RANDAZZA LEGAL GROUP, PLLC
Marc J. Randazza, NV Bar No. 12265
3625 S. Town Center Drive, Suite 150
Las Vegas, Nevada 89135
Tel: (702) 420-2001
Fax: (305) 437-7662
ecf@randazza.com

Attorneys for Amici Curiae

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IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO Appellants/Cross-Respondents. v. GLENN WELT, RHODA WELT, LYNN WELT, and MICHELLE WELT, Respondents/Cross-Appellants.	Supreme Court No. 67363 Dist. Ct. No. A-14-706566-C **BRIEF AS *AMICI CURIAE* BY NEVADA PRESS ASSOCIATION, TRIPADVISOR, INC., AND YELP, INC.**
HOWARD SHAPIRO and JENNA SHAPIRO Appellants, v. GLENN WELT, RHODA WELT, LYNN WELT, and MICHELLE WELT, Respondents.	Supreme Court No. 67596 Dist. Ct. No. A-14-706566-C

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STATEMENT OF *AMICUS CURIAE*

Nevada Press Association

Amicus Nevada Press Association is a non-profit organization that for over a century has represented multiple news organizations in the states of Nevada and California, including the Las Vegas Review-Journal and the Reno Gazette-Journal. Its purpose is to represent the common interests of Nevada newspapers, further the public's "right to know" by educating people on the importance of a free press, and improve journalistic standards by fostering a closer relationship between newspapers.

TripAdvisor, Inc.

TripAdvisor is an online travel company, whose travel research platform permits reviews and opinions by the public about destinations, accommodations, activities, attractions, and restaurants throughout the world, including in Nevada. TripAdvisor has over 60 million members and hosts over 200 million reviews. Its users and its platform are both protected by the Nevada Anti-SLAPP statute.

Yelp, Inc.

Yelp, Inc. is a company that provides platforms and services, including Yelp.com, which allows consumers to share information, reviews, photographs, and ratings of businesses. Yelp is one of the best-known consumer review websites in the world, and serves millions of consumers and businesses on a daily basis. Its users and its platform are both protected by the Nevada Anti-SLAPP statute.

Common Interest

Amici curiae rely on the robust protections afforded by the First Amendment to the United States Constitution to function. Nevada's Anti-SLAPP statute, NRS 41.635 *et seq.*, is one the nation's finest example of a legislative pronouncement of a firm commitment to freedom of speech. The statute works to protect the *amici* from frivolous lawsuits.

Appellants, the Shapiros, argue on appeal that a crucial portion of Nevada's Anti-SLAPP statute, NRS 41.637(4), is unconstitutional. The *amici* thus have a significant interest in the legal issues on appeal in this matter, namely weighing in on why the Court should affirm the constitutionality of this provision.

Amici file this brief under Nevada Rules of Appellate Procedure 29(a) and 29(c), which permit a third party to file a brief as *amicus curiae* with leave of the court or with the written consent of all parties.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. The undersigned has read the following brief of *amici curiae* of the Nevada Press Association, TripAdvisor, Inc., and Yelp, Inc.;

2. To the best of the undersigned's knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

3. The following brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found; and

4. The brief complies with the formatting requirements of Rule 32(a)(4)-(6), and the type-volume limitations stated in Rule 32(a)(7) and Rule 29(e). Specifically, the brief is 3,887 words.

Dated this 11th day of December, 2015.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza, Esq.
3625 S. Town Center Dr., Suite 150
Las Vegas, Nevada 89135

Attorney for Amici Curiae

SUMMARY

Nevada's Anti-SLAPP statute creates a substantive immunity from suit and procedural mechanism to give shape to that immunity when the claim seeks to suppress First Amendment rights. It has already withstood constitutional challenges and is substantively identical to California's Anti-SLAPP statute, which has stood as the Anti-SLAPP benchmark for decades.

Appellants, the Shapiros, argue in their Opening Brief that NRS 41.637(4), a crucial portion of Nevada's Anti-SLAPP statute, is "unconstitutionally vague." (*Id*. at 13.) The statute has no effect on the validity of a plaintiff's claims and does not create any new legal concepts likely to cause confusion among either attorneys or parties. It safeguards important Constitutional freedoms, and the Court should take this opportunity to affirmatively uphold the statute's constitutionality.

ARGUMENT

1.0 The History and Application of Nevada's Anti-SLAPP Statute

NRS 41.660 is a special creature, both substantively and procedurally, first created by the Nevada legislature 1993. *See* S.B. 405, 1993 Leg. Sess., 67th Sess. (Nev. 1993). The legislature then amended it in 1997. *See* A.B. 485, 1997 Leg. Sess., 69th Sess. (Nev. 1997). The legislature then gave the Nevada Anti-SLAPP law real teeth in 2013 when it passed Senate Bill 286. *See* S.B. 286, 2013 Leg. Sess., 77th Sess. (Nev. 2013). It further refined the statute in 2015,

to make it more resemble California's. *See* S.B. 444, 2-15 Leg. Sess., 78th Sess., (Nev. 2015).[1]

When the legislature passed the 2013 Anti-SLAPP statute, it made a strong pronouncement that freedom of expression occupies an exalted place in this state, and that Nevada will not abide SLAPP suits. "A SLAPP lawsuit is characterized as a meritless suit filed primarily to discourage the named defendant's exercise of First Amendment rights." S.B. 286, 2013 Leg. Sess., 77th Sess. (Nev. 2013). The Nevada legislature acted to protect these rights by creating a tort reform mechanism that requires cases attacking these rights to be more than a mere recitation of allegations. The pre-2013 version of the statute only covered petitioning activity, which made its protections narrower (at the time) than the Anti-SLAPP statutes of Nevada's neighboring states, such as California and Oregon.

That is why the 2013 amendment added, *inter alia*, NRS 41.637(4), which protects a defendant's exercise of his First Amendment rights in connection with an issue of public interest. This expansion was based on the California Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16(b), which protects "any act . . . n

[1] The initial version of SB444 actually sought to largely repeal the statute and render it ineffective to protect freedom of expression. However, in large part due to the Nevada Press Association's efforts, the bill morphed from an attempt to eviscerate the statute into one that essentially put it in complete harmony with California's. The ultimate version of the bill added the ability for either party to take discovery, in the event that it is deemed necessary, and lowered a plaintiff's burden of proof from "clear and convincing evidence" to "prima facie evidence."

furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue . . . ." The legislature also took this opportunity to clarify that the Anti-SLAPP statute creates a substantive immunity from suit, not just immunity from liability, drawing inspiration from *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 797 (June 18, 2012) (finding that California's Anti-SLAPP statute provides immunity from suit, rather than immunity from liability). *See* Senate Committee on Judiciary hearing on Nev. SB 286, at 3 (Mar. 28, 2013); *see also* Journal of the Senate, 77th Leg. Sess., Day 78 at 600 (Apr. 22, 2013).

Nevada's Anti-SLAPP statute reflects the Legislature's recognition that permitting unsupported lawsuits against citizens and corporations for exercising their First Amendment rights chills free speech. *See* Senate Committee on Judiciary hearing on Nev. SB 286, at 4 (Mar. 28, 2013); Assembly Committee on Judiciary hearing on Nev. SB 286, at 4-7 (May 5, 2013). The process is the punishment; dragging out a frivolous suit aimed First Amendment protected activity not only intimidates defendants from any further speech, but stands to chill other speakers or journalists. Without the Anti-SLAPP statute, the standards under Nev. R. Civ. P. 12(b)(5) allow a plaintiff to survive a motion to dismiss with little more than rote recitations of the *elements* of his claims.

The 2013 amendments were a specific legislative act to put an end to this, while leaving the door open for legitimate defamation claims. In states without an Anti-SLAPP statute, defendants with the means and wherewithal to successfully move for summary judgment

after discovery find themselves significantly burdened despite "winning" the case, because there are rarely any mechanisms available to afford recovery of attorneys' fees in the successful defense of SLAPP suits.[2]

Nevada's Anti-SLAPP statute, like its long-standing California ancestor, is a burden-shifting statute; once a defendant makes a minimal showing that the plaintiff's claims are based upon protected communications, which were either true, or believed to be so by the Defendant, the Plaintiff must then demonstrate that his claims have minimal factual merit. *See* NRS 41.660(3)(b). A plaintiff cannot simply make factual *allegations*, but rather must provide competent and admissible *evidence* that supports those allegations. *See id*.

The statute provides a clear procedure for the legitimate defamation plaintiff to follow – he must have his evidence *in hand* when he files his case, or he must know what he needs in order to show that his case has merit. This brings an early end to defamation lawsuits brought simply to chill speech, punish legitimate speech, or that have no ultimate chance of winning on the merits. Further, the

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[2] As a prime example of a SLAPP defendant's phyrric victory, *see Vandersloot v. The Foundation for National Progress*, 7th District Court for Bonneville County, Idaho, Case No. CV-2013-532 (granting summary judgment for journalist organization defamation defendant after two years of litigation and $2.5 million in defense costs, but declining to award any attorneys' fees or sanctions); *see also* Monika Bauerlein and Clara Jeffrey, *We Were Sued by a Billionaire Political Donor. We Won. Here's What Happened*, MOTHER JONES (Oct. 8, 2015), available at: <http://www.motherjones.com/media/2015/10/mother-jones-vandersloot-melaleuca-lawsuit> (last visited December 9, 2015).

procedure is not some strange alien being. Nevada's courts treat it like the long-familiar early motion for summary judgment. *See Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013). And, like Nev. R. Civ. P. 56(f), the statute permits a Plaintiff to request the ability to take additional discovery, if it is targeted and focused. *See* NRS 41.660(4). However, it does not permit complete fishing expeditions or abusive discovery – only discovery necessary to oppose (or even bring) the motion.

The Nevada legislature and judiciary have historically looked to California for guidance on crafting and applying its Anti-SLAPP statute. This Court explicitly stated in *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 756 (2009) that "we consider California caselaw because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute." Furthermore, the legislature explicitly incorporated California case law in amending the statute in 2015 when it defined a plaintiff's evidentiary burden on the second prong of analysis for a special motion to dismiss. The plaintiff's burden is that of "prima facie" evidence, which is defined as "the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuit Against Public Participation law as of the effective date of this act." *See* S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev. 2015) at §12.5(2).

California courts have specifically noted that "because unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable." *Good Government Group, Inc. v.*

Superior Court of Los Angeles County, 22 Cal. 3d 672, 685, 586 P.2d 572, 578 (Cal. 1978) citing *Dombrowski v. Pfister*, 380 U.S. 479, 486-487 (1965). Thus, summary judgment was deemed to be a "favored" remedy in defamation cases. *See id.*; see also *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 252, 690 P.2d 610, 614, 208 Cal. Rptr. 137, 141, 1984 Cal. LEXIS 125, *10, 11 Media L. Rep. 1065 (Cal. 1984) ("summary judgment remains a 'favored' remedy in defamation cases involving the issue of 'actual malice' under the New York Times standard."); *Jensen v. Hewlett-Packard Co.*, 14 Cal. App. 4th 958, 965, 18 Cal. Rptr. 2d 83, 86 (Cal. App. 4th Dist. 1993) (affirming a nonsuit, *i.e.* a judgment after opening statements, as similarly a "favored remedy"). Rather than the mechanism of the Anti-SLAPP statute being constitutionally problematic, it is constitutionally desirable as it promotes the speedy resolution of cases involving free speech.

2.0 Anti-SLAPP Statutes Have Long Withstood Constitutional Scrutiny

The majority of states have adopted Anti-SLAPP statutes, though not all to the same degree. California, Nevada, Oregon, Maine, Texas, the District of Columbia, Washington, and recently Florida have all enacted advanced Anti-SLAPP laws that cover a wide array of First Amendment-protected activity. Potent Anti-SLAPP statutes across the nation have routinely, though not universally, either withstood constitutional challenges or have had courts opine on why their provisions are constitutional.[3]

[3] The only one that suffered from a constitutional infirmity was Washington's, under the Washington Constitution, due to provisions

One of the earliest Anti-SLAPP challenges occurred in California in *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106 (1999). The plaintiff there argued that the state's Anti-SLAPP statute deprived a plaintiff of his right to a jury trial by forcing him to prove his case at the early stages of litigation. The court dismissed this argument, finding that the statute only required a showing of minimal merit as to a plaintiff's claims, not to definitely prove them. *See id*. at 1122-23. The *Briggs* court also cited with approval the public policy underlying a broad application of the statute. *See id*. at 1121-22.

Dealing with a similar issue regarding the Texas Anti-SLAPP statute, Tex. Civ. Prac. & Rem. Code § 27.003 *et seq*., the court in *Deaver v. Desai*, 2015 Tex. App. LEXIS 12259, *14 (Tex. App. Houston 14th Dist. Dec. 3, 2015) found that the evidentiary requirements of that state's statutes did not create any constitutional problems. The Texas statute requires a plaintiff to "establish[] by clear and specific evidence a prima facie case for each essential element of the claim in question." Tex. Civ. Prac. & Rem. Code § 27.005. While daunting at first blush, Texas courts have interpreted this language to mean that a plaintiff must merely provide evidence that is "unambiguous, sure, or free from doubt" and that is "explicit or relating to a particular named thing." *Desai*, 2015 Tex. App. LEXIS 12259 at *14. The court stated that "[t]hese terms do not impose an elevated evidentiary standard, nor do they categorically reject the

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that are no longer found in the Nevada statute, and which were not in play in this case. *See infra* at p. 17-18.

consideration of circumstantial evidence." *Id*. While this case did not deal with a constitutional challenge, the standards recited by the court establish that it would withstand constitutional scrutiny.

Oregon addressed the constitutionality of its Anti-SLAPP statute in *Handy v. Lane Cnty.*, 274 Ore. App. 644, 652 (2015). The Oregon statute, ORS 31.150, requires a plaintiff to "establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case." *Id*. at 31.150(3). The court in *Lane* explained that a plaintiff may meet his burden under the statute "by producing direct evidence, reasonable inferences that may be drawn from that evidence, and 'affidavits setting forth such facts as would be admissible in evidence.'" *Lane*, 274 Ore. App. at 652 (quoting *OEA v. Parks*, 253 Ore. App. 558, 567 (2012)). It specified that, for the statute to remain constitutional, '"the trial court may not weigh the plaintiff's evidence against the defendant's' and 'may consider defendant's evidence only insofar as necessary to determine whether it defeats plaintiff's claim as a matter of law.'" *Lane*, 274 Ore. App. At 652 (quoting *Young v. Davis*, 259 Ore. App. 497, 501 (2013)).

Maine's courts have also addressed the constitutionality of its Anti-SLAPP statute, 14 M.R.S. § 556.[4] That statute requires a plaintiff to show "that the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law." *Id*. The court in *Nader v. Me. Democratic Party*, 2012 ME 57,

[4] This statute is narrower than the Anti-SLAPP statutes of some other states, protecting only the "right of petition under the Constitution of the United States or the Constitution of Maine." 14 M.R.S. § 556.

¶33, explained that the statute, to be constitutional, "requires only that the nonmoving party provide prima facie evidence to support its burden." This evidentiary burden is very similar to the one imposed by the statutes in Nevada, California, Texas, and Oregon.

Additionally, the District of Columbia discussed a plaintiff's applicable burden of proof in opposing an Anti-SLAPP motion in *Mann v. Nat'l Review, Inc.*, 2013 D.C. Super. LEXIS 7, *15-16 (July 19, 2013). The D.C. statute, D.C. Code § 16-5502, provides that a plaintiff must "demonstrate[] that the claim is likely to succeed on the merits" to successfully oppose a motion. In addressing an argument that the statute required a plaintiff to prove his case by a preponderance of the evidence, the court noted that the D.C. statute is "an almost identical act to the California act" and adopted the same summary judgment-like evidentiary standard imposed by California's Anti-SLAPP statute. *Mann*, 2013 D.C. Super. LEXIS 7 at *15. By explicitly taking inspiration from California, there is no reason to think that D.C.'s statute would not withstand a constitutional challenge.

In fact, the only Anti-SLAPP statute that has not withstood constitutional scrutiny is Washington's RCW 4.24.525. That statute provided that a plaintiff had to "establish by clear and convincing evidence a probability of prevailing on the claim" in order to survive an Anti-SLAPP motion. RCW 4.24.525(4)(b). Further, the plaintiff was forced to do so without the opportunity to take discovery. This was the same standard as Nevada had before the 2015 revisions, but SB 444 removed these similarities to Washington. Therefore, even if

hypothetically, the Nevada Statute would have been similarly evaluated under the Nevada constitution, it would no longer be so.

The Washington Supreme Court decided in *Davis v. Cox*, 183 Wn.2d 269 (2015) that the standard was too burdensome for the Washington constitution to bear. The *Cox* court found that, unlike the Anti-SLAPP statutes of other states, Washington's statute's "clear and convincing" evidentiary burden required a trial court to weigh the *credibility* of evidence prior to trial. *See id*. at 282-83.[5]

However, with the dial-back on the standard in Nevada this summer, if Washington were to import Nevada's statute wholesale, the statute would withstand the same scrutiny.

3.0 NRS 41.637(4) is Constitutional

"Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) (citation omitted).[6] That has not been met here.

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[5] Hypothetically, had the 2013 Anti-SLAPP statute not been amended by SB 444, the 2013 version of the statute would have been constitutional under the Nevada Constitution. The Washington Constitution's guarantee of jury review does not match Nevada's. In Nevada, a statute must make the right to a jury practically unavailable in order to be struck down on this basis. *Tam v. Eighth Judicial Dist. Court*, 358 P.3d 234, 238 (Nev. 2015). Moreover, the Appellant does not appear to challenge the statute on the basis of whether the judge or the jury should determine particular matters, and thus this issue is not even before the court.

[6] This is not Nevada's only tort reform scheme. For example, the legislature adopted NRS 41A.071 "to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice actions are filed in

Nevada's Anti-SLAPP statute has withstood constitutional challenges, though not of the same type as California's. The court in *John*, 125 Nev. at 755-56, dealt with a challenge to the statute because it allegedly interfered with federal substantive rights. The Supreme Court dismissed this argument finding that the statute was neutral and did not interfere with such rights. *See id.* at 756-60. While *John* was decided prior to the 2013 amendment, nothing in that amendment changes this outcome. *John* did not directly address the constitutionality of NRS 41.637, but discussed with approval the requirement that only statements made in good faith are protected under the Statute. *See id*. at 761-62.

More importantly, the provisions of Nevada's Anti-SLAPP statute are almost exactly in line with California's. With the 2015 amendment to the statute, it imposes the exact same evidentiary burden on plaintiffs that was upheld by the court in *Eden Council*, 19 Cal. 4th 1106 over 15 years ago. The constitutionality of this evidentiary burden has since been adopted and affirmed by the States of Oregon, Texas, and Maine, and the District of Columbia. Furthermore, California's Anti-SLAPP statute has always been expansive enough to cover not only a defendant's right to petition, but their right to free speech in connection with a matter of public

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good faith based upon competent expert medical opinion." *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304 (Nev. 2006). If the legislature has the right to enact tort reform legislation in order to reduce weak medical malpractice lawsuits, it certainly has the prerogative to do so in order to protect the right to free expression.

concern. Nevada's Anti-SLAPP statute is thus constitutional for the same reasons these other statutes are.

The Shapiros, however, argue that NRS 41.637(4) is unconstitutional because it is impermissibly vague, asserting that it "is in contravention of ancient common-law claims for defamation and are [sic] thus unconstitutionally vague as they [sic] create confusion concerning when a defamation case can be made and under what circumstances." (Opening Brief at 13.)[7] Nevada's statute suffers from no such infirmity. In fact, the standard is quite clear – if a plaintiff brings an unsupportable claim, he loses. There is no change to the elements of defamation or what a plaintiff must ultimately prove, notwithstanding that the legislature is free to abrogate the common law; the statute only adds the clear requirement that the plaintiff must have *some* proof at the time of filing.

The Anti-SLAPP statute creates a "procedural mechanism for to prevent wasteful and abusive litigation by requiring the plaintiff to make an initial showing of merit." *John*, 125 Nev. at 755. If a claim was valid before the statute was enacted, it remains valid afterward.

Viewed charitably, what the Shapiros are actually saying is that NRS 41.637(4) creates uncertainty as to what speech or conduct may meet the first prong of an Anti-SLAPP analysis. But this argument

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[7] Appellants also devote a specific section of their opening to the claim of constitutional vagueness (pp. 4-11), but it is more an overview of First Amendment rights in the face of defamation claims, rather than any discussion of the statute. The rest of Appellants' argument speaks to specific factual findings and legal determinations removed from questions of constitutionality. *Amicus* takes no position on these issues.

is similarly unfounded. California's Anti-SLAPP statute has had similar language to NRS 41.637(4) for decades, and despite thousands of cases under that law, nobody has yet been confused. California went so far as to broaden the applicability of its statute in 1997 to cover a larger swath of speech. *See Eden Council*, 19 Cal. App. 4th at 1119 (noting that the 1997 amendment to Cal. Code Civ. Proc. § 425.16(a) provided that the statute "shall be construed broadly"). Meanwhile, in the history of Anti-SLAPP litigation, not one challenge to a single statute could be found where anyone else had found this common standard to be "vague."

The Shapiros' vagueness argument, even if articulated most favorably to them, is based on the erroneous assertion that NRS 41.637(4) "is in contravention of ancient common-law claims for defamation." (Opening Brief at 13.) NRS 41.637(4) specifies that, for a statement to be in "good faith," thus triggering the statute's protections, it must be "truthful or . . . made without knowledge of its falsehood." This is nothing new in the defamation context. Falsity has always been an element of a defamation claim. And the "without knowledge of falsity" component of the "good faith" requirement is one of the components of the "actual malice" standard enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). NRS 41.637(4) thus does not create some alien legal concept, but rather simply expands the bedrock principle of modern defamation law that has existed for over 50 years. If the statute offends "ancient" notions of defamation, perhaps the Shapiros are

referring to law that pre-dates *Sullivan*. If that is the case, they are more than 50 years too late to complain.

If the Shapiros' grievance is that Nevada cannot expand the *Sullivan* actual malice standard[8] to a context other than a public figure defamation plaintiff, then they will still not find any satisfaction here. *Sullivan* and its progeny stand for the proposition, *inter alia*, that a state cannot *lower* the necessary fault for a defamation claim to something less than negligence. *See Gertz v. Robert Welch, Inc.*, 323 Nev. 334, 347-48 (1974). These cases do not in any way establish that a state is not free to *raise* the required level of fault to support a defamation claim. In fact, Nevada would be well within its rights to abrogate the common law and abolish defamation as a cause of action altogether if the legislature felt like it. *Compare State v. Palm (In re Estate of Melton)*, 272 P.3d 668, 676, 2012 Nev. LEXIS 15, *21-22, 128 Nev. Adv. Rep. 4 (Nev. 2012) (discussing NRS 132.370's abrogation of common law disinheritance rules). Thus, the additional hurdle for frivolous defamation claims created by NRS 41.637(4) does not offend any constitutional principles, but rather advances them. Nevada's Anti-SLAPP statute is both constitutional and indispensable in guaranteeing the First Amendment rights of Nevadans.

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[8] It is important to note that NRS 41.637(4) does not, in practice, expand the "actual malice" standard to statements on an issue of public interest, as it is the **defendant's** burden to show truth or lack of knowledge of falsity.

4.0 CONCLUSION

NRS 41.637(4), and Nevada's Anti-SLAPP statute as a whole, is on firm constitutional footing. It is substantively identical to California's Anti-SLAPP statute, which has withstood constitutional scrutiny for decades, and which has served as the model for several other states in drafting constitutional Anti-SLAPP statutes. The statute creates a clear procedural mechanism for early dismissal of frivolous suits while in no way affecting the validity of defamation claims. The Court has no reason to strike it down, and instead should take this opportunity to explicitly affirm its constitutionality.

Dated this 11th day of December, 2015.

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
RANDAZZA LEGAL GROUP, PLLC
3625 S. Town Center Drive, Suite 150
Las Vegas, Nevada 89135
Tel: 702-420-2001
Email: ecf@randazza.com

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this foregoing document was electronically filed and served upon counsel for each of the parties to this appeal through the Supreme Court of Nevada's electronic filing system on this 11th day of December, 2015.

Respectfully Submitted,

Employee,
Randazza Legal Group, PLLC