

No. _____

IN THE
Supreme Court of the United States

STEVE WYNN,

Applicant,

v.

THE ASSOCIATED PRESS; AND REGINA GARCIA CANO,

Respondents.

**APPLICATION TO THE HON. ELENA KAGAN FOR AN
EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEVADA**

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Pursuant to Rule 13.5 of the Rules of this Court, and 28 U.S.C. § 2101(c), Applicant Steve Wynn (“Wynn”) respectfully requests a 58-day extension of time, to and including January 31, 2025, within which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Nevada in this case. Wynn reached out to Respondents, who stated that they did not oppose this Application to the Honorable Elena Kagan for an Extension of Time to File a Petition for a Writ of Certiorari to the Supreme Court of Nevada.

1. The Supreme Court of Nevada issued its decision on February 8, 2024. *Wynn v. Associated Press*, 542 P.3d 751 (Nev. 2024); App. 2a-16a. Applicant timely filed a petition for en banc reconsideration. The court granted the petition, withdrew the February 8 opinion, and issued its en banc decision on September 5, 2024. *Wynn v. Associated Press*, 555 P.3d 272 (Nev. 2024); App. 18a-32a. Unless extended, the time to file a petition for certiorari will expire on December 4, 2024. This application is being filed more than ten days before a petition is due. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257.

2. In January 2017, Respondent Regina Garcia Cano (“Garcia Cano”) joined Respondent the Associated Press’s (“AP”) (collectively, “Respondents”) Las Vegas Bureau. In February 2018, after a local Las Vegas newspaper published an article stating that the Las Vegas Metropolitan Police Department had taken two complaints from two women who accused Wynn of sexual misconduct in the 1970s, Garcia Cano submitted a public records request for both complaints. App. 20a. A few days later, on February 27, 2018, Garcia Cano obtained copies of the two complaints. *Id.* One complaint weaved a fantastical tale of an alleged “rape[]” that “result[ed] in a

pregnancy and the birth of a child in a gas station bathroom under unusual circumstances.” App. 20a-21a; *see also* App. 34a-35a.

3. Garcia Cano recognized the absurdity of that citizens’ complaint. As she told her supervisor at the time, “One of them is crazy.” App. 37a. But this absurdity did not cause Respondents to hesitate—within an hour of obtaining the citizens’ complaints, they published an article accusing Wynn of “Rape” without (1) factchecking the allegations, (2) investigating the allegations, or (3) reaching out to Wynn for a comment prior to publication. Troublingly, the article sanitized the citizens’ complaints by omitting the “crazy” details. *See* App. 39a.

4. After Respondents refused to retract the defamatory article, Wynn brought a defamation claim against Respondents. Respondents brought an anti-SLAPP special motion to dismiss, which the district court granted after concluding, with minimal explanation, that Wynn failed to show actual malice. App. 41a-45a.

5. On appeal, a panel of the Nevada Supreme Court affirmed, applying—for the first time—*New York Times v. Sullivan*’s¹ clear-and-convincing-evidence actual malice standard to the second step of the anti-SLAPP analysis. App. 3a-4a. The panel rejected Wynn’s argument that applying that standard would violate his right to a civil jury trial. App. 11a-12a. While the panel acknowledged that other state courts of last resort had reached a contrary conclusion, it did not meaningfully address those holdings or the many recent criticisms of *Sullivan*. *See id.* Troublingly, the panel explicitly weighed evidence despite the fact that this was merely a special motion to dismiss. App. 14a.

¹ 376 U.S. 254 (1964).

6. After the panel denied rehearing, Wynn timely petitioned for en banc reconsideration, asserting that the panel's opinion violated his right to a civil jury trial under both the Seventh Amendment and Nevada's Constitution. Wynn also contended that the panel inserted the constitutionally dubious *Sullivan* standard into Nevada's anti-SLAPP statutes.

7. Over Respondents' opposition, the Nevada Supreme Court "considered the petition for en banc reconsideration in the matter, as well as the response thereto," "determined that reconsideration is warranted," and "granted" Wynn's petition for en banc reconsideration. App. 19a. However, the en banc opinion issued was virtually identical to the panel's opinion, with some minor cosmetic changes. *Compare* App. 18a-32a, *with* App. 2a-16a.

8. The en banc court reaffirmed its prior *Sullivan*-based holding that public-figure plaintiffs must present "sufficient" evidence "for a jury, by clear and convincing evidence, to reasonably infer that the publication was made with actual malice." App. 20a. The en banc court also concluded that such a standard does not violate Wynn's right to a civil jury trial. App. 27a-29a. And just like the panel, the en banc court did not address the contrary conclusions from the highest courts of other states or the growing consensus that *Sullivan* was wrongly decided. *See id.* On the merits, the en banc court recognized that "the only element [of Wynn's defamation claim] reasonably in controversy on appeal is Wynn's ability to establish actual malice." App. 25a.

9. Relying on its heavily sanitized version of the citizens' complaints, the en banc court concluded that Wynn showed only evidence that Respondents "held *some*

doubt,” but not “*serious* doubt” about the truth of the complaint’s “clearly delusional” allegations. App 31a (emphases in original).

10. This case presents a clean vehicle to address several critical issues. First, as the actual-malice determination was the only determination “reasonably in controversy,” and that the actual-malice standard does not have an independent state-law ground in Nevada (having arisen solely from this Court’s decision in *Sullivan*) this case presents a clean vehicle for this Court to revisit *Sullivan*—as several Justices have called for. Second, should this Court decline to revisit *Sullivan*, this case presents a clear vehicle to address whether the Seventh Amendment is incorporated against the States and whether the application of the *Sullivan* standard in anti-SLAPP motions to dismiss violate the Seventh Amendment right to a civil jury trial.

11. Pursuant to Supreme Court Rule 29.4(c), 28 U.S.C. § 2403(b) may apply, and this document shall be served on the Attorney General of the State of Nevada.

12. For these reasons, Applicant requests an order extending the time to file a petition for certiorari to and including January 31, 2025.

Respectfully submitted,



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