidence is false **does not preclude its presentation to the trier of fact**</u>**.** A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See ER 1.0(f). Thus, although <u>a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client</u>, the

[2] Available here: https://www.azcourts.gov/Portals/0/20/2008-2025%20Rule%20Minutes-Orders/2025%20Rules/R-25-0029%20FinalRulesOrder.PDF?ver=KbVRo6mCcJtUw65eyqXxuQ%3D%3D

> lawyer cannot ignore an obvious falsehood. If a lawyer reasonably believes that evidence has been materially altered or generated with the intent to deceive the court, the lawyer has an obligation to conduct a reasonable inquiry before submitting the evidence to the court. The scope of the inquiry will vary according to the circumstances of each case, but factors to consider may include the probative value of the evidence, the value or importance of the case or issue, the source of the evidence, and what, if any, accessible, reliable, and affordable tools or methods are available to assess the evidence's authenticity or integrity. <u>**If after inquiry the lawyer still does not know that the evidence has been materially altered or generated with intent to deceive, the lawyer retains discretion to submit the evidence to the court**</u>. (emphasis added).

Based on these standards, Respondent is entitled to summary judgment as to this claim because even assuming Ms. Owens was not truthful at some point, the bar has no evidence to show Respondent <u>actually knew that</u>. The bar's implied argument that Respondent *should have known* the truth misstates the legal requirement of *actual knowledge*; "'Knowingly,' 'known,' or 'knows' <u>denotes actual knowledge of the fact in question</u>." ER 1.0(f) (emphasis added).

Here, the Complaint claims Ms. Owens offered testimony the bar claims was false. And the Complaint claims Respondent "did not take any steps during direct or redirect examination to address Owens' false or inconsistent testimony." Amended Compl. ¶ 176.

Despite those allegations, the Complaint merely claims Ms. Owens made one statement at one time, and then later changed her story. The bar appears to allege this proves Respondent *knew* Ms. Owens' first statement was true and her second was not. That argument is simply not logical. If a witness offers testimony and later changes it, that may mean the witness intentionally lied, or it could simply mean the witness realized the initial statement was wrong, and thus a correction was required.

In this case, one of the bar's main allegations is that during her deposition on March 1, 2024 (which took place before Respondent represented Ms. Owens), she said she visited a Planned Parenthood location in Orange County, California. Then, at trial on June 10, 2024, Ms. Owens claimed she went to a different Planned Parenthood location in Los Angeles, not Orange County (Los Angeles and Orange County are directly adjoining).

The fact that Ms. Owens changed her testimony means that *one* version was incorrect. But the state bar does not explain *which*, nor does the bar have even a scintilla of evidence to show that Respondent *knew* which version was correct and which was not. In fact, the Complaint specifically alleges (without citing any evidence) that "Respondent learned prior to the June 10, 2024 hearing that Owens had not gone to a Planned Parenthood office in Mission Viejo, California [meaning Orange County]." Compl. ¶ 134.

Respondent denied that allegation in his Answer, and he has supplied this court with an affidavit stating under penalty of perjury that the bar's allegation in ¶ 134 of the Complaint is factually false. As such, the bar now bears the burden of offering admissible evidence to prove a genuine factual dispute on that issue. But the bar has disclosed nothing to support this false allegation. For that reason, Respondent is entitled to summary judgment on that issue.

Obviously, comment 8 to ER 3.3 indicates: "A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances", and ER 1.0(f) provides: "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge <u>may be inferred from circumstances</u>." (emphasis added).

It does not appear that the Arizona Supreme Court has published any authority regarding the correct standards under which a lawyer's knowledge of falsity may be inferred, but clearly the answer cannot be based on nothing but pure speculation. In that case, any lawyer involved in any case in which a client made a statement and later changed it would *always* be exposed to career-ending discipline. Since the standard here is clear and convincing evidence, the bar cannot be allowed to make such a serious claim of wrongdoing based on literally nothing but sheer conjecture and speculation.

That fact is supported by decisions from other states which have the same ethical rules. For instance, in *Matter of Herron*, 309 Kan. 839 (Kan. 2019) a lawyer was accused of making a false statement to a court regarding the amount of time his client had tested "clean" for drugs. At a status conference, the lawyer informed the court his client had "tested clean" for 16 weeks. In truth, the actual amount of time was 11 weeks. Based on those facts, a hearing panel "found that respondent had been dishonest with the court" in violation of ER 3.3. *See Herron*, 309 Kan. at 870.

On review to the Kansas Supreme Court, the lawyer argued his statement was based on a simple miscalculation, and he specifically cited language in comment 8 to Kansas's version of ER 3.3 that was identical to Arizona's; i.e., "A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. <u>A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances</u>." *Herron*, 309 Kan. at 871 (emphasis added).

The Kanas Supreme Court *reversed* the hearing panel's finding of *knowing* dishonesty, finding the facts did not support the charge (even though knowledge of falsity can be inferred). The Court held clear and convincing evidence did not prove the lawyer offered "a knowing falsehood, rather than a faulty mental calculation during argument." *Id*. As a result, that charge was dismissed.

Similarly, in *Doe v. Idaho State Bar*, 161 Idaho 139, 384 P.3d 386 (Idaho 2016), a lawyer was found guilty of violating Idaho's version of ER 3.3 (which is identical to Arizona's). The lawyer violated ER 3.3 by making representations to a court based on the facts contained in an "unsigned" declaration from a witness named Miller. The lawyer continued to make those representations "from March 2011 through February 2012", but it was eventually discovered Miller signed a different declaration containing different facts on May 9, 2011. *See Doe*, 161 Idaho at 140. The lawyer (Doe) never disclosed this new information to the court.

The Idaho Supreme Court found there was "substantial evidence" to prove a violation of ER 3.3. This is so because "Bar Counsel expressly found that Doe made false statements to the tribunal <u>by continuing to rely on the unsigned declaration after receiving the signed affidavit</u> and representing to the court that Miller was unwilling to sign an affidavit when he had already done so." *Id*. at 143 (emphasis added).

Here, there are no facts to support the same result. The bar correctly notes Ms. Owens changed her story, claiming in her deposition that she went to a Planned Parenthood in Orange County, and later changing her story at trial to claim she went to one in Los Angeles. Despite that change, the bar has no evidence – literally none – to show Respondent *knew* which story was true and which was false. The bar also has no evidence that Ms. Owens ever told Respondent that she planned to change her testimony at trial.

Given those facts, Respondent understood when Ms. Owens changed her story at trial, this was done to *correct* a prior inaccurate statement. In that situation, Respondent was under no obligation to "take corrective action" regarding Ms. Owens' trial testimony because Respondent believed *the changed story WAS the correction*.

Because Ms. Owens gave "contradictory versions of events", the bar argues Respondent was required to withdraw. Compl. ¶ 3. But this is both a misstatement of the law[3] *and* it ignores the fact Mr. Echard also offered contradictory versions of events.

Specifically, on October 11, 2023, Mr. Echard filed a petition for a harassment injunction in Case No. CV2023-053592 against Ms. Owens. In his original petition, Mr. Echard claims Ms. Owens harassed him by sending "**over 100 emails**".

required	Defendant has sent over 100 emails, despite being blocked, also has texted me from at least 7 different phone numbers,
required	everytime I block one, she creates a new number

Later, Mr. Woodnick presented a materially different story to the court in his Motion for Rule 26 Sanctions: "Respondent obtained an Injunction of Harassment against Petitioner based on the receipt of **500+ harassing messages** in (CV2023-05392 [sic])." RJN Ex. 33 at 4:11–22 (emphasis added).

If the state bar's position in this case is correct – that Respondent was *required* to withdraw from representing Mr. Owens simply because she changed to her story and offered "contradictory versions of events" – then the same rule would apply to Mr. Woodnick. But again, the bar has refused to pursue discipline against Mr. Woodnick.

[3] Comment 15 to ER 3.3 states a lawyer is *not* required to withdraw simply because a client has offered false testimony which the lawyer is later required to correct.

In any case, the above facts show Respondent did *not* violate ER 3.3 or any other rule simply because Ms. Owens changed her story. The standard of proof here is extremely high – the bar bears the burden of show not just that Ms. Owens changed her story, but also that Respondent knew the truth and intentionally offered false testimony and evidence to the court. There is not a scintilla of admissible evidence to support that claim. A such, Respondent is entitled to summary judgment on that claim.

e. Pursing An Unsuccessful Appeal

The fifth issue involves the appeal Respondent filed on Ms. Owens' behalf. The Complaint quotes hearsay statements from the unpublished memorandum decision finding that certain arguments Respondent presented were "unreasonable". Of course, statements contained in the appellate decision are hearsay, and even when a court sanctions a lawyer for misconduct, such rulings are not entitled to *res judicata* or preclusive effect in discipline proceedings. *See Hancock v. O'Neil*, 253 Ariz. 509 (Ariz. 2022).

To date, the state bar has disclosed no evidence showing Respondent's arguments in the appeal violated any ethical rule. Obviously the appeal was not successful, but the case involved a matter of first impression which was not controlled by any published (or unpublished authority). The arguments Respondent presented were based on analogous provisions of federal law which were supported by *extensive* legal authority. Unfortunately, the Court of Appeals ignored the authority cited by Respondent, without ever discussing it.

In any case, Respondent's arguments in the appeal were certainly not frivolous; "'Groundless' and 'frivolous' are equivalent terms, and a claim is frivolous 'if the proponent can present no rational argument based upon the evidence or law in support of that claim." *Rogone v. Correia*, 236 Ariz. 43, 50, 335 P.3d 1122, 1129 (Ariz. App. 2014) (quoting Evergreen W., Inc. v. Boyd, 167 Ariz. 614, 621 (Ariz. App. 1991)).

"However, a claim is not groundless if it is 'fairly debatable,' even if such claim constitutes a long shot[.]' In other words, a claim may lack winning merit without being sufficiently devoid of rational support to render it groundless." *Arizona Republican Party v. Richer*, 257 Ariz. 237, 243 (Ariz. 2024) (quoting *Goldman v. Sahl*, 248 Ariz. 512, 531 ¶ 68, 462 P.3d 1017, 1036 (App. 2020); *Johnson v. Mohave County*, 206 Ariz. 330, 335 ¶ 19, 78 P.3d 1051, 1056 (App. 2003) (holding a claim that requires "considerable examination" is "fairly debatable" and thus non-frivolous)).

Here, the appellate arguments Respondent presented were complicated, well-supported, and clearly debatable. Merely losing an appeal is not unethical. This is especially so when there was no indication by the Court of Appeals that the position was sanctionable. There is no basis at all for the bar's position, and certainly none is supported by *clearly* established law (an impossible finding to make, given that the arguments in *Owens* raised matters of first impression in Arizona).

Based on those facts, the bar's claim as to the appeal should be dismissed pursuant to A.R.S. § 12–751 and/or summary judgment should be granted. The mere fact that Bar counsel is seeking to punish a lawyer for a failed appeal is so utterly beyond any rational basis, if the Anti-SLAPP law does not apply here, and that refusal to apply it is sustained on appeal, then woe unto any Arizona lawyer who files an appeal at all – since a full one-half of all Arizona appellate lawyers shall now find themselves at least deeply concerned about being disbarred. And even if Gingras' position on appeal was novel, due to it being an issue of first impression, that should never be the basis for discipline. If it is, then Arizona must declare that it is no longer a common law jurisdiction, as the common law cannot develop without lawyers willing to take cases of first impression.

f. Statements Regarding Judge Mata

The final point of discussion concerns the statements Respondent made about Judge Mata. It is understood the PDJ accepted the state bar's position that Respondent's speech is not protected by the First Amendment, and that the comments violated the ethical rules without regard to their truth/falsity. Neither Ariz. Const. art. II, § 6 nor the First Amendment would abide such a shockingly unconstitutional position. It is far more frivolous to say that truthful speech is not protected by the First Amendment than any position that the Respondent took in the appeal that the Bar finds so offensive.

To preserve these issues for appeal, and this issue for certain will be the subject of an appeal, Respondent offers the following arguments. First, states (and even Congress) <u>*cannot* create new categories of unprotected speech</u>. *See United States v. Stevens*, 559 U.S. 460, 472 (2010) (rejecting argument that states and Congress have "freewheeling authority to declare new categories of speech outside the scope of the First Amendment."); *Brown v. Entertainment Merchs. Ass'n*, 564 U.S. 786, 791 (2011) ("new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated.")

Here, citing *Matter of Marshall*, 528 P.3d 653 (N.M. 2023), this Court appears to have created a new category of unprotected speech – *true* statements made with reckless disregard for the truth. That conclusion directly conflicts with Ariz. Const. art. II, § 6 and the First Amendment, all for what seems to be a desperate misreading of *Marshall*.

In *Marshall*, a lawyer accused a judge of bias claiming the judge "concealed his ties to the Navajo Nation in order to award water to his former clients." *Marshall*, 528 P.3d at 665. In that case, the lawyer's claim was *literally false* because the evidence showed the judge merely represented "individual Navajo people" in the past, *not* the entire Navajo Nation itself. *See id*. at 666.

Because the lawyer's statement was technically false, the Court found "Substantial evidence supports the hearing committee's determination that Marshall did not have an objectively reasonable factual basis to support his allegations of bias and lack of candor against Judge Wechsler." *Id*. During its discussion of the case, the New Mexico Supreme Court appeared to suggest that even a *true* statement could be punished if it was made with "reckless disregard for the truth" (which the Court defined as making "accusations against judicial officers in the absence of an adequate factual grounding.")

That conclusion was stated in footnote 2 of the decision:

> Just as <u>we reject imposing a requirement that the statement be, in fact, false</u>, so we reject a requirement that it be demonstrably true. What is important is whether the attorney has exhibited a conscious indifference to the statement's truth or falsity. If an attorney possesses an objectively reasonable factual basis for making a statement, the attorney cannot be said to be indifferent to its truthfulness.

Id. at 662 n.2 (emphasis added).

To be clear – because the attorney's speech in *Marshall* was apparently literally false, the New Mexico court seems to have abandoned the substantial truth doctrine, which is alive and well in Arizona. Ariz. Const. art. II, § 6, would not tolerate such a decision. "A technically false statement may nonetheless be considered substantially true if, viewed through the eyes of the average reader, the statement differs from the truth only in insignificant details." *Desert Palm Surgical Group, P.L.C. v. Petta*, 343 P.3d 438, 449 (Ariz. Ct. App. 2015). The Bar should not rely on an unprincipled decision from New Mexico when no Arizona court has ever agreed with such a novel interpretation of the First Amendment. And even if the First Amendment would hypothetically support such a ludicrous statement of law, the Arizona free speech clause would not do so.

However, to the extent this Court believes *Marshall* allows a New Mexico lawyer to be disciplined for *truthful* speech, simply because the *Court* believes the lawyer somehow acted recklessly, that conclusion is legally erroneous, and incompatible with our civil liberties in Arizona. If New Mexico wants to secede from rational interpretations of free speech, federalism might permit it to do so. But Arizona has never before followed this road, and it should not do so here.

This is so because punishing *truthful* statements based on a speaker's recklessness is a brand-new category of unprotected speech, never before recognized. Very much to the contrary, the "reckless disregard" standard originated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). *Sullivan* was a <u>defamation</u> case involving statements criticizing a public official.

The U.S. Supreme Court held in that context:

> The constitutional guarantees [of the First Amendment] require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory **falsehood** relating to his official conduct unless he proves that

> the statement was made with 'actual malice'-that is, with knowledge that it was false or with **reckless disregard of whether it was false or not**.

Sullivan, 376 U.S. at 279–80 (emphasis added).

In Arizona, a true statement cannot be defamatory. For that reason, "In an action for defamation, 'the truth of the contents of ... [a] statement is a complete defense.'" *Sign Here Petitions LLC v. Chavez,* 243 Ariz. 99, 107 (Ariz.App. 2017) (quoting Read v. Phoenix Newspapers, Inc., 169 Ariz. 353, 355 (Ariz. 1991)).

Thus, while a lawyer certainly CAN be punished for making a *false* statement with reckless disregard for the truth (as occurred in *Marshall*), there is no legal authority allowing punishment for true statements, regardless of how recklessly the lawyer may have been. That fact was recognized thirty years ago by the Ninth Circuit in *Yagman*; "attorneys may be sanctioned for impugning the integrity of a judge or the court only if their statements are false; truth is an absolute defense." *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995). *See also In Re Green*, 11 P.3d 1078, 1083 (Colo. 2000) (agreeing only false statements of fact may be punished, and recognizing, "if an attorney's activity or speech is protected by the First Amendment, disciplinary rules governing the legal profession cannot punish the attorney's conduct."); *In re Olin*, 2024 WL 6881775, *9 (Cal. Bar Ct. 2024) ("The First Amendment does not protect intentionally false statements and false statements made with reckless disregard for the truth. Truth is an absolute defense to any statement made by an attorney that impugns the honesty or integrity of a judge.")

Given these authorities, a *false* statement may be punished when made with reckless disregard for the truth. But a *true* statement cannot be punished, no matter how carefully or careless uttered. In short, a lawyer *cannot* act with reckless disregard for the truth when making a true statement.

Here, the bar takes the position true statements may be punished simply because a third party (bar counsel or this Court) thinks the lawyer made a recklessly *true* statement. The *only* authority that supports that position is *Marshall*, which is inconsistent with the Arizona and U.S. Constitutions.

Let us, however, presume that the Arizona Supreme Court will one day take leave of reason and adopt *Marshall* and reject the U.S. and Arizona Constitutions views on the subject of truth, stating that *Yagman*, *Green*, and *Olin* were wrong. Even then, Respondent cannot be disciplined for this, because the Arizona Supreme Court has not yet become the first court in the United States to follow *Marshall*. Therefore, the bar cannot meet its burden of showing this aspect of the Complaint is "justified by clearly established law."

That position is further supported by *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) which it appears this Court has misunderstood. *Gentile* explained that as a general matter, "disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment." 501 U.S. at 1054.

Despite that <u>general</u> rule, *Gentile* explained there are narrow exceptions that allow lawyers to face greater restrictions on their speech. One exception is "commercial speech by attorneys" and the other exception is "restrictions upon release of information that the attorney could gain only by use of the court's discovery process."

This Court appears to take the position that these narrow exceptions somehow swallow the general rule, thus allowing "freewheeling" new restrictions on attorney speech.

Respondent disagrees. This case does not involve attorney advertising, nor do Respondent's comments about Judge Mata implicate information gained "only by use of the court's discovery process." Because this case does not fall within either of the two recognized exceptions in *Gentile*, there is no basis to ignore "normal First Amendment principles" here. *Gentile*, 501 U.S. at 1054.

At the end of the day, under a correct application of the law, the state bar must prove Respondent made a <u>false</u> statement of fact impugning Judge Mata's integrity <u>and</u> that Respondent acted with reckless disregard for the truth at the time he made the statement. The bar has disclosed no evidence of any kind that would support such a finding. In addition, Respondent has disclosed clear and unrefuted evidence to support every critical statement he made.

Based on these facts, the bar's claims regarding Judge Mata are barred by Ariz. Const. art. II, § 6 and thus A.R.S. § 12–751. The bar's claims are not clearly supported by existing law; if anything, they are contrary to the law. In addition, the bar has failed to disclose any evidence to support a finding that Respondent made any factually untrue statements. Accordingly, that claim should be extinguished.

g. Additional Issues

To ensure a complete appellate record, two other points warrant brief mention. First, as the Ninth Circuit discussed in *Yagman*, and as the Colorado Supreme Court agreed in *Green*, there is a general rule in First Amendment jurisprudence which provides that if a speaker explains the facts on which his statements are based, and if those facts are true, the speaker's conclusions about those facts qualify as protected opinions:

> We applied this principle in *Lewis v. Time, Inc.*, 710 F.2d 549 (9th Cir.1983), where an attorney claimed he had been defamed by an article calling him a "shady practitioner." *We held that this expression of opinion was protected by the First Amendment because the article set forth the facts on which the opinion was based*: a judgment entered against the attorney for defrauding his clients, and another judgment holding him liable for malpractice. Id. at 556. Because the article's factual assertions were accurate, we concluded that the plaintiff's claim was barred: "[W]here a publication sets forth the facts underlying its statement of opinion ... and those facts are true, the Constitution protects that opinion from liability for defamation."

Yagman, 55 F.3d at 1440.

Applying that rule to attorney criticism of a judge, the Ninth Circuit held Mr. Yagman's criticism of the judge in that case was protected by the First Amendment because the lawyer explained the facts on which his statements were based: "Like the defendant in Lewis, Yagman disclosed the basis for his view that Judge Keller is anti-Semitic and has a penchant for sanctioning Jewish lawyers: that he, Kenner and Manes are all Jewish and had been sanctioned by Judge Keller." *Id*. Because the underlying facts were *disclosed*, and those facts were not false, the Ninth Circuit held the speech was fully protected.

The same rule was applied in *Green*:

> We view Green's statements that the judge was a "racist and bigot" and having a "bent of mind" as statements of opinion *based upon fully disclosed and uncontested facts*. Because Green's statements do not involve false statements of fact or represent statements of opinion necessarily implying undisclosed false assertions of fact, we may not, consistent with the First Amendment and the first prong of the New York Times test, discipline Green for his subjective opinions, irrespective of our disagreement with them

Green, 11 P.3d at 1086.

The same standard was also applied by the California Bar Court in *In Re Olin*, 2024 WL 6881775, *11 (Cal. Bar Ct. 2024) (affirming dismissal of charge because: The hearing

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judge determined the statement represents Olin's *belief on stated facts*. The judge reasoned that Olin was presenting his subjective view and concluded that the statement, whether accurate or not, was not disciplinable.")

Notably, in *Marshall*, the New Mexico Supreme Court did not discuss the concept of statements based on fully disclosed facts. It appears in that case, the lawyer made false statements impugning a judge's integrity, but the lawyer did *not* explain the facts on which his statements were based. Therefore, the Court had no occasion to consider whether this concept applied to protect the lawyer's speech.

Even assuming *Marshall* was correctly decided (which Respondent does not concede), the facts of this case are completely different because here, like in *Green* and *Yagman* and *Olin*, Respondent's claims against Judge Mata were based on facts which were disclosed at length, in a detailed affidavit submitted in support of the Notice of Change of Judge filed in *Owens*. *See* RJN Ex. 105 at pp. 17-37. The State Bar has challenged <u>none</u> of the facts in that affidavit.

By fully disclosing the true facts on which his statements were based, Respondent offered opinions which were fully protected by the First Amendment and the Arizona constitution. Opinions cannot be false, because "Under the First Amendment there is no such thing as a false idea." *Green*, 11 P.3d at 1084 (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 339, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974)).

The final point worth mentioning is this – the bar repeatedly accuses Respondent of violating ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay or burden another person, ER 8.4(d) by engaging in conduct prejudicial to the administration of justice, and Supreme Court Rule 41(b)(7) (prohibiting "unprofessional" conduct).. As applied to Respondent's speech and petitioning conduct, those rules are unconstitutional as-applied both for reasons of vagueness and overbreadth, because they seek to unnecessarily punish substantial portions of protected speech.

As the U.S. Supreme Court held in both *Bates v. State Bar of Arizona* and *Gentile v. State Bar of Nevada*, ethical rules cannot be applied in a manner that violates the First Amendment, nor can vague/overbroad rules withstand First Amendment scrutiny.. As for speech that may "embarrass" other person, the Supreme Court has spoken clearly: "Speech does not lose its protected character ... simply because it may embarrass others or coerce them into action." *NAACP v. Claiborne Hardware Co*., 458 U.S. 886, 910, 102 S.Ct. 3409, 3424, 73 L.Ed.2d 1215 (1982); *see also FCC v. Pacifica Foundation*, 438 U.S. 726, 745, 98 S.Ct. 3026, 3038, 57 L.Ed.2d 1073 (1978) ("[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.")

IV. CONCLUSION

For the reasons stated above, this Court must dismiss the Amended Complaint in its entirety pursuant to A.R.S. § 12–751. In the alternative, the Court must grant summary judgment in favor of Respondent as to all claims pursuant to Ariz. R. Civ. P. 56.

/s/ Marc J. Randazza, Esq.
Marc J. Randazza #027861
RANDAZZA LEGAL GROUP, PLLC
[redacted]
Las Vegas, Nevada 89117
Tel: [redacted]
Email: [redacted]

Attorneys for Respondent
David S. Gingras

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CERTIFICATE OF SERVICE

Original electronically filed via email to [redacted] on April 14, 2026 with:

Disciplinary Clerk of the
Office of the Presiding Disciplinary Judge
Supreme Court of Arizona
[redacted]
Phoenix, AZ 85007

Mr. James D. Lee, Esq.
Senior Bar Counsel; State Bar of Arizona
c/o [redacted]
Phoenix, AZ 85016-6266

/s/ David S. Gingras

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Exhibit 9

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
FILED
04-14-2026

C.LOPEZ
DISCIPLINARY CLERK

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** **Bar No. 021097** **Respondent.**	**No. PDJ 2026-9010** **STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Ariz. R. Civ. P. 56(c)(3), Respondent David S. Gingras submits the following statement of undisputed material facts. As used below, references to "Gingras Aff." mean the Affidavit of David S. Gingras submitted herewith, and "RJN" mean the Request for Judicial Notice filed in this matter on March 18, 2026.

1. On August 1, 2023, Laura Owens filed a *pro se* Petition to Establish paternity in *Owens v. Echard*. **SOURCE: RJN Ex.** 1

2. On August 21, 2023, Clayton Echard filed a *pro se* response to Ms. Owens' petition in which he denied paternity. **SOURCE: RJN Ex. 9**

3. On September 14, 2023, Ms. Owens filed a *pro se* Motion to Seal Court Record. **SOURCE: RJN Ex. 17**

4. On October 20, 2023, the Court issued an order denying Ms. Owens' Motion to Seal Court Record. **SOURCE: RJN Ex. 20**

5. On December 4, 2023, court administration issued an order setting the case for dismissal due to inactivity. **SOURCE: RJN Ex. 22**

6. On December 12, 2023, attorney Gregg R. Woodnick filed a Notice of Appearance in Owens v. Echard on behalf of Mr. Echard along with several other

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pleadings including a Motion for Leave to Amend Response to Petition. **SOURCE: RJN Ex. 25 & 26.**

7. On December 23, 2023, Ms. Owens (through other counsel) moved to dismiss her petition with prejudice claiming she was no longer pregnant. **SOURCE: RJN Ex. 28**.

8. On January 3, 2024, Mr. Woodnick filed a Motion for Sanctions pursuant to Rule 26 of the Rules of Family Law Procedure which claimed Ms. Owens had "faked" her pregnancy. **SOURCE: RJN Ex. 33.**

9. On January 17, 2024, Ms. Owens (through other counsel) filed a Motion for Confidentiality and Preliminary Protective Order. **SOURCE: RJN Ex. 39.**

10. On January 19, 2024, Mr. Woodnick filed a Response/Objection to Petitioner's Motion for Confidentiality And Preliminary Protective Order. **SOURCE: RJN Ex. 43**.

11. On February 2, 2024, the Court issued an order setting a hearing for February 27, 2024 on Mr. Woodnick's motion for sanctions and request for fees. **SOURCE: RJN Ex. 51.**

12. On February 21, 2024, the Court issued an order denying Ms. Owens' Motion for Confidentiality And Preliminary Protective Order. **SOURCE: RJN Ex. 59.**

13. On February 21, 2024, the Court issued a lengthy minute entry order which contained various rulings/statements including the following:

> **IT IS FURTHER ORDERED** denying counsel for Petitioner's oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality. …

> **LET THE RECORD FURTHER REFLECT** that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties. …
>
> **IT IS FURTHER ORDERED** setting a discovery & disclosure deadline (30) days prior to trial. Any disclosure beyond that deadline shall be precluded.
>
> However, **IT IS FURTHER ORDERED the** parties shall complete initial disclosure no later than (45) days from today's date.
>
> **SOURCE: RJN Ex. 60**.

14. Respondent was first retained to represent Laura Owens in *Owens v. Echard* on March 25, 2024, and he entered his appearance in the case that same day. **SOURCE: RJN Ex. 66.**

15. Immediately after Respondent was retained to represent Ms. Owens, he asked her if the court had issued a protective order. Ms. Owens' response was: "No, I asked for a protective order multiple times, but the judge denied every one of those requests." **SOURCE: Gingras Aff. ¶ 11**.

16. After Ms. Owens told Respondent that no protective order had been entered, he reviewed the docket and verified that statement was correct. **SOURCE: Gingras Aff. ¶ 12**.

17. In his pleading opposing Ms. Owens' request for a protective order, Mr. Woodnick argued such an order would constitute "an impermissible prior restraint of protected speech. Beyond that, it also represents tremendous overreach in the use of Rule 53 to diminish Respondent's rights as a litigant." Mr. Woodnick further argued, "Petitioner is requesting an order that would prohibit Respondent from defending his

character in public view despite the fact that she made his character a matter of public interest and that she self-identifies as a public figure. The toothpaste cannot be put back in the tube." Mr. Woodnick further argued: "**It is premature to designate as confidential documents, recordings, or records that do not exist and have not yet been produced.** To the extent a response to this assertion is warranted, there is nothing to be designated confidential." **SOURCE: Gingras Aff. ¶ 14; RJN Ex. 43 at 8:24–27.**

18. The February 21, 2024 order issued by Judge Mata did not contain "written findings of fact and conclusions that the specific sealing or redaction is justified" nor did the order contain any finding that "there exists an overriding interest that overcomes the right of public access to the record." Ariz. R. Fam. L.P. 17(c)(1). **SOURCE: RJN Ex. 60.**

19. On April 4, 2024, Mr. Woodnick sent Respondent an email stating "I am also not certain why you are publishing court documents and your client's personal medical records contrary to court order." **SOURCE: Amended Complaint ¶ 49; Respondent's Answer ¶ 49; Gingras Aff. ¶ 33.**

20. 34 minutes after Mr. Woodnick's email was sent on April 4, 2024, Respondent sent a reply explaining, among other things, that he was "aware of no court order that would stop Laura from publishing her own medical records." Respondent explained his position to Mr. Woodnick and further stated: "If you interpret the order to mean that Laura is somehow enjoined from publishing her own records for the purpose of responding to false statements other people are making … you need to let me know that immediately so I can take the issue up with the judge." **SOURCE: Gingras Aff. ¶ 35.**

21. Mr. Woodnick never responded to that message. **SOURCE: Gingras Aff. ¶ 36.**

22. In mid-April 2024, Respondent spoke with a lawyer named Randy Sue Pollock who was disclosed by Mr. Woodnick as the contact person for Michael Maraccini. **SOURCE: Gingras Aff. ¶ 42.**

23. Ms. Pollock told Respondent over the phone, and later confirmed in writing, that Mr. Marraccini would not appear as a trial witness in *Owens v. Echard*. **SOURCE: Gingras Aff. ¶ 43.**

24. A short time later, Mr. Woodnick disclosed new evidence that made it appear Mr. Marraccini was planning to testify at trial. **SOURCE: Gingras Aff. ¶ 44.**

25. In response to that new disclosure, on May 6, 2024, Respondent called Randy Sue Pollock to request clarification regarding Mr. Marraccini's position. During that call, Respondent told Ms. Pollock that if Mr. Marraccini wanted to testify, that was absolutely fine. **SOURCE: Gingras Aff. ¶ 45.**

26. During the May 6th phone call, Respondent asked Ms. Pollock to agree to produce Mr. Marraccini for either an informal interview or a deposition. **SOURCE: Gingras Aff. ¶ 45.**

27. In response, Ms. Pollock told Respondent: "we are not willing to cooperate with you." Ms. Pollock further informed Respondent that rather than complying with the disclosure and discovery rules, Mr. Marraccini may simply "show up" at trial as a spectator, not as a witness. **SOURCE: Gingras Aff. ¶ 48.**

28. At the time of trial on June 10, 2024, Ms. Owens had a valid domestic violence restraining order (DVRO) against Mr. Marraccini issued by the San Francisco County Superior Court which required him to stay at least 100 yards away from Ms. Owens at all times with no exceptions. **SOURCE: Gingras Aff. ¶ 48.**

29. In response to Ms. Pollock's statement that Mr. Marraccini might just "show up" at the trial without appearing in response to a lawful subpoena, Respondent informed Ms. Pollock if Mr. Marraccini engaged in interstate travel with the intent to violate the California order, that would constitute a serious federal crime. SOURCE: Gingras Aff. ¶ 50.

30. The DVRO itself contained exactly the same warning. **SOURCE: Gingras Aff. Ex C.**

31. Respondent also told Ms. Pollock that if Mr. Marraccini wanted to testify at trial, he could do so as long as he complied with the procedural rules and with the law. **SOURCE: Gingras Aff. ¶ 50.**

32. On the morning of trial, June 10, 2024, Ms. Owens informed Respondent that Mr. Marraccini violated the California DVRO by coming less than 100 yards away from her outside the court in Phoenix. **SOURCE: Gingras Aff. ¶ 55.**

33. After seeing Mr. Marraccini violate the court order, Ms. Owens told Respondent she was "absolutely terrified" and that she may walk out and refuse to appear at trial unless Respondent did everything possible to have law enforcement keep Mr. Marraccini away from her, as the order specifically required. **SOURCE: Gingras Aff. ¶ 55.**

34. In response to Ms. Owens' request, Respondent contacted Superior Court security and informed them of the violation of the order by Mr. Marraccini. Security personnel told Respondent they could not enforce court orders, and they said the only option was to call Phoenix Police, which Respondent did. **SOURCE: Gingras Aff. ¶ 56.**

35. When Phoenix Police arrived, Respondent handed them a copy of the California DVRO, and a copy of 18 U.S.C. § 2262 which is the relevant provision of the Violence Against Women Act (VAWA) which required the California order to be enforced in Arizona. **SOURCE: Gingras Aff. ¶ 57.**

36. Prior to June 10, 2024, Respondent spent several hours doing legal research into the question of whether an Arizona subpoena could somehow excuse the violation of a California DVRO. Respondent found no legal authority to support that position. **SOURCE: Gingras Aff. ¶ 59**.

37. Mr. Marraccini never testified at trial because Mr. Woodnick never called him as a witness. **SOURCE: Gingras Aff. ¶ 63**.

38. ¶¶ 109–112 of the Amended Complaint accuse Respondent of sending a private email in which referred to certain anonymous individuals as "total fucking assholes" and "total fucking psychotic assholes". **SOURCE: Amended Complaint ¶¶ 109–112.**

39. The email in question was sent by Respondent on his own behalf for the purpose of enforcing his own legal rights. **SOURCE: Gingras Aff. ¶ 65.**

40. The Amended Complaint accuses Respondent of knowingly and/or negligently offering false testimony from Ms. Owens. **SOURCE: Amended Complaint ¶¶ 114–177.**

41. As to the claim Respondent knowingly offered false testimony or evidence, that allegation is false and is not supported by any evidence at all. **SOURCE: Gingras Aff. ¶¶ 71–121.**

42. As to the claim Respondent negligently offered false testimony or evidence, that allegation is false and is not supported by any evidence at all. **SOURCE: Gingras Aff. ¶¶ 71–121.**

43. ¶¶ 178–184 of the Amended Complaint accuse Respondent of violating various rules by bringing a non-meritorious appeal. **SOURCE: Amended Complaint ¶¶ 114–177**.

44. The appeal involved a matter of first impression relating to a revision of Family Law Rule 26 which occurred in 2018, with the change effective January 1, 2019. **SOURCE: Gingras Aff. ¶ 123.**

45. Since Family Law Rule 26 was amended in 2019 to add a new "safe harbor" provision, that aspect of the law was not interpreted by any published authority. **SOURCE: Gingras Aff. ¶ 123.**

46. The state bar has not disclosed any evidence or legal authority to show that any argument Respondent made in the appeal was frivolous, either factually or legally. **SOURCE: Gingras Aff. ¶ 126**.

47. The Amended Complaint accuses Respondent of making five different false statements which impugn Judge Mata's integrity or which were otherwise "unprofessional". **SOURCE: Gingras Aff. ¶ 127; Amended Complaint ¶¶ 102–107.**

48. Every statement Respondent made regarding Judge Mata was either factually true, or represented an expression of Respondent's opinion based on fully disclosed facts which the bar has not claimed are false. **SOURCE: Gingras Aff. ¶¶ 127–146**.

49. Prior to making any statements regarding Judge Mata's integrity, Respondent took responsible steps to verify the accuracy of those statements. Among other things, Respondent contacted Judge Mata, informed her of certain allegations being made by third parties, and asked her to explain if those allegations were true. **SOURCE: Gingras Aff. ¶ 156**.

50. Judge Mata never responded to Respondent's inquiry and has never denied the accuracy of the allegations. **SOURCE: Gingras Aff. ¶ 157**.

51. The state bar has disclosed information showing that certain statements Respondent made regarding Judge Mata were true. That includes the allegation that Judge Mata "invited" her father to watch the *Owens* trial and that she discussed the case with her father. **SOURCE: Gingras Aff. ¶¶ 158–160**.

52. Respondent also accused Judge Mata of violating the Code of Judicial Conduct by making a factual finding that was not based on admitted trial evidence, but which was based on extra judicial evidence from an unknown source. That statement is factually true. **SOURCE: Gingras Aff. ¶¶ 161–168.**

53. Prior to accusing Judge Mata of violating the Code of Judicial Conduct by considering extra judicial evidence, Respondent undertook extensive research to determine whether that statement had a reasonable basis. The steps taken include ordering an expedited copy of the trial transcript (which confirmed that Judge Mata falsely attributed testimony to Dr. Deans regarding the business hours of Planned Parenthood). **SOURCE: Gingras Aff. ¶¶ 158–160.**

54. Respondent further asked his wife and Ms. Owens to separately review every pleading from the docket in *Owens* to determine if the issue of Planned Parenthood's business hours was discussed in some earlier pleading. Both Ms. Owens and Respondent's wife concluded that Planned Parenthood's business hours were not discussed in any pleadings filed in *Owens* prior to June 10, 2024. **SOURCE: Gingras Aff. ¶¶ 158–160.**

55. In addition to asking his wife and Ms. Owens to review every pleading from the case, Respondent personally reviewed every pleading filed between August 1, 2023 and June 10, 2024. That review confirmed that Planned Parenthood's business hours were not discussed in any pleadings filed in Owens prior to June 10, 2024. **SOURCE: Gingras Aff. ¶¶ 158–160.**

Submitted April 14, 2026.

/s/ Marc J. Randazza
Marc J. Randazza #027861
RANDAZZA LEGAL GROUP, PLLC
[redacted]
Las Vegas, Nevada 89117
Tel: [redacted]
Email: [redacted]

Attorneys for Respondent
David S. Gingras

CERTIFICATE OF SERVICE

Original electronically filed via email to [redacted] on April 14, 2026 with:

Disciplinary Clerk of the
Office of the Presiding Disciplinary Judge
Supreme Court of Arizona
[redacted]
Phoenix, AZ 85007

Mr. James D. Lee, Esq.
Craig Henley, Esq.
State Bar of Arizona
c/o [redacted]
Phoenix, AZ 85016-6266

/s/ David S. Gingras

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