

ARIZONA SUPREME COURT

David S. Gingras,

Petitioner,

v.

State Bar of Arizona,

Respondent.

Arizona Supreme Court

No.: CV-26-0236

Office of the Presiding Disciplinary Judge

No. PDJ2026-9010

PETITIONER'S REPLY IN SUPPORT OF PETITION
FOR SPECIAL ACTION (APPELLATE)

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INTRODUCTION

The State Bar has charged Petitioner David Gingras with making false statements about a judge in violation of ER 8.2(a). By its own terms, that rule prohibits only false statements about a judge:

(a) A lawyer shall not make a statement that the lawyer **knows to be false or with reckless disregard as to its truth or falsity** concerning the qualifications or integrity of a judge (emphasis added).

As Comment 1 to ER 8.2 explains, the rule does not prohibit truthful criticism:

Assessments by lawyers are relied on in evaluating **the professional or personal fitness** of persons being considered for election or appointment **to judicial office** Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, **false statements** by a lawyer can unfairly undermine public confidence in the administration of justice. (emphasis added).

The Bar claims Gingras made false statements about Judge Julie A. Mata. Gingras admitted making the statements but denied they were false. His Answer repeatedly avowed each statement was either factually true or protected opinion.

Despite the factual dispute established by the pleadings, the Bar moved for partial judgment on the pleadings. Rule 12(c) required the PDJ to accept Gingras’s well-pleaded allegations as true and draw reasonable inferences in his favor. She did not. Instead, the PDJ granted the Bar’s motion without considering any evidence. The result is extraordinary: If this decision stands, then a lawyer may be punished

for criticism of a judge without any proof the criticism was false and without any opportunity to defend its truth.

The Bar attempts to justify this by asserting “lawyers’ First Amendment rights may lawfully be limited while engaged in the practice of law.” Response at 13. That generalization conflates narrow exceptions involving matters such as attorney advertising or disclosure of private information obtained through discovery with truthful criticism of a public official.

The Bar similarly argues “[l]awyers’ disparaging comments about judges ... may result in the public losing confidence in the impartiality of the courts.” Response at 15. That is only half the equation. **False** attacks on judges may undermine public confidence and may be punished, but **truthful** criticism is both constitutionally protected and essential to public accountability.

Consider the Bar’s theory in practice. What if a lawyer learns a judge has developed a serious gambling problem and is accepting bribes from litigants to cover his/her losses? According to the Bar, that lawyer could say nothing publicly about it, because exposing the truth might somehow harm the judiciary. The Bar’s position is wrong, un-American, and conflicts with decades of controlling Supreme Court authority. This Court should and must reject it.

DISCUSSION

I. Rule 12(b) Factors Guiding Special Action Jurisdiction

As noted in Gingras’s petition, special action jurisdiction is proper when a court denies a motion to dismiss raising serious First Amendment claims. *See Citizen Publishing Co. v. Miller*, 210 Ariz. 513, 516 (Ariz. 2005). This case involves First Amendment defenses which the PDJ erroneously rejected. The PDJ’s ruling stripped Gingras of his rights to engage in public criticism of the judiciary and to mount a defense.

That holding was incorrect and irreparably harmful to the right to speak freely:

The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State’s constitutional power to regulate can justify limiting First Amendment freedoms. Thus it is no answer to the constitutional claims asserted by petitioner to say ... that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression. For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.

Regulatory measures no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.

National Ass’n for Advancement of Colored People v. Button, 371 U.S. 415, 438–39 (1963) (emphasis added) (cleaned up) (citing extensive authority).

Given the serious First Amendment and Arizona constitutional issues implicated here, *Miller* by itself is sufficient to support jurisdiction. Gingras will also discuss the other Rule 12 factors, though.

a. Rule 12(b) Factors Supporting Jurisdiction

Rule 12(b)(1): The PDJ’s June 22, 2026, Order stated:

Given that this is a matter of first impression and the effect the PDJ’s ruling herein provides on the instant case, the PDJ understands that a party (or both) may wish to file a Petition for Special Action with the Court.

Pet.Appx. 0550. While the PDJ’s comment is not a formal designation under Rule 13, it is nevertheless noteworthy that the PDJ herself recognized special action jurisdiction may be warranted.

Rule 12(b)(2): This factor favors special action jurisdiction in cases involving immunity from suit. Special action jurisdiction is routinely accepted when a court denies immunity because “a party who claims immunity from suit loses the benefit of the immunity if he is forced to stand trial, and therefore has no adequate remedy by direct appeal.” *Pinal County v. Cooper ex rel. County of Maricopa*, 238 Ariz. 346, 349 ¶ 7, 360 P.3d 142, 145 (App. 2015).

The Anti-SLAPP law confers immunity from suit. Even in the absence of the Anti-SLAPP law, review would be proper. Although the First Amendment is not an “immunity,” on its own, an order erroneously denying First Amendment protection inflicts similar irreparable harm in the same way. That is why this Court recognized in *Miller* that special action jurisdiction is appropriate when a First Amendment defense has been rejected.

The Bar counters that “Mr. Gingras does not have a case-dispositive defense to the allegations in the State Bar’s complaint.” Response at 13. That is incorrect. If the First Amendment limits ER 8.2(a) (and other rules) to false statements, that defense will be dispositive if the Bar cannot prove falsity. Yet the PDJ’s judgment on the pleadings prevents Gingras from developing that defense and improperly relieves the Bar of its burden of proof under Supreme Court Rule 58(j)(3).

Enhanced review is important here because, in First Amendment cases, it “provides assurance that the foregoing determinations will be made in a manner so as not to constitute a forbidden intrusion of the field of free expression.” *Turner v. Devlin*, 174 Ariz. 201, 204 848 P.2d 286, 289 (1993). And “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Thus, an order erroneously denying First Amendment protection is analogous to an order denying immunity. Both immediately deprive a party of important rights in a way that cannot be meaningfully restored after trial. Rule 12(b)(2) therefore weighs in favor of jurisdiction.

However, immunity is not just conferred as a matter of First Amendment law, and review is not compulsory just because the First Amendment was trod upon; there is a statutory basis for review. Gingras also sought protection under Arizona’s anti-SLAPP statute, A.R.S. § 12–751, which expressly provides that “an order granting

or denying a motion filed pursuant to this section is appealable pursuant to section 12-2101.” A.R.S. § 12–751(H). Although the statute contemplates an appeal after the required subsection (B) determination, the PDJ refused to reach the merits of Gingras’s motion and therefore made no such determination. If that refusal was erroneous, it provides additional reason for interlocutory review now.

Rule 12(b)(3): The Bar concedes, as the PDJ expressly noted in her order denying Gingras’s Motion to Dismiss under A.R.S. § 12–751, that “this is a matter of first impression” [Pet.Appx.0550](#).

The Bar nevertheless argues application of the First Amendment and Arizona Constitution to lawyers is *not* a matter of first impression. But the cases it relies upon either do not involve truthful criticism of a judge or predate U.S. Supreme Court authority rejecting the premise that lawyers and other professionals have diminished First Amendment protection. *See, e.g., Chiles v. Salazar*, 607 U.S. 627, 646–47 (2026) (“The Constitution does not protect the right of some to speak freely; it protects the right of all [O]ur precedents have expressly rejected the ... notion that ‘professional speech’ represents some ‘separate category of speech’ subject to ‘diminished constitutional protection’”); *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054 (1991) (“We have not in recent years accepted our colleagues’ apparent theory that the practice of law brings with it comprehensive restrictions, or that we

will defer to professional bodies when those restrictions impinge upon First Amendment freedoms”).

This case thus presents an important question of first impression in Arizona: whether the federal or Arizona Constitution permits a lawyer to be punished for truthful criticism of a judge. It also requires this Court to determine whether the older authority cited by the Bar remains viable in light of intervening U.S. Supreme Court precedent. Either question supports special action review.

Rule 12(b)(4): The Bar argues this case does not present issues of statewide importance, but it is wrong. First, if the Bar’s position is correct, it means every lawyer in the State of Arizona has lost their right to free speech. That is not an “as-applied” challenge limited to the facts of this case; it is a decision on constitutional issues of the highest state-wide importance. No lawyer can criticize a judge. Presumably this is a valuable rule to many sitting judges, as come election time, no lawyer running against them can criticize them. In fact, if the Bar’s position is correct, no lawyer can give any citizen their negative opinion about a judge. Is that truly the law in the State of Arizona, that Judge Mata should run for re-election with no criticism because those with the most knowledge of her suitability for retention are compelled to remain supportive or silent? No matter how stark a judge’s misconduct might be, truthful criticism of the judge would then be the subject of

disciplinary action. That cannot be the law under the Arizona Constitution nor the First Amendment.

Second, as the PDJ noted, this case is the first instance of a lawyer invoking Arizona’s newly amended anti-SLAPP law, A.R.S. § 12–751. The PDJ, citing no controlling authority, held this law was *per se* inapplicable in discipline cases, affecting all future discipline cases containing similar speech-based claims. Clarity from this Court on that issue will affect all future cases involving attempts by the Bar to punish constitutionally protected speech.

Rule 12(b)(7): The Bar argues resolution of this special action will not “materially advance the efficient management of the case” That is incorrect.

The PDJ’s judgment on the pleadings forecloses any further evidence concerning the truth or falsity of Gingras’s statements. Thus, the evidentiary record on that claim is closed: it consists only of the Bar’s Complaint and Gingras’s Answer denying that he made any false statements.

Both sides agree other claims remain to be litigated. But litigating those claims will not develop the evidentiary record concerning the claim already resolved against Gingras on the pleadings. If this Court finds the PDJ erred in ruling in favor of the Bar, this case will have to be remanded for further proceedings regardless of what happens with the other claims.

Thus, the Bar’s proposed course is remarkably inefficient: litigate the remaining claims to completion, then seek direct review, and then—if the Rule 12(c) ruling is reversed—return to the PDJ to litigate the improperly foreclosed claim all over. In practical terms, denying special action review now creates the substantial risk that this case will have to be litigated twice.

Accepting jurisdiction now avoids that waste. If this Court determines that truth is a defense and Gingras must be permitted to prove his statements were true—and that the Bar must first prove otherwise—the PDJ’s ruling can be corrected now and all claims litigated together in a single proceeding.

Rule 12(b)(8): The Bar argues this case does *not* concern decisions that “cannot be justified under any rule of law.” That is incorrect. The PDJ held, in effect, that a lawyer can be punished for truthful criticism of a judge without any evidence that the lawyer’s statements were false. That result cannot be reconciled with controlling First Amendment law.

The Bar attempts to justify the ruling by asserting, citing *Gentile*, that “a state may adopt lawyer conduct regulations that may limit lawyers’ First Amendment rights” and “this Court’s decisions dealing with a lawyer’s First Amendment right ... have not suggested that lawyers are protected to the same extent as those engaged in other businesses” There is a fundamental problem with the Bar’s reliance on *Gentile*: **the quoted language was the Nevada Bar’s *losing* argument which the**

Supreme Court rejected. By quoting an unsuccessful litigant’s position and attributing it as the Court’s own holding, the Bar materially misstates *Gentile*, ironically committing the only ethical violation here.

The *Gentile* Court actually held the opposite:

We have not in recent years accepted our colleagues’ apparent theory that the practice of law brings with it comprehensive restrictions, or that we will defer to professional bodies when those restrictions impinge upon First Amendment freedoms. And none of the justifications put forward by respondent suffice to sanction abandonment of our normal First Amendment principles in the case of speech by an attorney regarding pending cases.

Id. at 1054. *Gentile* recognized attorney speech may be regulated in certain narrowly defined circumstances, *id.* at 1074–76, but no such circumstances apply here.

The existence of narrow exceptions does not authorize the Bar to create a broad new exception swallowing the rule. The Bar’s theory would transform limited authority to regulate particular attorney speech into sweeping authority to eliminate First Amendment protection whenever a lawyer truthfully criticizes a judge. Other courts have rejected that proposition. *See In re Green*, 11 P.3d 1078, 1083 (Colo. 2000) (“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, at *8 (Cal. Bar Ct. 2024) (“disciplinary rules governing the legal profession cannot punish speech protected by the First Amendment”); *Standing Comm. v. Yagman*, 55 F.3d 1430 (9th Cir. 1995) (same).

The Bar responds with cases involving materially different conduct or cases that do not address the First Amendment at all. *See, e.g., In re Levy*, SB-21-0085-AP (2022) (never mentioning the First Amendment). It also relies on *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984), involving a judicial candidate and predating both *Gentile* and the Supreme Court’s recent decision in *Salazar*.

Indeed, *Levy* further supports review here. There, this Court directed that, on remand, the lawyer be permitted to present evidence that his allegedly improper language was “objectively and reasonably necessary to advance the litigation” and to present mitigating evidence. *In re Levy*, SB-20-0010-AP at 9–10. Here, by contrast, judgment on the pleadings prevents Gingras from presenting *any* evidence establishing the truth of his statements.

Under the current state of the law in 2026, the PDJ’s ruling cannot stand. Truth is a defense to a disciplinary charge alleging that a lawyer made false statements about a judge. A contrary rule—under which falsity need neither be litigated nor proven—cannot be justified under any rule of law.

b. Rule 12(c) Factors Against Jurisdiction

Rule 12(c)(1): The Bar argues this case is inappropriate for special action review because it asks the Court to “resolve” questions of fact. That is incorrect.

First, whether Arizona’s anti-SLAPP law, A.R.S. § 12–751, applies to attorney discipline is a question of law. The statute applies to “any regulatory or

administrative action by a state actor.” A.R.S. § 12–751(J)(1)(a)(iii). Determining whether that language encompasses attorney discipline or violates separation of powers rules raises purely legal questions.

Second, the challenged ruling granted partial judgment on the pleadings under Rule 12(c). In that posture, the PDJ was neither required nor permitted to resolve disputed facts. Rather, judgment was improper if any material facts remained disputed. *See Bank of Am., N.A. v. Allen*, 2015 WL 6696911 (App. 2015). Moreover, “all allegations of the moving party which have been denied are taken as false” *Food for Health Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106 628 P.2d 986, 989 (App. 1981). Determining whether there is a dispute of fact is not the same as making factual findings.

Gingras denied making any false statements or acting with reckless disregard for the truth. This Court therefore need not resolve that factual dispute; it is required to accept as true Gingras’s factual positions and reject as false the Bar’s unproven allegations. Because this special action requires resolution of exclusively legal issues—not disputed facts—Rule 12(c)(1) does not weigh against jurisdiction.

Rule 12(c)(2): The Bar correctly notes this case seeks review of claims resolved, in part, under Civil Procedure Rule 12(c). Special Action Rule 12(c)(2) provides such matters should not ordinarily warrant interlocutory review. However,

as noted above, this Court has recognized in *Miller* that this general rule does not apply in cases involving serious First Amendment issues.

Rule 12(c)(3): The Bar claims the issues in this case are clearly resolved by settled law. The problem for the Bar is that settled law overwhelmingly shows the PDJ's decision was incorrect insofar as she held truth is not a defense in a case involving non-violent lawyer criticism of a judge. Substantially every other court to consider that question has reached the opposite result.

Rule 12(c)(4): The Bar argues these issues can adequately be addressed by direct appeal. That position ignores the very real and immediate First Amendment injury caused by the PDJ's ruling.

Consider the analogous treatment of injunctive relief. An order granting or denying an injunction is immediately appealable as of right. A.R.S. § 12–2101(A)(5)(b). The reason is apparent: such orders immediately affect the parties' rights, and delaying review may cause harm that cannot later be undone. Although the PDJ did not formally enter an injunction, her ruling has a similar practical effect. It holds that truth provides Gingras no defense to discipline for criticizing a judge. Thus, even truthful criticism potentially subjects him to additional professional discipline.

That threat is particularly immediate here. Judge Mata is currently seeking retention in the November 2026 election. Gingras believes evidence demonstrates

she is unfit to serve, and he has shared—and wishes to continue sharing—truthful information concerning her fitness for judicial office. Comment 1 to ER 8.2 recognizes the public value of such speech: “Expressing honest and candid opinions on such matters contributes to improving the administration of justice.”

Other courts have recognized the same principle:

[T]he protection of attorney criticism of judges is similar to the protection of criticism of other public officials, relying upon the principal purpose of the First Amendment: safeguarding public discussion of governmental affairs Restrictions on attorney speech burden not only the attorney’s right to criticize judges, but also hinder the public’s access to the class of people in the best position to comment on the functioning of the judicial system. Interest about judges is important in Colorado, where the public periodically votes whether to retain judges.

Green, 11 P.3d at 1085 (cleaned up) (emphasis added).

That reasoning has special force here. Under the PDJ’s ruling, further criticism of Judge Mata exposes Gingras to additional discipline even if his statements are true. The resulting chilling effect exists *now*, while voters are evaluating whether to retain her in November—not months later when a direct appeal might eventually be decided. Gingras cannot engage in protected political speech while the cloud of this case hangs over him, but who better to inform the public about whether or not they should vote for Judge Mata? The Bar rules are being weaponized as an incumbent protection scheme.

This Court has emphasized that the First Amendment exists “to protect against chilling criticism of public officials,” and that protection against governmental restraint of speech is “foremost within our pantheon of constitutional liberties.” *Rogers v. Mroz*, 252 Ariz. 335, 339, 502 P.3d 986, 990 (2022). Later appeal is not an adequate substitute for review now. Speech that could impact an upcoming judicial retention election cannot meaningfully be restored after the election has passed. The immediate and irreparable First Amendment consequences of the PDJ’s ruling strongly favor special action jurisdiction.

Rule 12(c)(5): As addressed above, the Bar’s position is wrong and the Bar appears to be focused on trying to ensure this case is as prolonged and needlessly costly as possible.

Virtually all the Rule 12(b) factors weigh in favor of jurisdiction, many heavily so, and none of the Rule 12(c) factors weigh against jurisdiction.

II. The PDJ Erred by Granting Judgment on the Pleadings When the Material Facts Were Disputed

The Bar argues the PDJ properly granted judgment on the pleadings because: “The PDJ ... found that Gingras had not asserted that the language he used in disparaging Judge Mata ‘was objectively and reasonably necessary to advance his client’s matter.’” Response at 15. This misrepresents the record and misapplies both Civil Rule 12(c) and the Bar’s burden of proof under Supreme Court Rule 58(j)(3).

The Bar's Complaint alleged Gingras violated ER 4.4(a) by making "objectively false" statements about Judge Mata, thus "using means that have no substantial purpose other than to embarrass or burden" her. [Pet.Appx.0024](#) (Amended Complaint ¶ 108). Gingras's Answer, [Pet.Appx.0092](#), denied that allegation:

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.

That denial created a factual dispute which precluded the entry of judgment under Rule 12(c). Gingras had no burden at the pleading stage to *prove* his words were "objectively and reasonably necessary." Once he denied the Bar's allegation that his speech lacked any legitimate purpose, the burden shifted to the Bar to prove otherwise by clear and convincing evidence. *See* Sup. Ct. R. 58(j)(3). The PDJ's ruling improperly relieved the Bar of that burden. This alone requires reversal.

Moreover, Gingras's Answer alleged that "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.” [Pet.Appx.0088](#) (Amended Answer ¶ 101). Gingras denied acting recklessly. As explained above, truthful criticism of a judge is itself a legitimate purpose for speaking.

The PDJ therefore erred by finding Gingras “had not asserted” a legitimate purpose for his speech. Rule 12(c) required the PDJ to accept Gingras’s well-pleaded allegations and defenses as true, not resolve the disputed issue in the Bar’s favor without evidence.

This does not mean the Bar necessarily loses. It means the Bar must *prove* what it has claimed. Because the Bar presented no evidence and the pleadings disputed the issue, partial judgment on the pleadings was improper.

III. Judgment on the Pleadings Was Improper Because Truth is a Defense When a Lawyer Criticizes a Judge, and The Bar Bears the Burden of Proving Falsity

On pages 15–16 of its Response, the Bar cites authority establishing that a lawyer’s **false** statements about a judge may be punished. Gingras agrees. The problem is the Bar’s attempt to transform that narrow rule into one permitting punishment of *truthful* criticism merely because it is disparaging or intemperate.

The Bar’s own authority demonstrates the error. *In re Olin*, 2024 WL 6881775, *8 (Cal. Bar Ct. 2024), begins with the rule that: “disciplinary rules governing the legal profession cannot punish speech protected by the First Amendment.” It then states the rule directly applicable here: “Truth is an absolute

defense to any statement made by an attorney that impugns the honesty or integrity of a judge.” *Id.* at *9.

The Bar nevertheless relies on *Olin* because the court found truth was not a defense to one particular statement. But that statement was not criticism; it involved *a threat of violence*. Attorney Olin told a court commissioner that, if he won the lottery, **he would pay someone to kill her minor child**. *Id.* at *1. Truth is no defense to a violent threat because “[t]rue threats of violence are outside the bounds of First Amendment protection.” *Counterman v. Colorado*, 600 U.S. 66, 69 (2023).

Gingras threatened no one. Instead, the Bar objects to the “demeaning and disparaging” tone of Gingras’s criticism. Response at 22. But speech does not lose First Amendment protection for being offensive or disparaging. *See, e.g., Leidholdt v. L.F.P., Inc.*, 860 F.2d 890, 894 (9th Cir. 1998) (holding First Amendment protected defendant’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 June 16, 2015) (holding First Amendment protected plaintiff’s right to call police officer “a fucking asshole,” and explaining, “[a]s 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’”).

This Court has recognized that public debate must tolerate “insulting, and even outrageous, speech” to provide adequate “‘breathing space’ to the freedoms protected by the First Amendment.” *Rogers*, 252 Ariz. at 344; *see also Texas v. Johnson*, 491 U.S. 397, 414 (1989) (government may not prohibit an idea merely because it is “offensive or disagreeable”); *Salazar*, 607 U.S. at 640 (“no official—‘high or petty’—may command our tongues or silence our voices”).

Other courts agree – while lawyers should conduct themselves professionally, that does not mean they operate in a First Amendment free zone. On the contrary, lawyers are allowed to use angry/emotional rhetoric just like non-lawyers. *See Olin*, 2024 WL 6881775, *11 (finding First Amendment protected lawyer’s emailed statement attacking judicial officer: “[Commissioner] VEASEY NEVER GAVE A SHIT” and “COMPLETELY SIDED WITH MY PERJURIOUS EX-WIFE,” explaining, “[i]n these statements, Olin vented about what he considered to be unfair treatment, and as explained in *Yagman*, they amount to rhetorical hyperbole which is protected speech”); *see also In re Green*, 11 P.3d 1078, 1086 (Colo. 2000) (holding First Amendment protected lawyer’s right to call judge “racist”; “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 ... discipline Green for his subjective opinions, irrespective of our disagreement with them”).

Olin itself rejected the notion that judicial dignity justifies suppressing criticism:

The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions.

Olin, 2024 WL 6881775, at *1 (quoting *Yagman*, 55 F.3d at 1445).

The Bar's remaining authorities fare no better. It cites *State v. Brown*, 207 Ariz. 231 (App. 2004), for the proposition that "epithets or personal abuse" are unprotected. But *Brown* was a criminal harassment case involving a non-lawyer and did not hold that offensive speech, standing alone, is unprotected. Indeed, the Court of Appeals recently cited *Brown* for the opposite proposition: Arizona's harassment statute "does not apply to pure First Amendment speech." *Gregorwicz v. Villa-Kennedy*, ___ P.3d ___, 2026 WL 1741808, at *2 (Ariz. App. June 17, 2026).

The Bar's other cases are even further afield. *In re Bemis*, 189 Ariz. 119 (1997), involved improper *ex parte* communications and a proposed order containing material outside the court's minute entry. *In re Fee*, 182 Ariz. 597 (1995), involved dishonesty toward a court concerning a settlement. Neither discusses the First Amendment or truthful criticism of judges. And *Nix v. Whiteside*, 475 U.S. 157 (1986), which dealt with counsel's refusal to present perjured testimony, has no relevance in this case.

The Bar acknowledges it “is not required to prove that Mr. Gingras knew that his comments about Judge Mata were false; rather, the Bar need only prove that he acted with reckless disregard for the truth or falsity of his statements,” Response at 19, without realizing this concession defeats its position. Whether proceeding under actual knowledge or reckless disregard, the Bar must still prove the statements were false. It cannot establish liability for a “false statement” without proving falsity with admissible evidence. And under Supreme Court Rule 58(j)(3), the Bar bears (but did not meet) that burden by clear and convincing evidence.

Here, the Bar *alleged* falsity and reckless disregard, and Gingras denied both. The Bar offered no evidence proving either. On a Rule 12(c) motion, that should have ended the matter. The Bar cannot convert disputed allegations into established facts merely by labeling Gingras’s truthful criticism “demeaning” or “disparaging.”

IV. The PDJ Erred by Refusing to Consider Gingras’s Anti-SLAPP Motion

Gingras’s Petition also asks this Court to reverse the PDJ’s finding that A.R.S. § 12–751 does not apply to attorney discipline cases because it “unduly hampers” this Court’s ability to punish lawyers. That is the *point* of the Anti-SLAPP law – to hamper weak cases that unduly burden free speech rights. The rules of evidence and the burdens of proof also “hamper” the ability to punish a lawyer. A new rule exists, and the Bar must follow it like everyone else. This is not “unduly” hampering anything. It is the Bar having to follow the law.

As noted in the initial petition, the PDJ’s reasoning was wrong as a matter of law because, as the legal authorities above explain, this Court has no power to punish a lawyer for constitutionally protected speech. A.R.S. § 12–751 therefore does nothing to interfere with this Court’s authority to regulate the practice of law, because this Court has no authority to disregard the First Amendment. *See Button*, 371 U.S. at 439 (holding “a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights”).

In its argument, the Bar appears to concede that if Gingras’s speech was *lawful*, it would be subject to protection under A.R.S. § 12–751. Response at 29. That concession should resolve the issue. As explained above, Gingras *was* lawfully exercising his First Amendment rights when he expressed truthful criticism of Judge Mata.

For that reason, the PDJ plainly erred when she refused to even consider the merits of Gingras’s anti-SLAPP motion. This Court should thus reverse that error, and remand with instructions for the motion to be considered in due course, albeit by a different judicial officer.

V. Upon Granting Relief This Matter Should Be Reassigned

For the reasons stated in the original Petition, if this Court accepts jurisdiction and grants relief, it should order this matter reassigned to a new judge.

CONCLUSION

The Bar attempted to punish Gingras for providing truthful criticism of a judge. The PDJ entertained this attempt at censorship by finding that Gingras, and all future Arizona attorneys, cannot rely on truth as a defense in discipline proceedings, and cannot rely on Arizona's anti-SLAPP statute to protect their First Amendment rights. The PDJ's decisions are an affront to the First Amendment with wide-ranging implications for attorneys in this state.

The Court should accept jurisdiction here, reverse the order granting partial judgment on the pleadings in the Bar's favor, reverse the order finding that Anti-SLAPP motions do not apply in discipline proceedings, and assign the underlying case to a different judge following remand.

Dated: August 13, 2026

Respectfully Submitted,

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