



December 12, 2025

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**VIA TRUE FILING**

**RE: *Amicus* Letter in Support of Petition for Review in  
*G.W., et al. v. Coronado Unified School District, et al.*  
Supreme Court of California Case No. S293866**

Honorable Justices:

The Foundation for Individual Rights and Expression (FIRE) writes pursuant to California Rule of Court 8.500(g) to urge review in this matter, which involves not only the use of state protection of speech rights from strategic lawsuits against public participation, *i.e.*, the “anti-SLAPP” law, Cal. Civ. Proc. Code § 425.16, to strike First Amendment (and other) claims and to award government defendants attorney’s fees, but also appellate sanctions on plaintiffs for challenging that award. As the Court has not directly addressed applying § 425.16 fee-shifting to plaintiffs advancing civil rights claims under 42 U.S.C. § 1983, and because such fee awards—which case law firmly establishes are substantive—disincentivize vindication of the very free speech rights the legislature intended § 425.16 to protect, the Court should grant the Petition here. Review is necessary to clarify that, despite § 425.16’s mandatory fee-shifting, federal law preempts state courts from ordering plaintiffs advancing § 1983 claims to pay defendants attorney’s fees absent a finding the claims were clearly frivolous, vexatious, or harassing, in which case, vehicles other than the state anti-SLAPP law are available to award fees. That conclusion is the only way to conform state law to the U.S. Supreme Court’s firm admonition that awarding defendants attorney’s fees in civil rights suits, in other than exceptional circumstances, impermissibly impedes the vigorous enforcement of civil rights—including free speech.

### **Introduction**

When a plaintiff files a meritless lawsuit to punish critics for their protected public expression by dragging them into costly litigation, that suit is a SLAPP: a strategic lawsuit against public participation. The paradigmatic SLAPP seeks to

510 Walnut Street, Suite 900 Philadelphia, PA 19106

Phone: 215-717-3473 Fax: 215-717-3440

[thefire.org](http://thefire.org)

Document received by the CA Supreme Court.

“impos[e] litigation costs on citizens who protest, write letters, and distribute flyers,” or otherwise speak in ways an opponent of that speech wishes to silence or burden. *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 143 (2019). Anti-SLAPP statutes address this in states nationwide, including California, by granting defendants expedited means of ending litigation by showing a suit lacks merit and seeks to silence protected expression.

The California Legislature enacted § 425.16 in 1992 to provide that “[a] cause of action against a person arising from any act of that person in 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 shall be subject to a special motion to strike, unless ... the plaintiff has established [ ] there is a probability that the plaintiff will prevail on the claim.” Cal. Civ. Proc. Code § 425.16. If invoked through a special motion to strike any such claim(s), the statute requires courts to decide if the defendant can show their acts underlying the cause of action involve expression § 425.16 protects—and, if they do, to require the plaintiff to show a probability of prevailing on the claim(s). *Thomas v. Quintero*, 126 Cal. App. 4th 635, 645 (2005). The statute further provides, in relevant part here, that defendants prevailing on an anti-SLAPP motion are “entitled to recover ... attorney’s fees and costs,” but prevailing plaintiffs receive attorney’s fees only if the “special motion to strike is frivolous or is solely intended to cause unnecessary delay. Cal. Civ. Proc. Code §425.16 (c)(1).

This Court has held § 425.16 “may not be interpreted to exclude governmental entities and public officials from its potential protection.” *Vargas v. City of Salinas*, 46 Cal. 4th 1, 8 (2009). But it has not directly considered whether federal civil rights law, especially 42 U.S.C. § 1983 and its fee-shifting provision at § 1988, preempts awarding attorney’s fees under § 425.16 against plaintiffs who bring non-frivolous civil rights claims, although at least one reported California Court of Appeal decision held it does not. *Patel v. Chavez*, 48 Cal. App. 5th 484, 490 (2020).<sup>1</sup> This case—where a trial court granted anti-SLAPP motions and ordered plaintiffs to pay defendants’ fees without distinguishing federal § 1983 claims from state law causes of action, and the California Court of Appeal then affirmed—presents an ideal opportunity for this Court to clarify that federal preemption bars courts from awarding fees on § 1983 claims unless they are clearly frivolous, vexatious, or harassing.

---

<sup>1</sup> Other California Court of Appeal cases have remanded cases with instructions to award fees to defendants with no discussion of federal preemption. *See, e.g., Bradbury v. Superior Court*, 49 Cal.App.4th 1108, 1117–1118 (1996); *Vergos v. McNeal*, 146 Cal.App.4th 1387, 1392, fn. 4 (2007); *Turnbull v. Lucerne Valley Unified Sch. Dist.*, 24 Cal. App. 5th 522, 534 (2018).

Plaintiffs’ § 1983 and state claims here, against various government officials, administrators, and teachers at Coronado High School and its school district, sought to protect G.W.’s refusal to wear a mask in protest of the district’s masking policies under the First Amendment to the United States Constitution, U.S. Const. amend I, and the California Constitution, Cal. Const. art. I, § 2(a). But the trial court granted defendants’ anti-SLAPP motions, holding all causes of action, including the § 1983 claim, were subject to strike. The court first held defendants’ “comments and actions” including “the actual casting of votes in favor of the mask policy and the surrounding discussion” would “clearly come within” §§ 425.16(b) & (e)(2), because they “directly arise out of” the issue of public interest of the district “formulating and thereafter enforcing a COVID policy ... regarding the use of masks.” CT 4:875. The court then held plaintiffs failed to establish probability of prevailing on the claims, and the California Court of Appeal affirmed (albeit on forfeiture grounds). *G.W. v. Coronado Unified Sch. Dist.*, No. D082619, 2024 WL 4248911, at \*1 (Cal. Ct. App. Sept. 19, 2024), *reh’g denied* (Oct. 8, 2024).<sup>2</sup> While plaintiffs’ appeal was pending, the trial court granted defendants’ motion for fees, ordering G.W. and her mother to pay all the defendants’ attorneys’ fees, totaling \$68,238.62, without differentiating the federal § 1983 claim from the state causes of action. Min. Order, Feb. 9, 2024. When plaintiffs appealed the fee award, the court California Court of Appeal not only affirmed but ordered sanctions *sua sponte* against plaintiffs’ counsel for what the court deemed a frivolous appeal. *G.W. v. Coronado Unified Sch. Dist.*, No. D083991, 2025 WL 2753730, at \*6 (Cal. Ct. App. Sept. 29, 2025), review filed (Nov. 12, 2025).

Plaintiffs’ appeal of the fee award was not frivolous for at least three reasons. First, as plaintiffs argued, the trial court failed to identify what protected speech of defendants formed the basis of any of plaintiffs’ claims, such that it should not have made the § 425.16 fee award in the first instance. See, *Park v. Bd. of Trs. of Cal. State Univ.*, 2 Cal. 5th 1057, 1064 (2017). Second, plaintiffs had nonfrivolous public policy arguments for modifying or reversing existing law on government defendants using the anti-SLAPP law or receiving attorney’s fees under it—problems the Uniform Law Commission recognized in its Model Anti-SLAPP Act, which specifically bars application to claims “against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity.”<sup>3</sup> Third, even if the trial court correctly granted anti-SLAPP fees under current state

---

<sup>2</sup> Although the court of appeal discussed the merits, it confined discussion of whether defendants’ conduct involved free speech on a public issue to “adoption of the masking policy, which they concede[d] is protected activity.” *Id.* at \*6.

<sup>3</sup> <https://www.uniformlaws.org/committees/community-home?communitykey=4f486460-199c-49d7-9fac-05570be1e7b1>.

law, federal law preempts the award on plaintiffs' claim under 42 U.S.C. §§ 1983 and 1988.

*Amicus* FIRE therefore urges that the Court, at a minimum, grant review to consider the important yet unresolved legal issue of whether federal preemption bars California courts from granting fee awards under § 425.16 against plaintiffs bringing § 1983 actions without a finding the claims clearly frivolous, vexatious, or harassing.

### **Interest of *Amicus***

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended freedom of expression without regard to speakers' political orientation through public advocacy, strategic litigation, and participation as *amicus curiae* in free speech cases. In defending and fostering free expression, FIRE frequently interacts with SLAPP suits and state anti-SLAPP statutes. See, e.g., Br. *Amicus Curiae* FIRE Supp. Pl.-Appellant, *U.S. News & World Report, L.P. v. Chiu*, Case No. 24-2928 (9th Cir. filed July 9, 2024) (arguing government-defendant recovery of attorney's fees in civil rights cases will chill rights anti-SLAPP law intends to protect); see also Br. *Amicus Curiae* FIRE Supp. Def., *Salaam v. Trump*, 2:24-cv-05560-WB (E.D. Pa., filed 1Jan. 16, 2025). That includes FIRE's own litigation, where it often relies on anti-SLAPP laws in defending its clients. See, e.g., *Mostriano v. Gregory*, No. 5:24-cv-00567-F (W.D. Okla.); *Adams v. Guley*, No. CCH-24-587004 (Super. Ct. San Francisco Cnty.).

Although FIRE often defends targets of SLAPPs, it more often litigates on behalf of clients seeking to regain or protect their rights to free expression against government officials who commit constitutional violations in part or whole through communicative state action. Despite carefully vetting claims prior to filing, First Amendment claims are notoriously complex and FIRE is not always successful. Clients' claims are occasionally dismissed at early stages of litigation, especially where, even if claims identify constitutional violations, courts dismiss claims for lack of standing, *Palsgaard v. Christian*, No. 1:23-CV-01228-KES-CDB, 2025 WL 318716, at \*16 (E.D. Cal. Jan. 28, 2025) (dismissing pre-enforcement challenge to state collage DEIA regulations), or dismiss government defendants based on qualified immunity. *Abbott v. Pastides*, 900 F.3d 160, 174–75 (4th Cir. 2018) (upholding dismissal of § 1983 claims based in part on qualified immunity). FIRE is thus seriously concerned about the ability of government officials to use anti-SLAPP statutes not only to dismiss claims, but to saddle ordinary citizens with devastating fee awards of tens or even hundreds of thousands of dollars, simply for attempting to assert their legitimate free expression claims. This creates obvious disincentives

against suing to vindicate free speech expression rights—an outcome that undermines the very purposes of anti-SLAPP laws like § 425.16.

### Argument

The present petition raises an important question regarding whether federal law preempts application of § 425.16 fee-shifting to plaintiffs' § 1983 claim. Review is needed because the question recurs, and the otherwise prevailing law on this issue comes from the published California Court of Appeal decision in *Patel* that reached the wrong conclusion, on which an alarming number of unreported court of appeal cases (and certainly many more unappealed superior court rulings) have relied. These cases have devastating real-life impact on ordinary citizens who simply seek justice for constitutional harms committed by government officials, and they stand as disincentives to others to bring similar cases to protect their rights. Automatic awards of attorney's fees against plaintiffs who bring unsuccessful but non-frivolous § 1983 claims undermines both federal law and the purpose of the anti-SLAPP statute.

#### **Federal law preempts § 425.16's mandatory fee awards as applied against plaintiffs bringing § 1983 claims in state court.**

The trial court erred by ordering plaintiffs to pay all of defendants' attorney's fees, including those incurred defending against plaintiffs' § 1983 claim, despite the absence of any finding that claim was frivolous. Federal law preempts § 425.16 fee awards in state courts against § 1983 plaintiffs, because the fee-shifting structure for federal civil rights claims is a vital and substantive element of federal law. Thus, awarding § 425.16 fees against plaintiffs on non-frivolous § 1983 civil rights claims is preempted by 42 U.S.C. § 1988, which prohibits fee awards against plaintiffs unless their claim is "meritless in the sense that it is groundless or without foundation." *Hughes v. Rowe*, 449 U.S. 5, 14 (1980); see also *Hubbard v. SoBreck, LLC*, 554 F.3d 742, 744–45 (9th Cir. 2009) (limiting fees to frivolous claims in challenge under federal Americans with Disabilities Act).

When federal civil rights statutes give discretion to courts to award attorney's fees to prevailing parties, prevailing plaintiffs "ordinarily recover an attorney's fee unless special circumstances would render such an award unjust," *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 (1968), but fees should not be awarded to prevailing defendants "unless a court finds [the plaintiff's] claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978). The U.S. Supreme Court explicitly applied this rule to civil rights claims under 42 U.S.C. § 1983 in

*Hughes*, holding that “[t]he fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees.” 449 U.S. at 14.

State courts must apply federal standards in awarding fees when plaintiffs bring a § 1983 action. *James v. City of Boise, Idaho*, 577 U.S. 306, 307 (2016) (*per curiam*). “As with many other federal statutes, California courts and the federal courts exercise concurrent jurisdiction over actions brought pursuant to section 1983.” *Chavez v. Keat*, 34 Cal. App. 4th 1406, 1413 (1995) (citing *Ochoa v. Superior Court*, 39 Cal.3d 159, 173, n. 10 (1985)). Under the Supremacy Clause of the federal Constitution, U.S. Const. art. VI, cl. 2, the “general rule is that where an action founded on a federal statute is brought in a state court, the law of the state controls in matters of practice and procedure unless the federal statute provides otherwise.” *Id.* at 1413–14 (citing *Bach v. County of Butte*, 147 Cal.App.3d 554, 561–562 (1983) (§ 1983 action); *King v. Schumacher*, 32 Cal.App.2d 172, 181 (1939) (Federal Employers’ Liability Act action)). However, state rules of even evidence or procedure do not apply to federal claims in state court if “application of those rules would affect plaintiffs’ substantive federal rights.” *County of Los Angeles v. Superior Court*, 139 Cal.App.4th 8, 17 (2006) (citing *Felder v. Casey*, 487 U.S. 131, 138 (1988)).

Federal preemption asks, “does the enforcement of such a requirement [...] ‘stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress?’” *Felder*, 487 U.S. at 138 (citations omitted). Because “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Id.* (citing *Free v. Bland*, 369 U.S. 663, 666 (1962)). Thus, in *Williams v. Horvath*, 16 Cal.3d 834 (1979), this Court held the Supremacy Clause barred state courts from applying the California Tort Claims Act’s 100-day notice requirement in to § 1983 claims. “In California statutes or ordinances which condition the right to sue the sovereign upon timely filing of claims and actions are more than procedural requirements. They are elements of the plaintiff’s cause of action and conditions precedent to the maintenance of the action.” *Id.* at 839 (quoting *Willis v. Reddin*, 418 F.2d 702, 704–05 (9th Cir. 1969)). Just as the Tort Claims Act’s notice provision is more than merely procedural and therefore barred from application to state-filed § 1983 claims, so too § 425.16’s mandatory fee-shifting provision in favor of prevailing defendants is more than procedural and thus inapplicable against non-frivolous § 1983 claims.

The duty to follow federal law’s treatment of attorney’s fees on federal claims holds true even where fee-shifting provisions appear within independent state laws. In *Garedakis v. Brentwood Union Sch. Dist.*, 752 F. App’x 466, 468 (9th Cir. 2018), plaintiffs sued a school district and some of its employees for violations of the ADA and various California laws. The court granted summary judgment for defendants

and awarded them fees under Cal. Civ. Proc. Code § 1038 “on the ground that the state tort claims were ‘not brought in good faith and with reasonable cause.’” *Id.* The Ninth Circuit reversed, holding the defendants could not recover that portion of fees attributable to defending the ADA claims because “[u]nder the ADA, defendants may recover fees only for defending against frivolous claims” and “the district court did not find the ADA claims were frivolous.” *Id.* (emphasis in the original).

Similarly, in *Hubbard*, plaintiffs filed parallel claims under the ADA and the California Disabled Persons Act (CDPA) against restaurant operators. 554 F.3d at 744. The ADA’s fee-shifting provision allows attorney’s fee awards against plaintiffs only if claims are frivolous, but California’s law imposes mandatory fee shifting for both prevailing plaintiffs *and* defendants. *Id.* at 744–45. The district court awarded fees under the CDPA but not the ADA. The Ninth Circuit reversed the award under the CDPA finding “violation of the federal ADA constitutes a violation of the CDPA,” so the federal treatment of fee shifting preempted the state law. *Id.* at 745; *see also Kohler v. Presidio Int’l, Inc.*, 782 F.3d 1064, 1071 (9th Cir. 2015). While this Court “disagree[d] with the Ninth Circuit’s premise, that fees for defending a state law claim are necessarily fees for ADA work if the claims overlap,” it acknowledged federal fee-shifting principles apply to federal claims in state courts. *Jankey v. Lee*, 55 Cal. 4th 1038, 1053 (2012). It held that while the plaintiff “repeatedly describe[d] section 55 as a law imposing fees ‘for’ a nonfrivolous ADA action,” “[s]uch a law *would* be preempted,” because “a state law that provided state court defendants with prevailing party fees for defending against federal ADA access claims ... would, in fact, conflict with federal law.” *Id.* at n. 15 (emphasis in original).

State laws cannot frustrate the substantive role 42 U.S.C. § 1988 plays in protecting constitutional rights. See *Miller v. Bonta*, 646 F. Supp. 3d 1218, 1227–31. (S.D. Cal. 2022). The federal fee shifting structure “encourages the vindication of federal constitutional rights by removing the threat to plaintiffs of an adverse fee award for the government’s attorney’s fees.” *Id.* at 1228. Thus, federal law preempts § 425.16 fee awards in state courts against § 1983 plaintiffs. Like the ADA, federal civil rights claims brought pursuant to § 1983 allow courts to award fees against plaintiffs only if their claims are frivolous, unreasonable, or groundless. *Hughes*, 449 U.S. at 14. And just as state courts cannot rely on Cal. Civ. Proc. Code § 1038 or Cal. Civ. Code § 55 to award fees against plaintiffs advancing federal claims without finding the claims frivolous, courts cannot use § 425.16 anti-SLAPP fee-shifting to award fees against a plaintiff’s § 1983 claim without expressly finding the claim was frivolous, unreasonable, or groundless.

**The Court should grant review because it has not spoken on the issue, and the only published California Court of Appeal decision is diametrically incorrect.**

Review is necessary to clarify the preemptive effect of federal law for § 1983 claims against awards of attorney’s fees to prevailing defendants invoking § 425.16 especially because, while this Court has not considered the issue, one California Court of Appeal has, reaching a result contrary to the protection of expressive rights. In *Patel*, the Second District Court of Appeal held the anti-SLAPP statute applies in its entirety to § 1983 claims in state court, including mandatory fee-shifting against plaintiffs. 48 Cal. App. 5th at 490. Given scant law in the lower courts, review here is critical to correct for how the *Patel* court ruled, as it erred in several respects.

First, the *Patel* court began by erroneously holding that “analysis of whether to apply the anti-SLAPP statute to a federal claim in *state* court begins with the observations that the anti-SLAPP statute is a procedural law, rather than a substantive immunity, and that a forum generally applies its own procedural law.” *Id.* at 487 (emphasis in original) (citations omitted). But California’s anti-SLAPP law has multiple provisions, and while some may be procedural, others are not, so fee-shifting must be considered separately. Though the Ninth Circuit’s application of § 425.16 to state claims in federal court requires a slightly different analysis,<sup>4</sup> it is nonetheless instructive in showing the importance of differentiating between individual provisions within the anti-SLAPP law.<sup>5</sup> Federal courts have applied some provisions of the anti-SLAPP law to state law claims in federal courts, but held that other provisions conflict with federal procedure.<sup>6</sup> Thus, just because some aspects of

---

<sup>4</sup> When considering whether provisions of the anti-SLAPP statute apply to state claims in federal court, the consideration is whether they conflict with federal procedural rules; when contemplating application of those provisions to federal claims in state court, the consideration is whether it would frustrate federal substantive law. See *Nath v. Baylor Coll. of Med.*, No. 01-20-00401-CV, 2022 WL 1038372, at \*9 (Tex. App. Apr. 7, 2022) (citing *Felder*, 487 U.S. at 138; *Rogers v. Bagley*, 623 S.W.3d 343, 353 (Tex. 2021)).

<sup>5</sup> “Procedural state laws are not used in federal court if to do so would result in a direct collision with a Federal Rule of Civil Procedure.” *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 845–46 (9th Cir.2001) (internal quotation marks omitted).

<sup>6</sup> See *Verizon Del., Inc. v. Covad Commc’ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) (“granting a defendant’s anti-SLAPP motion to strike a plaintiff’s initial complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)’s policy favoring liberal amendment”); *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016) (requirement that anti-SLAPP motions be filed within 60 days of the service of the complaint or counter claims “directly collide[s] with the more permissive” timing rule under Rule 56); *Gopher Media LLC v. Melone*, 154 F.4th 696, 702 (9th Cir. 2025) (*en banc*) (orders denying motions to strike under anti-SLAPP statute are not immediately appealable under the collateral order doctrine).

California's anti-SLAPP law are procedural, it does not follow that the entire law is procedural. Moreover, even a state law that "contains a procedural instruction" can have an objective that is "manifestly substantive" leading to significant variations between state and federal judgments. *Gasperini v. Ctr. for Humans., Inc.*, 518 U.S. 415, 429 (1996); *see also U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999).

The question *here* is whether § 425.16 fee-shifting would frustrate federal law such that enforcement of the state law will frequently and predictably produce different outcomes based only on whether the claim is brought in state or federal court. See *Felder*, 487 U.S. at 138. Applying mandatory fee-shifting in favor of defendants who prevail on anti-SLAPP motions against a federal § 1983 claim will produce a result substantially different if the claim is brought in a federal rather than a California court, because "the anti-SLAPP statute is not applicable to...federal claims" in federal court. *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d 1127, 1130 (N.D. Cal. 1999). "Plainly, if the anti-SLAPP provisions are held [to apply in state court but] not to apply in federal court, a litigant interested in bringing meritless SLAPP claims would have a significant incentive to shop for a federal forum. Conversely, a litigant otherwise entitled to the protections of the anti-SLAPP statute would find considerable disadvantage in a federal proceeding." *Lockheed*, 190 F.3d at 973 (explaining why §425.16 should be applied to state claims in federal court). Section 425.16's fee-shifting provision is therefore not procedural, even if other provisions of the anti-SLAPP law are.

Secondly, relying on early state appellate cases construing § 425.16, the *Patel* court held that "[n]othing in section 1983 imposes federal procedural law upon state courts trying civil rights actions." 48 Cal. App. 5th at 488 (quoting *Chavez*, 34 Cal.App.4th at 1413–1414 (1995)). And "[o]n this basis, California courts have held that the anti-SLAPP statute *does* apply to federal section 1983 claims a plaintiff chooses to file in California state court." *Id.* (citing *Bradbury*, 49 Cal.App.4th at 1117–18; *Vergos*, 146 Cal.App.4th at 1392, n. 4. But those early cases are inapposite to the fee-shifting analysis. The court in *Chavez* considered only prerequisites for punitive damage awards on a federal claim brought in state court and did not address fee-shifting in either anti-SLAPP cases or § 1983 cases. *Bradbury* stated the anti-SLAPP law generally applies to § 1983 cases in state court but did not include any analysis involving fee-shifting. 49 Cal.App.4th at 1117–18. It simply ordered the award of fees below but left the lower court to determine which claims were eligible for fees and in what amounts. *Id.* at 1119. And in *Vergos*, where the court assumed the anti-SLAPP law applied to § 1983 claims and awarded fees, *id.* at 1405, there is no indication it considered federal preemption.

The *Patel* court’s reliance on these cases and its ultimate conclusion run directly counter to case law firmly establishing that fee-shifting is substantive. Civil rights plaintiffs “ordinarily cannot afford to” hire a lawyer to bring a case, *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986), let alone pay for the government’s lawyers. Therefore, “Congress enacted § 1988 specifically to enable plaintiffs to enforce the civil rights laws even where the amount of damages at stake would not otherwise make it feasible for them to do so: [F]ee awards have proved *an essential remedy* if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain.” *Id.* at 577–78 (quoting S. Rep. No. 94–1011, p. 2 (1976), U.S. Code Cong. & Admin. News 1976, p. 5910) (emphases added). Congress “enacted the fee-shifting provision as ‘an integral part of the remedies necessary to obtain’ compliance with civil rights laws to further the same general purpose—promotion of respect for civil rights—that led it to provide damages and injunctive relief.” *Evans v. Jeff D.*, 475 U.S. 717, 731 (1986) (quoting S. Rep. No. 94–1011, p. 5 (1976), U.S. Code Cong. & Admin. News 1976, p. 5912) (internal citations omitted). Fee-shifting in civil rights cases—whether in § 1988 or in § 425.16—is accordingly substantive, and the U.S. Supreme Court has made clear that routinely imposing attorney’s fees to defendants “would substantially add to the risks inherent in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement” of section 1983. *Hughes*, 449 U.S. at 15 (quoting *Christiansburg*, 434 U.S. at 422).

Finally, when the *Patel* court shifted its focus to the fee-shifting provision, it ignored California and federal precedent clearly establishing that federal treatment of fee-shifting in § 1983 / § 1988 cases preempts conflicting state law. As stated earlier, federal courts have consistently held defendants are entitled to fees under § 1988 only if a plaintiff’s § 1983 claims are held “unreasonable, frivolous, meritless, or vexatious.” *Allen v. City of Los Angeles*, 66 F.3d 1052, 1058 n.2 (9th Cir. 1995) (quoting *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1402 (9th Cir.1994)). California courts have recognized and followed this understanding regarding § 1988. “The entitlement to section 1988 fees is part of the remedy for section 1983 violations ‘whether the action is brought in federal or state court.’” *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 99 (2015) (quoting *Maine v. Thiboutot*, 448 U.S. 1, 11 (1980)). “Because the entitlement arises under federal law, ‘we follow the federal standard for determining section 1988 issues.’” *Id.* (quoting *Board of Administration v. Wilson*, 57 Cal.App.4th 967, 974 (1997)). California state courts, starting with this Court and all courts inferior to it, must therefore treat the federal regime for preserving civil rights—including, in especially relevant parts here, its approach to fee-shifting—as controlling in applying § 425.16 in § 1983 claims.

**Mandatory fee shifting in favor of government defendants defeats the purpose of the anti-SLAPP statute.**

Review is also justified because fee shifting in favor of government defendants on non-frivolous § 1983 claims in state court violates not only the Supremacy Clause, but the very purpose of California’s anti-SLAPP law itself. The legislature enacted the statute to protect speech and foster public debate. § 425.16(a) (“[I]t is in the public interest to encourage continued participation in matters of public significance” and “participation should not be chilled through abuse of the judicial process.”). As California courts have recognized, failing to achieve success on a civil rights claim “should not automatically entitle a prevailing defendant to fees and costs or otherwise only those plaintiffs with the most airtight cases will risk bringing suit ...” *Cummings v. Benco Bldg. Servs.*, 11 Cal. App. 4th 1383, 1390 (1992) (citing *Christiansburg*, 434 U.S. at 422). “Any other standard would have the disastrous effect of closing the courtroom door to plaintiffs who have meritorious claims but who dare not risk the financial ruin caused by an award of attorney’s fees if they ultimately do not succeed.” *Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro*, 91 Cal. App. 4th 859, 874 (2001). Applied to lawsuits against government defendants alleged to have violated free speech rights, the prospect of those defendants receiving anti-SLAPP fees because their constitutional violations involved communication will mean that “only those plaintiffs with the most airtight” First Amendment claims will proceed. *Cummings*, 11 Cal. App. 4th at 1390.

Here, the trial court held plaintiffs failed to meet their burden of establishing a probability of prevailing on the merits of their claims, but its order granting defendants’ anti-SLAPP motion did not include a finding that plaintiffs’ § 1983 claim was frivolous, unreasonable, or groundless. In their motions for fees, defendants made no distinction between fees incurred defending against plaintiffs’ state law claims and fees incurred defending against their § 1983 claim. Nor did the trial court or California Court of Appeal make any such distinction. Under state law, findings that a claim is frivolous are necessary in order to permit appellate review of fee decisions. See *Cummings*, 11 Cal.App.4th at 1388; *Maria P. v. Riles*, 43 Cal.3d 1281, 1295 (1987). The award of fees, and the imposition of sanctions for daring to appeal that award, are infirm for that reason alone. But to settle the law in this area, where this Court has not previously ruled on whether federal preemption prohibits mandatory fee shifting against plaintiffs bringing § 1983 claims in state court, it should grant review to clarify the issue, answer that question in the affirmative, and provide guidance not only for remand here, but to all state courts for future § 1983 cases in state courts where defendants invoke § 425.16.

Document received by the CA Supreme Court.

## Conclusion

For the reasons stated herein, FIRE urges the Court to grant the petition for review in order to consider arguments on whether federal preemption prohibits state courts from ordering plaintiffs advancing non-frivolous claims pursuant to § 1983 to pay attorney's fees to defendants who prevail on special motions to strike under California's anti-SLAPP law.

Respectfully submitted,



---

D Gill Sperlein  
Amicus Attorney  
Foundation for Individual  
Rights and Expression

Document received by the CA Supreme Court.

**CERTIFICATE OF SERVICE**

The undersigned declares as follows: I am a citizen of the United States and employed in the County Sonoma, State of California. I am over the age of 18 and not a party to the within action; my business address is:

The Foundation for Individual Rights and Expression  
510 Walnut Street, Suite 900  
Philadelphia, PA 19106  
[gill.sperlein@FIRE.org](mailto:gill.sperlein@FIRE.org)

On this date, I served the foregoing documents described as:

**Amicus Letter in Support of Petition for Review in  
G.W., et al. v. Coronado Unified School District, et al.  
Supreme Court of California Case No. S293866**

on the interested party(ies) listed below in this action as follows:

<p>Tracy L. Henderson, Esq. <a href="mailto:tlhlaw@protonmail.com">tlhlaw@protonmail.com</a> Law Offices of Tracy L. Henderson P. O. Box 221562, Carmel CA 93922</p> <p>Ryan Heath <a href="mailto:ryan.heath@thegavelproject.com">ryan.heath@thegavelproject.com</a> The Gavel Project 4022 E. Greenway Road #11-139 Phoenix, AZ 85253</p> <p>Attorneys for Petitioners</p>	<p>Erin N. Brandt <a href="mailto:ebrandt@wpgch.com">ebrandt@wpgch.com</a> Randall Winet <a href="mailto:rwinet@wpgch.com">rwinet@wpgch.com</a> Winet Patrick Gayer Creighton &amp; Hanes 1215 W. Vista Way Vista, CA 92083</p> <p>Attorneys for Respondents</p>
--	--

**BY ELECTRONIC MAIL:** By electronically serving the document(s) to the electronic mail address set forth above on this date and by e-filing through TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 12, 2025



\_\_\_\_\_  
D Gill Sperlein

Document received by the CA Supreme Court.