In the

Supreme Court of the State of Nevada

DAPHNE WILLIAMS,

Defendant-Appellant,

vs.

CHARLES "RANDY" LAZER,

Plaintiff-Respondent.

Supreme Court No. 80350

Appeal from the
Eighth Judicial District Court
for Clark County, Nevada

District Court Case No.
A-19-797156-C

APPELLANT'S PETITION FOR REVIEW

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Appellant Daphne Williams is an individual, and thus there is no parent corporation or publicly held company that owns 10% or more of her stock.

2. The following law firm represented Appellant in the district court proceedings leading to this appeal and represents Appellant in this appeal:

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No other law firm is expected to appear on Appellant's behalf in this appeal.

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1.0 Introduction

The Order of the Court of Appeals affirming the District Court's denial of Appellant's Anti-SLAPP Motion is indefensibly wrong. It ignores the Anti-SLAPP statute, this Court's precedents, and even the primary argument of Williams's briefing. It does so to give preferential treatment to a white man who brought a frivolous defamation claim against a black woman.

Though it did not say so outright, the Court of Appeals concluded that Williams was lying when she said that she subjectively believed Lazer was racist, sexist, unprofessional, and unethical. To reach this point, the court misrepresented the record, selectively quoted Williams to tell *her* what *she* actually meant to say, dismissed her lived experience of what she believed was racist and sexist behavior, and imputed to her a full technical knowledge of NRED regulations. The Court of Appeals is so wrong on every point of law and fact that this Court must correct the lower court's mistakes and clarify that no, Nevada's Anti-SLAPP jurisprudence did not make an abrupt 180-degree turn.

NRAP 40B(a) provides that "[a] party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court." In exercising its discretion to review a Court of Appeals decision, the Supreme Court may consider "(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or (3) Whether the case involves fundamental issues of statewide public importance." *Id*.

The Order of the Court of Appeals conflicts with several decisions of this Court and the U.S. Supreme Court regarding the "good faith" requirement of the first prong of the Nevada Anti-SLAPP statute's analysis, whether a statement is one of fact or opinion, and what defenses may be considered in deciding an Anti-SLAPP motion. This case also involves fundamental issues of statewide public importance, namely the limits of Nevada's absolute litigation privilege and when defendants may rely on the protections of Nevada's Anti-SLAPP statute. The importance of these issues is heightened by the numerous fundamental errors made by the Court of Appeals.

2.0 The Order of the Court of Appeals Conflicts with this Court's Decisions Regarding the "Good Faith" Requirement of NRS 41.637

A special motion to dismiss under NRS 41.660 requires a two-step analysis. First, the moving party must show that her statements fall under at least one category of conduct outlined in NRS 41.637 and that her statements are made in "good faith." SLAPP plaintiffs often attempt to end the inquiry at prong one by making the argument that "since the plaintiff did something **bad**, that can't be **good faith**." This kind of argument makes it clear that the litigants do not understand the law. The law makes it very clear that "good faith" means statements that are "truthful or made without knowledge of [their] falsehood." If the moving party makes this showing, the non-moving party must make a showing with *prima facie* evidence that he has a probability of prevailing on his claims. NRS 41.660(3)(b).

The most egregious error in the reasoning of the Court of Appeals is immediately apparent and requires reversal by this Court. It ignored that "good faith" under the Anti-SLAPP statute is found where a defendant makes a statement **without knowledge of its falsehood**. This is properly considered an "*actual malice plus*" requirement where

subjective motives or even doubts as to truth or falsity are irrelevant. The only way a statement is not made in "good faith" under the Anti-SLAPP statute is if the defendant was **lying** when they made it. If the defendant was mistaken, that is still "good faith." If the defendant was reckless, that is still "good faith." If the defendant was hypersensitive, that is still "good faith." And *perhaps* one could be forgiven for thinking Ms. Williams was all three – but there is no way to forgive a decision that states that Ms. Williams must have known her statements were false.

Multiple decisions from this Court over the past year have made this abundantly clear. *See Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019) (noting that proving "good faith" under Anti-SLAPP analysis is a "far lower burden than the [public figure] plaintiff must meet to prevail on his defamation claims, which require a showing of 'actual malice'");[1]

[1] The disparate treatment between the defendant in *Tarkanian* and Williams here is especially galling. Jacky Rosen did not even provide a declaration or any other evidence of her subjective belief in the truth of her statements, yet this Court drew several inferences and weighed competing evidence in her favor to determine she made her statements in good faith. Here, Williams provided multiple declarations testifying directly to the issue of good faith, which Lazer never rebutted, yet the Court of Appeals found this inadequate. Indeed, as explained below, the Court of Appeals even went so far as to invent new arguments in support of Lazer. Either the Court of Appeals got it wrong or senators receive extra, unwritten protections under the Anti-SLAPP statute.

Stark v. Lackey, 458 P.3d 342, 347 (Nev. 2020) (finding that "an affidavit stating that the defendant believed the communications to be truthful or made them without knowledge of their falsehood is sufficient to meet the defendant's burden absent contradictory evidence in the record"); *Abrams v. Sanson*, 458 P.3d 1062, 1068-69 (Nev. 2020) (finding that statements of opinion can never be made with knowledge of falsity for purposes of "good faith" analysis); *Taylor v. Colon*, 2020 Nev. LEXIS 48 (Nev. July 30, 2020) (finding that declaration from defendant testifying that he made statements without knowledge of falsity was sufficient to establish good faith, even when parties disputed what statements he made). The Court of Appeals was aware of these authorities; it even cited most of them. It simply ignored them.

Williams's Opening and Reply briefs repeatedly argued that she made her statements in good faith because she did not have actual knowledge any of her statements were false. (Opening Brief at 36-55; Reply Brief at 6-22.)[2] The Court of Appeals misrepresented this argument, claiming that Williams only argued her statements were false

[2] These pages from Williams's briefs are not cited to incorporate their contents by reference, but rather to show that Williams very clearly made this argument, yet the Court of Appeals ignored it.

or expressions of opinion. (Order at 6.) Williams did argue that her statements that Lazer was racist, sexist, unprofessional, and unethical were expressions of opinion that were, by definition, made in good faith. She then went on to address every single complained-of statement and explain that she did not make any statement with knowledge of its alleged falsity.

Specifically, the Court of Appeals found that Williams's claim of that Lazer was unethical in engaging in *ex parte* conversations with a property appraiser is not supported by the record. (Order at 8.) It reasoned that Williams failed "to provide proof, or any details, of this conversation," and that Nevada law allows realtors to communicate with appraisers. (*Id*.) This ignores the record. Williams testified that she spoke to an NRED employee who told her Lazer was not supposed to engage in this conduct. (II-AA 270, ¶12.) As Williams was a party to this conversation and testified as to its contents, she provided admissible evidence of it. Lazer never made an evidentiary objection to Williams's declaration, but the Court of Appeals decided to act as his counsel and

both make and rule on this objection, ignoring the record to do so.[3] And apparently, the NRED rules do allow *ex parte* communications with property appraisers. How was Ms. Williams to know that? She is not a real estate agent, and even members of the Bar would be surprised to know that there is no restriction on a realtor having an *ex parte* conversation with a property appraiser prior to a sale – since the appraisal should be objective.

The Court also, bizarrely, found that Williams was required to prove that Lazer was ethically obligated to provide her a receipt for her earnest money deposit. (Order at 8, n.5.) This is wrong; Williams's statement in the NRED complaint was that Lazer did not provide her a receipt, which Lazer admitted he did not. (I-AA 238-239, ¶29.) The decision of the Court of Appeals to transform this statement into something else simply because it disagreed with Williams's conclusion is inexplicable.

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[3] The court also acted as Lazer's counsel in citing NRED 645C.557(3) to support one of Lazer's arguments, despite him never citing this, or any other authority, to support his argument he was permitted to speak to the appraiser. Meanwhile, it is most certainly reasonable for Ms. Williams to have presumed that an ex parte communication with the appraiser would be unethical – even if under the actual rules it is not.

In any event, the court's discussion here completely overlooks that Williams was only required to prove that she subjectively believed Lazer was acting in an unethical or unprofessional manner. She established this through her declaration, which Lazer never rebutted. (II-AA 270, ¶12 and 273-274, ¶¶35-37.) Further, the NRED agreed with her opinion, at first. (II-AA 416-421.) The Court of Appeals apparently implies that not only did Williams knowingly lie about her understanding of NRED regulations, but apparently the NRED itself also lied, since it agreed with her. It is impossible that Williams *knew* her conclusions were false given that the NRED had to go through an appeal to come to that conclusion.

The Court of Appeals also found that Williams did not provide adequate evidence to support her claim that Lazer *was* racist or sexist, noting that Lazer's comment that he *hoped Williams would be successful one day* did not demonstrate racism or sexism. (Order at 9.) This is irrelevant; Williams was not bringing a claim for racial or sexual discrimination. Williams did not seek to prove Lazer was actually racist or sexist **because these are matters of opinion, not fact**. What Williams did do is prove that she did not make these statements with knowledge of their falsity. Her declaration establishes that she believed

all the statements in the NRED complaint were true or matters of opinion (II-AA 269, ¶6 and 273-274, ¶¶35-37). Again, Lazer never rebutted this, instead choosing to speculate and make unsupported attorney argument that Williams could not possibly have thought he was racist or sexist.

But even in articulating this faulty reasoning, the Court of Appeals compounded its mistake by not reviewing the record. On June 27, 2017, Lazer sent an email to Bryan Jolly, Williams's loan officer, who also happens to be black. This email was in response to Williams sending Lazer a text message accusing him of racism and sexism. (II-AA 382-383.) Lazer took it upon himself to tell Jolly "**I also play and write jazz, which is truly at the very heart of black/African culture**, and I have an incredible love and respect for that." (II-AA 382) (emphasis added.) A white man responding to allegations of racism by saying how much he likes black culture or has black friends is a stereotypically racist response. "I can't be racist because I play jazz" is so shockingly racist that if "racist" is capable of being objectively true or false, it is proven by this record.

It is also worth noting that, in this email, Lazer stated multiple times he would seek criminal prosecution against Williams for these

statements that, at the time, had not been published to third parties. (II-AA 382-83.) Jolly, a black man who had not accused Lazer of anything, saw this email as "odd, uncalled for, and extremely unprofessional." (II-AA 345-346, ¶ 16.) After Williams filed her NRED Complaint, Lazer also began to stalk and harass her, *over allegations of racism*, such that he tried to get her fired and made her and her mother fear for her safety. (II-AA 274-275, ¶¶34, 39-40; II-AA 300, ¶¶8-9.) Again, the inquiry here is not whether Lazer is actually racist or sexist, but if it were, the Court of Appeals ignored significant portions of the record to reach its preferred conclusion.

The Order of the Court of Appeals directly contradicts both the plain language of the Anti-SLAPP statute and the entire body of this Court's Anti-SLAPP jurisprudence. This alone requires reversal, but there are other errors the Court must also address.

3.0 The Order of the Court of Appeals Conflicts with Decisions of this Court and the United States Supreme Court Regarding Whether a Statement is One of Opinion

A statement of opinion cannot be false or defamatory, as the First Amendment recognizes that there is no such thing as a "false" idea. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714 (2002); *see also Gertz*

v. Robert Welch, Inc., 418 U.S. 323, 339 (1974). An "evaluative opinion" cannot be false or defamatory, either. *See PETA v. Bobby Berosini, Ltd.*, 11 Nev. 615, 624-25 (1995) (finding that claiming depictions of violence towards animals shown in video amounted to "abuse" was protected as opinion). Such an opinion is one that "convey[s] the publisher's judgment as to the quality of another's behavior, and as such, it is not a statement of fact." *Id*. at 624. To determine whether a statement is one of protected opinion or an actionable factual assertion, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Pegasus*, 118 Nev. at 715. This Court has recognized that a statement of opinion ***cannot be made with knowing falsity*** for purposes of the "good faith" inquiry. *Sanson*, 458 P.3d at 1068.

The Court of Appeals found that Williams's allegations of racist, sexist, unethical, and unprofessional behavior are statements of fact, rather than statements of opinion. Its rationale is that, because Williams filled out a form provided by NRED, which had a heading of "statement of fact," she must have intended every statement therein to be a statement of verifiably true or false fact. (Order at 9.) This is, with all

due respect, utter nonsense not supported by any authority. In fact, it is so bizarre that one must ask where the Court of Appeals cooked it up. By that rationale, if Ms. Williams had stated that Mr. Lazer was "ugly" or "pretty," "short" or "tall," or "mean" or "nice," then those clear opinions would be magically transmuted into statements of fact. This is linguistic alchemy, not reality.

The name of a government form has no bearing on the First Amendment inquiry of whether a statement is one of opinion. The Court of Appeals otherwise failed to address or distinguish any of the case law in Williams's briefing that her statements are expressions of opinion. It now falls to this Court to correct the Court of Appeals and affirm that a statement of opinion is not magically transformed into one of fact simply because of the title of a pre-populated form.

The Court of Appeals also interpreted Williams's declaration in support of her Anti-SLAPP motion as admitting that every statement in the NRED Complaint was a factual representation because she stated "… *I believed every statement I made in the NRED Complaint to be true. At this time, even upon review, I have no doubt as to the veracity of the statements I made*." (Order at 9-10) (emphasis added.) This is not even

remotely a reasonable interpretation of Williams's declarations because, in the same paragraph, she testified that *"[n]ever at any time have I doubted the truth of the statements I made. They are all either completely true facts or* ***they are my reasoned opinion based upon my experience with Plaintiff****."* (II-AA 274, ¶36) (emphasis added.) This selective and misleading quoting from the evidentiary record is a glaring error.

The court also reasoned that Williams's statements are of fact, rather than opinion, because the NRED Complaint "*appears to have been meant to have Lazer viewed in contempt by the NRED, which is a statement of fact per Pegasus*." (Order at 10) (emphasis added.) No it is not. The only case the Court of Appeals cites in the opinion analysis is *Pegasus*. Specifically, it claims that "[a] statement is, however, a defamatory statement of fact if it 'would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.'" (Order at 7) (quoting *Pegasus*, 118 Nev. at 714). This is a misstatement of *Pegasus* that conflates two distinct questions; the quoted language only concerns whether a statement is of a defamatory nature, not whether the

statement is one of fact. These are separate inquiries. Calling someone a "fool" is not factual simply because it insults someone or harms their reputation. There still must be a false statement of fact – and in this case, there was an opinion along with the basis for that opinion. (*See* II-AA 267-275.)

It is inexplicable that the Court of Appeals engaged in this inquiry at all. As noted in Williams's Reply Brief, **Lazer admitted Williams's statements were expressions of opinion**. (Reply at 9; Answering Brief at 23 [admitting "… the terms racist or sexist may, in and of themselves, be **statements of opinion** …."], 24 [admitting "… these claims of racism and sexism **are opinions**"], 61 [referring to the "**flagrantly unreasonable opinions** contained in Appellant's Statement of Fact ….") (emphasis added.) He made no argument either at the district court or on appeal responding to the voluminous case law Williams provided that her statements were expressions of opinion. Yet the Court of Appeals decided to invent new, unsubstantiated arguments out of whole cloth. The Nevada Supreme Court must make it clear that the Court of Appeals' conduct and reasoning are not acceptable.

The Court of Appeals also stated that "Williams made her complaint to the NRED immediately after Lazer insisted she retract her statements of racism, sexism, and unethical conduct, and apologize to him," and thus her complaint "could have been motivated by several factors including retaliation or to intimidate Lazer so he would not sue her as he threatened." (Order at 9 n.7.) It then stated that the question of motivations "cannot be answered without discovery and inquiry." (Order at 10 n.7.) This is false, as Williams testified that she "*did not file the NRED Complaint to gain any kind of advantage against Plaintiff or in a transaction involving him. Instead, I wanted to inform the NRED of his behavior which I observed first-hand and subjectively found to be racist, sexist, unprofessional, and unethical.*" (II-AA 274, ¶37) (emphasis added.) This is the only record evidence concerning Williams's motivations. The Court of Appeals also misses the entire point of the Anti-SLAPP statute. The statute automatically stays discovery, meaning denying a motion due to lack of discovery is not appropriate. NRS 41.660(4). A plaintiff may obtain limited, specified discovery upon a sufficient showing, but Lazer neither sought nor received such discovery.

More fundamentally, there is no explanation in the Order as to why Williams's motivations are relevant to the prong one inquiry. A defendant's motivations are completely unrelated to whether a statement is made in "good faith" under NRS 41.637. "Good faith" only looks at truth or knowledge of falsity. Presumably, this is an oblique reference to the five "guiding principles" for the prong one inquiry laid out in *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957 (N.D. Cal. 2013) and adopted by Nevada in *Shapiro v. Welt*, 389 P.3d 262 (2017). One of these principles is that "the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy." *Welt*, 389 P.3d at 268. This analysis, however, is only relevant to whether a statement deserves protection under NRS 41.637(4). *Id*. at 267-68. Williams's statements fall under NRS 41.637(1)-(3), as they were made to a government agency, the NRED, for the purpose of having the NRED take action against Lazer. Her motivations for doing so do not affect the "good faith" inquiry.

The Order of the Court of Appeals thus also conflicts with the precedents of the Nevada and U.S. Supreme Court concerning whether a

statement is one of opinion, and the relevance of one's motivations to the prong one analysis.

4.0 The Court of Appeals Had No Business Deciding Williams Subjectively Did Not Believe Lazer Was Racist and Sexist

Due to the Court of Appeals choosing to ignore a significant portion of the Anti-SLAPP statute, it avoided outright saying the most heinous necessary finding in its Order, that Williams lied when she said she believed Lazer was racist, sexist, unprofessional, or unethical. The closest the court comes to articulating its reasoning is stating "[t]here is no evidence in this limited record to indicate that Lazer made any remarks about Williams's race or gender," and Lazer's statement that he hoped Williams would be successful one day "does not demonstrate racism or sexism." (Order at 9, n.6.) The court's position appears to be that only racial epithets can be racist, which is obviously, demonstrably wrong, as explained in Williams's Briefing. (Opening Brief at 45, n.17.)

Williams explained the concept of "microaggressions" in her briefing, offensive and harmful statements and conduct that express racist or sexist biases without being as explicit as pulling out the epithet thesaurus. If this is actually a foreign concept to the Court of Appeals or this Court, there is plenty of other writing on the subject. (*See, e.g.,*

Michelle Singletary, "Racial microaggressions take a major toll on Black Americans," THE WASHINGTON POST (Dec. 4, 2020), attached as **Exhibit 1**.)[4] It takes little imagination to understand how context can make a statement appear racist. For example, calling a white man "articulate" is innocuous; calling a black man "articulate" is frequently loaded with racist assumptions. For the Court of Appeals to find that Williams was not just wrong about Lazer being racist, not just unreasonable, but actually **lying** about it, based on no more than the lack of Lazer calling Williams a recognizable epithet, is distressing, to say the least. The Court of Appeals has done a magnificent job of demonstrating the concept of institutional racism – showing that a system can be "color blind" to the extent that perhaps it lacks any empathy or understanding of people of color.[5]

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[4] Available at: https://www.msn.com/en-us/news/us/racial-microaggressions-take-a-major-toll-on-black-americans/ar-BB1bCZNn (last accessed Dec. 28, 2020). This article is attached as an exhibit merely for convenience, not because Williams wishes to add evidence to the record.

[5] California attorneys are required to take CLE credits to help eliminate bias in the profession. California MCLE Rule 2.72(A)(2). Starting after January 2023, California attorneys will also be required to complete CLE hours on implicit bias. California AB-242 (Oct. 2, 2019).

If the Court would like to experiment with this, it compliment a Black man on "spending time with his kids," or say to him "you are just so articulate," and watch how he reacts. Ask him how he feels. Then, come back to the transcript of what you said and claim that you said nothing racist. One might think that something so innocuous as "articulate" is not racist, but it packs all the racist punch of a verbal Confederate flag.

5.0 The Order of the Court of Appeals Conflicts with Decisions of this Court Regarding What Defenses May be Considered in Deciding an Anti-SLAPP Motion

Though it does so in dicta, the Order of the Court of Appeals concludes with staggeringly wrong statements about the second prong of the Anti-SLAPP analysis that must be corrected. It states that the litigation privilege "would apply only to Lazer's defamation and business disparagement claims where 'unprivileged publication' is an element of each cause of action." (Order at 11 n.9.) It further implies that the litigation privilege is somehow an issue that must be considered separately from an Anti-SLAPP motion, citing *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726-27 (2018) and *Welt*. The Court of Appeals here appears to have accepted an argument Lazer waived by not raising it at the district

court yet made in his Answering Brief. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52 (1981).

Procedural impropriety aside, it is plainly wrong. As Williams argued in her Reply Brief, a subsequent decision in the *Welt* case shows that affirmative defenses such as privilege may be considered in deciding an Anti-SLAPP motion. *Shapiro v. Welt*, 2018 Nev. Unpub. LEXIS 1202, *11-12 (Nev. Dec. 27, 2018) (reversing and remanding grant of Anti-SLAPP motion on grounds that district court did not properly apply litigation privilege). If this were not the case, the Anti-SLAPP law could not function no matter how obvious the affirmative defense might be. If that remains the case, then the Anti-SLAPP law cannot even consider actual malice in public figure defamation actions.

California, whose Anti-SLAPP law we follow, has found that affirmative defenses such as privilege may be considered in deciding an Anti-SLAPP motion. *See, e.g., Feldman v. 1100 Park Lane Associates*, 160 Cal. App. 1467, 1485 (2008) (holding that "[t]he litigation privilege is 'relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing'") (quoting *Flatley v. Mauro*, 38 Cal. 4th 299,

323 (2006)). This decision is incorporated into Nevada's Anti-SLAPP statute by operation of NRS 41.665(2), which defines a plaintiff's burden under the prong two analysis as the same as a plaintiff's burden under California's statute. Whether or not Nevada courts have "traditionally" considered privilege defenses in deciding an Anti-SLAPP motion, the plain language of the statute and unambiguous California case law require Nevada courts to consider them.

Whether an unprivileged publication is an element of a claim is also irrelevant. The litigation privilege is absolute; it shields a speaker from all liability, regardless of motivations, malice, or knowing falsity, not merely liability for causes of action that happen to mention privilege in their elements. *Jacobs v. Adelson*, 325 P.3d 1282, 1285 (Nev. 2014). "Though the privilege originally formed as a defense to defamation, it has been expanded to cover a variety of torts.'" *Allstate Ins. Co. v. Belsky*, 2018 U.S. Dist. LEXIS 162318, *8 (D. Nev. Sept. 21, 2018); *Lebbos v. State Bar*, 165 Cal. App. 3d 656, 667 (1985) (noting that litigation privilege applies to claims including, *inter alia*, intentional infliction of emotional distress and negligence).

This Court, for example, in *Lewis v. Benson*, 101 Nev. 300, 301 (1985) found that a privilege for citizen complaints against police officers shielded the complainant from liability against an intentional infliction of emotional distress claim (Lazer's fourth claim for relief), despite IIED making no mention of an unprivileged publication in its elements. An Anti-SLAPP motion is treated as a motion for summary judgment, and the moving party may prevail on a special motion to dismiss by establishing a privilege just as she may do so on a summary judgment motion. Accepting the reasoning of the Court of Appeals would mean that standard defenses, such as the statute of limitations running, could not be considered on an Anti-SLAPP motion. It would also encourage artful pleading by plaintiffs to avoid Anti-SLAPP liability merely by omitting causes of action that have an unprivileged publication as an element, disguising a defamation claim as something else.

The Order of the Court of Appeals thus conflicts with the precedents of this Court regarding what defenses may be asserted in an Anti-SLAPP Motion. It is particularly important that this Court correct this error of the Court of Appeals, as failing to do so could neuter Nevada's Anti-SLAPP statute.

CONCLUSION

Ms. Williams and the people of Nevada deserve better. This Court should reverse the Order of the Court of Appeals.

Dated: December 28, 2020.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

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Attorneys for Appellant

CERTIFICATION OF ATTORNEY

1. The undersigned has read the petition for review of Defendant/Appellant Daphne Williams;

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 petition for review complies with the content and formatting requirements of Rule 40B(d) and the type-volume limitations stated in Rule 32(a)(7). Specifically, the brief was written in 14-Point Century Schoolbook font, and the petition is 4,634 words as counted by Microsoft Word.

Dated: December 28, 2020. /s/ Marc J. Randazza
Marc J. Randazza

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December 2020, a true and correct copy of the foregoing Appellant's Petition for Review was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Respectfully Submitted,

/s/ Heather Ebert
Employee,
Randazza Legal Group, PLLC

EXHIBIT 1

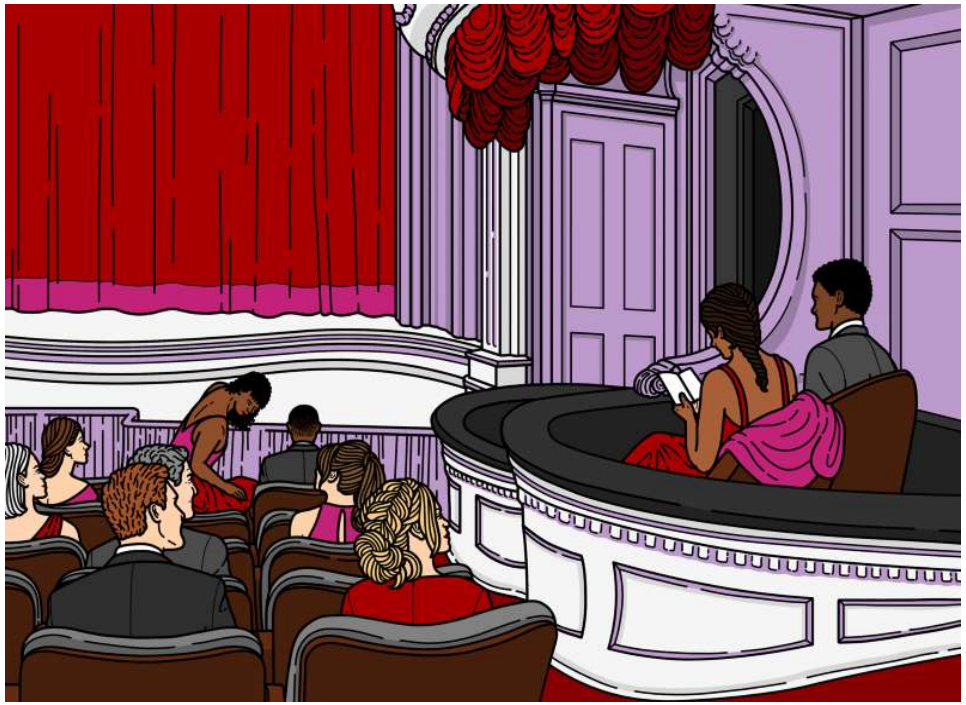
"Racial microaggressions take a major toll on Black Americans," The Washington Post (Dec. 4, 2020).

The Washington Post

Racial microaggressions take a major toll on Black Americans

Michelle Singletary 12/4/2020

Dear Reader,



I can’t do my two favorite things right now — traveling and attending the theater with my family — because of the coronavirus. But when I can do these activities again, I have a simple request for White vacationers and theatergoers: Please stop staring at us. Don’t compliment us for doing what comes naturally.

A while ago, my family was vacationing at a resort in Orlando. My husband was tossing our three young children around in the pool, to their audible delight. I was sitting nearby on a lounge chair, reading a book. There were other parents in the water playing with their children as well.

Sincerely, Michelle In a 10-part series, Michelle Singletary gets personal about common misconceptions involving race and inequality.

After another shriek of laughter from my kids, I looked up and saw a White man, perhaps in his mid-60s, splashing toward my family. He waded up to my 40-something husband and said, loud enough for me to hear as well: "You have such a nice family. It's so nice to see you playing with

your children."

My husband and I shared a glance. He could see me getting steamed. I wanted to say something about this man's offensive statement, but my husband just shook his head and mouthed, "Let it go."

If you're a Black person or a person of color, you understand why I was so angry.

If you're confused, let me explain why the compliment wasn't well received.

This White man felt duty-bound to congratulate my husband for playing with our Black children as if it were an anomaly. He didn't praise the White fathers spending time with their kids. No, he wanted my husband to know that he was proud of him for, in his mind, contradicting the stereotype of the absentee Black father.

But "most black dads are not absent," writes Josh Levs in "All In: How Our Work-First Culture Fails Dads, Families, and Businesses — and How We Can Fix It Together." Although Black children are more likely to have unmarried parents, this doesn't mean they are fatherless, Levs points out.

Even when Black fathers don't live with their children, they are more involved than White fathers in helping their children with homework, according to a study by the Centers for Disease Control and Prevention. And among the Black fathers who do live with their children, a higher percentage of them bathe, dress or diaper their kids compared with White dads, the study found.

So I'm sure that, while the White man at the pool had good intentions, he didn't recognize that what he said was insulting and biased.

We were on our way to a family vacation in Aruba. ... A White man standing behind us said: 'I don't think you are in the right line. This is for TSA PreCheck.' He didn't take it upon himself to question other travelers. Just us. The only Black folks in the queue.
Pre-pandemic, it was infuriating when White folks stared as our family showed up at five-star resorts or hotels. It was as if they were trying to figure out how we could afford to vacation with them. As we moved about the properties, some asked my big, hulking husband if he was an athlete. Or they asked what we did for a living — out of the blue, with no relationship established to justify such brazenness. For the record, we live frugally throughout the year so that we can afford treats like this.

We typically keep such incidents to ourselves. We wouldn't want to be accused of being "too sensitive."

But this happens too often.

I'm still bothered about the White woman who asked me how we got our front-row seats to a multiracial performance of "Oklahoma!" at Arena Stage in D.C.

It was intermission. I chose to stay seated to read the Playbill.

The woman, sitting a few rows back, moved down, tapped me on the shoulder and said: "Wow, you have great front-row seats. Do you have a relative in the cast?"

There were several White theatergoers parked along the front row — right next to me. But she didn't ask any of them if they were related to someone in the play who comped their seats.

I wanted to say, "Heifer, I purchased my ticket, just like you."

I wouldn't have actually called her that name, that would be rude, but I wanted to school that woman on why her question was offensive.

The message she was sending was that my husband and I couldn't have afforded our orchestra seats, being Black and all. It might have surprised her to know that we are season-ticket holders at Arena Stage and we pay extra for premium seating. (We even add on the dinner and parking package.)

It wasn't the first time we were made to feel out of place. Often, when we attend a non-Black production, we get stares from some White patrons who seem to be thinking, "They know this isn't an August Wilson play, right?"

It's the White customer who assumes a Black shopper at a luxury boutique is a clerk. Or a salesperson in Zurich redirecting Oprah Winfrey to cheaper handbags when she was inquiring about a $38,000 purse. It's the so-called 'compliment' that a Black person 'speaks so *well*.'
I'll share just one more incident, although there are so many more.

We were on our way to a family vacation in Aruba. The regular security lines were overwhelmed. My family hurried to take our place in the line reserved for people who had paid for TSA PreCheck, which speeds up the security process.

A White man standing behind us said: "I don't think you are in the right line. This is for TSA PreCheck."

He didn't take it upon himself to question other travelers. Just us. The only Black folks in the queue.

"I know what line this is," I said curtly.

As I started to say more, my husband, ever the peacekeeper, looked at me. He didn't have to say it this time.

But I'm tired of letting it go.

All the encounters I've shared are examples of racial microaggressions.

"Microaggressions are the everyday slights, insults, indignities, put-downs and allegations that people of color experience in their day-to-day interactions with well-intentioned White [people]," said Derald Wing Sue, a professor of psychology and education at Teachers College, Columbia University and author of "Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation."

Black Americans disproportionately experience microaggressions, according to a Gallup poll this summer. "The flash points that spark national conversations on racism are often instances of violence, but for many Black Americans, their experiences with mistreatment and discrimination are much subtler and are woven into the routines of their normal, daily lives," Gallup said.

It's the White customer who assumes a Black shopper at a luxury boutique is a clerk. Or a salesperson in Zurich redirecting Oprah Winfrey to cheaper handbags when she was inquiring about a $38,000 purse. It's the so-called "compliment" that a Black person "speaks so *well.*" Joe Biden found himself having to apologize to then-presidential candidate Barack Obama for saying, "You got the first mainstream African American who is articulate and bright and clean."

Sue writes in his book: "The power of microaggressions lies in their invisibility to the perpetrator, who is unaware that he or she has engaged in a behavior that threatens and demeans the recipient of such a communication."

In business, "microinequities" result in Black workers being overlooked, under-respected and devalued. Work performance suffers when microaggressions accumulate over time.

"Our research indicates that not only is it invalidating your experience of reality, but it has major psychological impact on what we call subjective well-being," Sue said in an interview.

But a lot of White people don't see the harm they are doing.

How has your race or identity shaped your financial decision-making? Share your thoughts with us.

"A lot of my White brothers and sisters believe that the everyday incivilities they experience with someone who is rude are no different from racial, gender or sexual-orientation microaggressions," Sue said.

When Sue began studying the impact of microaggressions, many of his White colleagues told him his work was making a mountain out of a molehill, that microaggressions were just macro nonsense.

But microaggressions can cause depression and self-esteem issues, Sue's research shows. "They are a constant reminder that we, as people of color, are second-class citizens in our own country," he said.

There's also the stress of how to respond.

"If you choose not to do anything about it, it takes a toll on you psychologically," Sue said. And physically. Studies have shown people subjected to microaggressions experience elevated blood pressure because they get upset or feel frustrated, maybe even angry at themselves for not saying something, he said.

Sue argues that it's important not to let incidents go unaddressed in the moment. He calls the reactions "microinterventions," strategies that people of color can use to make the "invisible visible," drawing attention to the insult.

"For example," he said, "if someone compliments me and says, 'Derald, you speak excellent English,' I would say: 'Thank you. I hope so. I was born here.'"

If your biased question, ill-conceived compliment, befuddled stare or racist statement is called out, don't get defensive or trivialize the incident. Black people need you to be able to accept the feedback, because it's literally detrimental to our psychological and physical health to stay silent and seethe in the face of racial microaggressions.

Sincerely,

Michelle

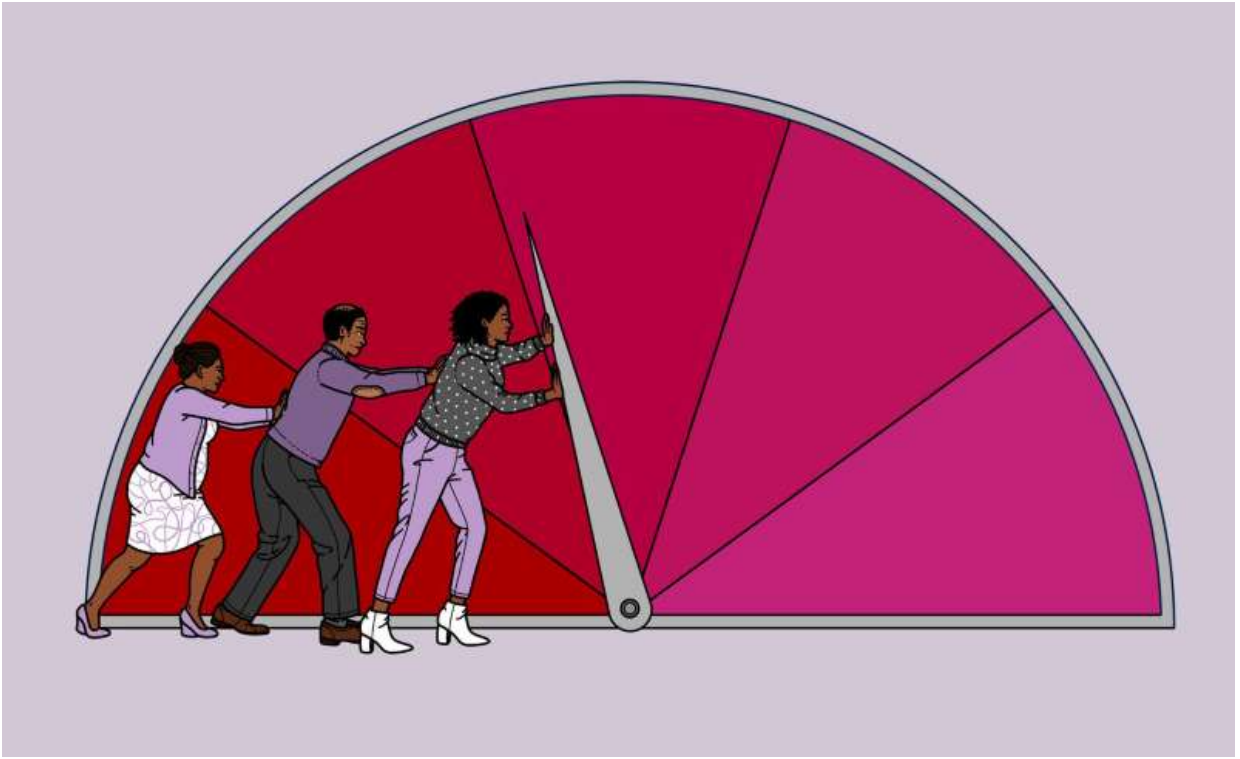
Read more from the "Sincerely, Michelle" series:

Yes, I was hired because I was Black. But that's not the only reason.

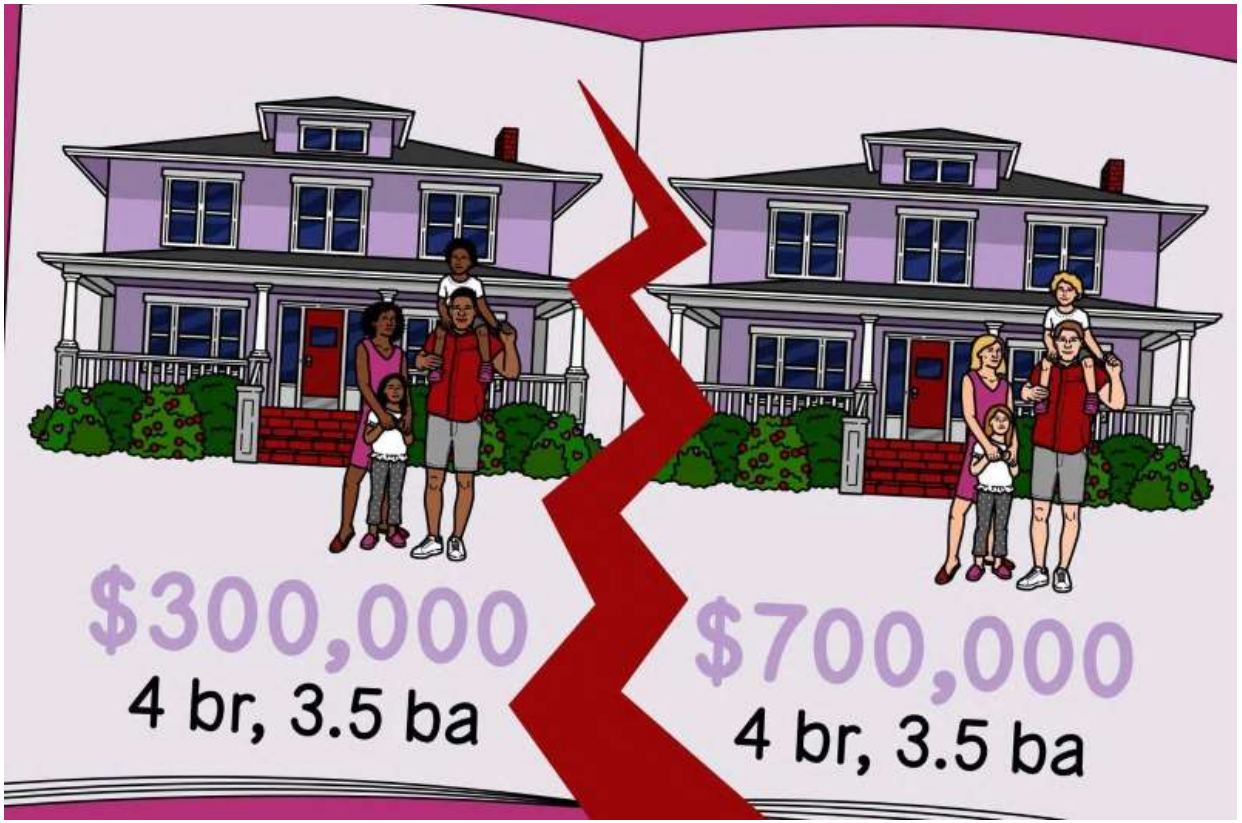
Black parents see a college degree as a key to success

The legacy of slavery made my grandmother fear investing

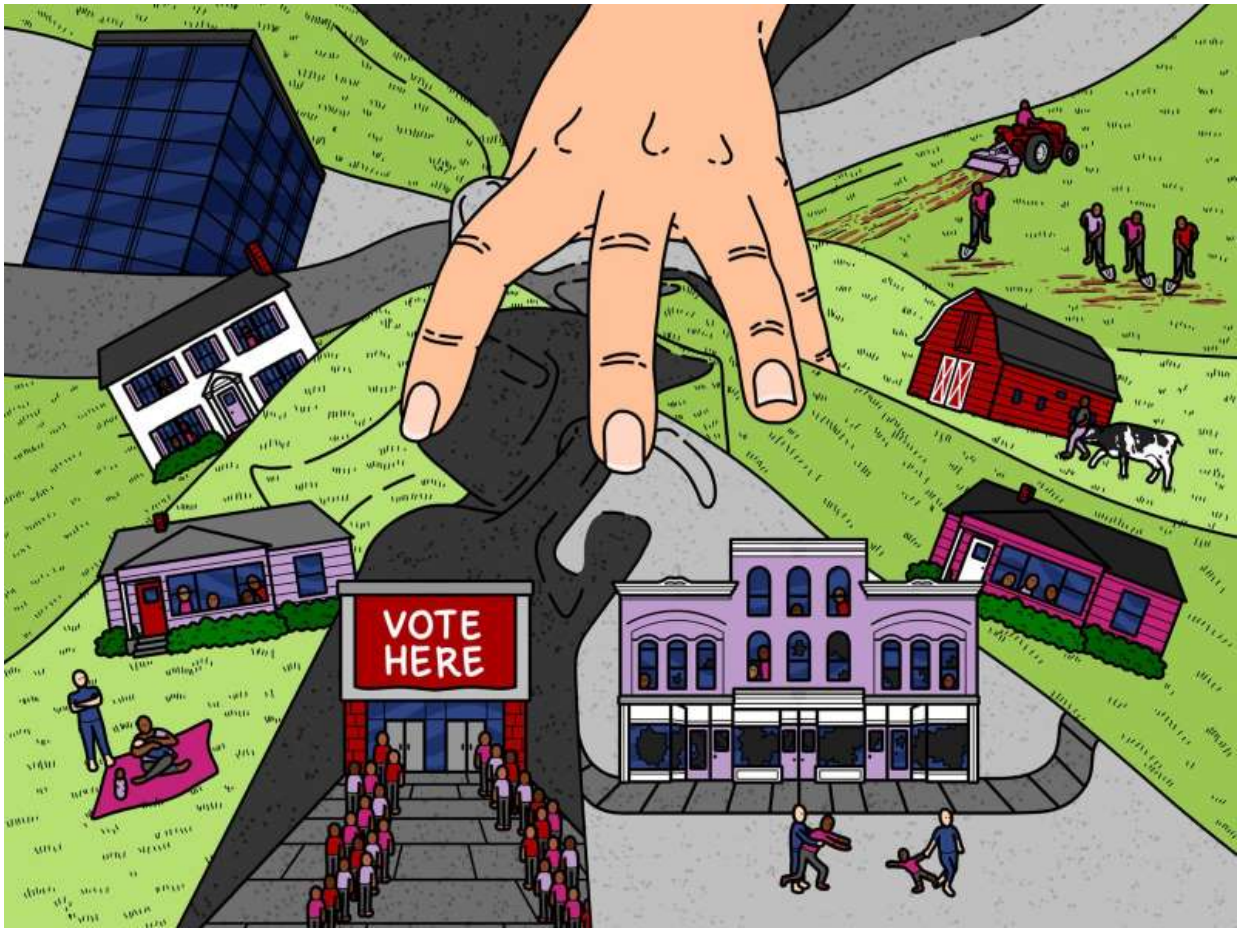
Credit scores are supposed to be race-neutral. That’s impossible.



Redlining robs Black families of generational wealth



Black Americans are entitled to reparations. We've earned them.



Systemic racism, not $200 Air Jordans, suppresses Black wealth

We can’t afford to lose Black businesses

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