

No. 25-0995

In the Supreme Court of Texas

PAUL CHABOT,
Petitioner,

v.

FREDERICK FRAZIER,
Respondent.

On Petition for Review from the Fifth District Court of Appeals, Dallas, Texas

BRIEF OF THE CENTER FOR AMERICAN LIBERTY
AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REVIEW

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STATEMENT OF INTEREST

This brief is tendered on behalf of amicus curiae Center for American Liberty. The Center for American Liberty is a 501(c)(3) non-profit law firm dedicated to protecting free speech and civil liberties. CAL has represented litigants across the country in cases seeking to vindicate individuals' constitutional rights, including religious freedom, free speech, and parental rights. *See, e.g., Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025); *Doe v. Weiser*, No. 1:24-CV-2185-CNS-SBP, 2025 WL 295015 (D. Colo. Jan. 24, 2025), *appeal docketed* No. 25-1037 (10th Cir. Jan. 31, 2025); *Antonucci v. Winters*, 767 F. Supp. 3d 122 (D. Vt. 2025), *appeal docketed* No. 25-514 (2d Cir. Mar. 4, 2025). CAL has an interest in ensuring that courts apply the correct legal standard in cases involving the First Amendment and that the purposes of anti-SLAPP statutes are fulfilled to ensure defamation law is not weaponized by public figures to chill their opponent's speech. No fee was paid or will be paid for preparing this brief.

INTRODUCTION

The First Amendment precludes using defamation law as a cudgel—least of all by public officials. Yet the panel’s decision below weakens the foundation of constitutional gatekeeping that has long protected criticism of government actors.

As Chabot argues in his petition for review, by treating a defamation case as one undifferentiated “claim,” the decision improperly allowed Frazier to rely on unpled allegations to fend off Chabot’s TCPA motion. But even if the panel’s reliance on Frazier’s unpled allegations was proper, it was nonetheless obligated to analyze each allegedly defamatory statement rather than deal out defamation in gross.

Chabot makes compelling arguments for why dismissal is proper under the TCPA, but even if the suit goes forward, it should be only on the specific allegations that survive scrutiny under the TCPA, and no others. That approach would be consistent with other courts’ statement-by-statement analysis in defamation cases, provide the “breathing space” the First Amendment requires, and prevent weakening the TCPA’s screening function into something far less than what the Legislature intended.

The stakes are straightforward. Public debate in Texas, especially on local and state governance, often occurs on sharp terms. If a public official’s broad-ranging defamation claim can survive a TCPA challenge by proving a prima facie case as to only *some* of the allegedly defamatory statements, the predictable incentive is vague

allegations and overpleading: load the petition with scattershot allegations, survive on a subset, and use the remaining to preserve discovery leverage, expense, and uncertainty. That is the very litigation dynamic the TCPA was designed to prevent, and it is precisely why settled First Amendment doctrine insists that, for defamation claims by public officials, the court must analyze falsity and actual malice with respect to each particular statement, in their full context, and with attention to the speaker's state of mind at the time of publication, not through an aggregate, "close-enough" review.

The panel's decision also risks distorting the actual-malice inquiry in a way that will reverberate well beyond this case. To the extent the decision treats the defendant's continued speech after receiving a cease-and-desist letter as sufficient evidence of actual malice, it invites a playbook in which public officials convert pre-suit threats into conclusive proof of culpable intent. But actual malice is a subjective standard that requires proof of at least a reckless state of mind; it is not established by mere notice that the public official disagrees with the statements plus persistence. If the panel's reasoning stands, public officials will be able to manufacture actual malice simply by demanding retraction and then suing when the speaker refuses to fold. That is not the law.

This Court should grant the petition to restore the constitutionally required statement-by-statement framework in public-official defamation cases and reaffirm

that the TCPA operates as a meaningful early check on suits that chill speech regarding public officials on matters of public concern.

SUMMARY OF THE ARGUMENT

The Court should grant the petition for review. The panel’s “single claim of defamation” framework is incompatible with the Supreme Court’s First Amendment jurisprudence. Because of the importance of speech in our constitutional design, public-official defamation liability turns on a demanding, statement-by-statement showing of falsity and actual malice, evaluated in the specific context of each challenged publication, not an aggregate “close enough” assessment. By allowing a plaintiff to plead many statements but make a *prima facie* showing on only a subset, the decision dilutes constitutional fault requirements and expands litigation pressure over speech that has never been tested under the governing standard. This Court should grant review to restore the statement-specific constitutional discipline that protects criticism of public officials.

The panel’s rule also guts the TCPA’s screening function and invites exactly the type of abusive incentives it was enacted to stop. Plaintiffs should not be permitted to overplead broadly, survive by proving only a handful of allegations, and keep the rest as “litigation ballast.” Doing so only increases discovery costs, causes uncertainty to become the punishment, and leads to speakers losing even when the law is on their side. Most significant, it turns the TCPA from an early

merits filter into a minor procedural detour, while rewarding strategic pleading that maximizes chill. Review is warranted to reaffirm that the TCPA requires a meaningful showing as to the challenged speech rather than a selective showing that leaves unproven allegations to keep the case alive.

Finally, the panel’s reliance on a tactical cease-and-desist letter that was short on proof risks warping the actual-malice inquiry into a roadmap for public officials. Actual malice is a subjective standard that is analyzed at the time of publication. It is not established by vague allegations of wrongdoing plus persistence, and it cannot be manufactured by pre-suit threats designed to deter speech. Treating a pre-suit demand letter as sufficient to infer culpable intent at the time of the statement invites officials to weaponize retraction demands, pressuring critics to choose between silence and litigation exposure. This Court should grant review to prevent that distortion and to preserve the “breathing space” that is required for robust debate about public misconduct.

ARGUMENT

I. THE PANEL’S “SINGLE CLAIM OF DEFAMATION” APPROACH IS CONSTITUTIONALLY IMPERMISSIBLE

Because the TCPA requires a plaintiff to establish a *prima facie* case as to each element of defamation, defamation law defines the showing the plaintiff must make. *See, e.g., In re Lipsky*, 460 S.W.3d 579, 587 (Tex. 2015) (citing Tex. Civ. Prac. & Rem. Code § 27.005(c)). Under settled First Amendment principles, public officials

may not use defamation lawsuits to obtain speech-detering leverage through imprecision. Instead, in public-official defamation cases, the First Amendment demands “breathing space” by requiring proof of actual malice. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964).

A constitutionally sound actual malice inquiry asks whether a defendant had subjective awareness of probable falsity or reckless disregard for truth. That standard is necessarily statement specific. A court cannot determine whether a speaker acted with actual malice without identifying the particular statement alleged to be defamatory, its meaning in context, and the speaker’s state of mind about that statement.¹ Collapsing a case into a single, undifferentiated “defamation claim” severs those required connections and risks substituting general suspicion about a defendant’s intent for the Constitution’s demanding, statement-by-statement fault standard.

The panel rejected that framework. The panel acknowledged that Frazier “pleaded multiple statements” that he claimed were defamatory “between 2022 and 2024.” *Chabot v. Frazier*, No. 05-24-01272-CV, 2025 WL 2164002, at *4 (Tex. App.

¹ This statement-by-statement requirement is consistent with the substantial-truth (“gist” or “sting”) doctrine. See Chabot Pet. at 16 (citing *Polk Cnty. Publ’g Co. v. Coleman*, 685 S.W.3d 71, 73 (Tex. 2024)); Free Speech and Free Press Amicus Br. at 1–7 (same). Courts may assess the gist of each challenged publication to determine whether any actionable falsehood exists while still demanding that the plaintiff carry the applicable burden—including actual malice where required—as to each statement that serves as a potential basis for liability. Put differently, “gist” addresses whether a statement is materially false, while statement-specific review ensures the plaintiff proves the elements for the particular statements he or she is suing over.

July 30, 2025, pet. filed). But the panel held that he was not required to establish a prima facie case for “each allegedly defamatory statement.” *Id.* at *5. The panel reasoned that a court “cannot dismiss facts; it can only dismiss legal claims,” and that the “legal action” at issue is a single “defamation” claim. *Id.* On that premise, the panel announced it would “focus” on only the two statements Frazier relied on and treat the remainder as irrelevant to the TCPA’s threshold inquiry. *Id.*

Under the panel’s reasoning, a plaintiff need only allege one undifferentiated claim of “defamation” to avoid having the defendant’s statements analyzed as defamatory. That is wrong. Instead, the First Amendment demands that courts must set forth “the standard for analysis” of *each statement*, “reproduce *each statement* to which [the plaintiff] objects, and . . . analyze [the] defamation claim on *each statement*.” *Mallory v. S & S Publishers*, 168 F. Supp. 3d 760, 766 (E.D. Pa. 2016) (emphases added); *see also Tarver v. Republican Women’s Fed’n of Mich.*, No. 358812, 2022 WL 18006111, at *2 (Mich. Ct. App. Dec. 29, 2022) (“A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory.” (cleaned up)).

The panel’s contrary conclusion is not a mere matter of pleading form. It transforms the First Amendment inquiry from whether the plaintiff has shown actionable falsity and actual malice as to each challenged statement into whether the plaintiff can keep a lawsuit alive by proving any small subset of the allegations while

leaving the rest as background “facts” that continue to tax and chill the defendant’s speech.

Other jurisdictions require a statement-by-statement analysis when considering a defamation claim. In the federal courts, for example, the First and Tenth Circuits have both explained that “[t]he plaintiff ‘carries the burden of showing that each allegedly defamatory statement is materially false.’” *Brokers’ Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1106 (10th Cir. 2017) (quoting *Yohe v. Nugent*, 321 F.3d 35, 41 (1st Cir. 2003)). The Fourth Circuit approved an approach under which the lower court “analyzed each statement and concluded that [the plaintiff] failed to plausibly claim how any of them were legally defamatory[.]” *Harvey v. Cable News Network, Inc.*, 48 F.4th 257, 265 (4th Cir. 2022). And the Sixth Circuit has been explicit that “[w]hen multiple defamatory statements . . . are alleged, each element, including actual malice, must be proven as to *each statement*.” *West v. Media Gen. Ops., Inc.*, 120 F. App’x 601, 622 (6th Cir. 2005).

The highest courts in other states rule the same. The Supreme Court of Connecticut, for instance, has explained that “[e]ach [allegedly defamatory] statement furnishes a separate cause of action and requires proof of each of the elements for defamation.” *Gleason v. Smolinski*, 125 A.3d 920, 947 (Conn. 2015). And the Supreme Court of Iowa evaluated “each [allegedly defamatory] statement”

before reaching a ruling. *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 48 (Iowa 2018). The Virginia Supreme Court reversed a trial court’s denial of summary judgment because the court had denied consideration of “each allegedly defamatory statement as a whole.” *Hyland v. Raytheon Tech. Servs.*, 670 S.E.2d 746, 752 (Va. 2009) (same); *Madison v. Todd Cnty.*, No. A20-0794, 2021 WL 1344021, at *2 (Minn. Ct. App. Apr. 12, 2021) (same). The Court of Appeals of Minnesota has held that it only considers specific statements “contained in [the plaintiff’s] complaint” when ruling on a defamation claim. *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 538 (Minn. Ct. App. 1997).

These cases honor the “profound national commitment to the free exchange of ideas, as enshrined in the First Amendment, [which] demands that the law of libel carve out an area of ‘breathing space’ so that protected speech is not discouraged.” *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989). The panel’s approach threatens that required “breathing space” because it permits defamation in gross. That approach ensures that litigation does not become a vehicle for imposing costs on protected advocacy and commentary. The risk is greatest in defamation cases brought by public officials, where political speech sits at the First Amendment’s core and where the temptation to use civil litigation to silence critics is at its peak.

For these reasons, this Court should reject the panel’s “single claim of

defamation” framing and reaffirm the constitutionally mandated rule: when a public official alleges that speech about him is defamatory, courts must evaluate the claim on a statement-by-statement basis, requiring the official to identify each challenged statement and make a constitutionally sufficient showing as to that statement, including actual malice. The panel’s contrary rule—which narrows review to only the public official’s chosen subset of statements while allowing others to remain in the case—is inconsistent with Supreme Court precedent and would invite doctrinal drift that chills robust political speech.

II. THE PANEL’S RULE UNDERMINES TCPA SCREENING BY REWARDING OVERPLEADING AND LETTING PLAINTIFFS SURVIVE BY PROVING ONLY A HANDPICKED SUBSET OF ALLEGATIONS

In addition to violating the First Amendment, the panel’s “single claim of defamation” approach also violates the TCPA, causing the statute’s *prima facie* inquiry to cease functioning as an effective early check on speech-detering litigation. Anti-SLAPP statutes like the TCPA exist because defamation cases impose a distinctive chilling cost: even weak claims can punish speakers through discovery burdens, litigation expense, and the pressure to self-censor. *See, e.g., Cheniere Energy, Inc. v. Lotfi*, 449 S.W.3d 210, 212 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (explaining that anti-SLAPP statutes “establish[] a mechanism for early dismissal of frivolous lawsuits that threaten the free exercise of First Amendment rights”). Thus, anti-SLAPP procedures are designed to shield

defendants “from the undue burden of frivolous litigation” and ensure that liability tracks proven wrongdoing, not generalized disapproval of a speaker’s criticism of government. *Baral v. Schnitt*, 376 P.3d 604, 615 (Cal. 2016). In short, “[t]he purpose of [the TCPA] is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law[.]” Tex. Civ. Prac. & Rem. Code § 27.002; *see also Metabolife Int’l v. Wornick*, 264 F.3d 832, 837 n.7 (9th Cir. 2001) (explaining that anti-SLAPP safeguards are designed to “protect individuals from meritless, harassing lawsuits whose purpose is to chill protected expression”).

The TCPA creates an early screening mechanism that prevents a process-as-punishment dynamic by requiring the claimant to come forward with “clear and specific evidence” establishing a prima facie case of the underlying claim. *Lipsky*, 460 S.W.3d at 587 (quoting Tex. Civ. Prac. & Rem. Code § 27.005(c)); *see also* George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation (“SLAPPs”): An Introduction to the Bench, Bar and Bystanders*, 12 Bridgeport L.Rev. 937, 943–44 (1992) (describing SLAPPs as lawsuits that are “without substantial merit that are brought by private interests to stop citizens from exercising their political rights or to punish them for having done so” (cleaned up)). When courts enforce the requirement of “clear and specific evidence” with precision,

speakers can engage in robust debate about public affairs without being forced into litigation based on allegations that lack meaningful evidentiary support.

The panel’s “single claim of defamation” framework defeats the TCPA’s design by changing the incentives for plaintiffs at the pleading and response stages. Here, for example, the panel allowed Frazier to “focus[] his prima facie case analysis” on only two statements and then treated that narrowing as sufficient to carry the TCPA’s Step Two as to his entire case. *Chabot*, 2025 WL 2164002, at *5. Thus, under the panel’s approach, a plaintiff can plead broadly but survive TCPA dismissal by proving only a small subset of the pleaded statements. This approach effectively defeats the TCPA’s purpose of precluding plaintiffs from using litigation to chill speech because it does not require the plaintiff to make the required “clear and specific” showing for those other statements.

The panel’s approach is also a roadmap for “plead-and-switch” tactics. The panel’s reasoning invites plaintiffs—especially public officials suing over political criticism—to overplead, survive by underproving, and still force speakers to litigate under the shadow of untested allegations. The predictable consequence is greater chill: speakers will be pushed toward retraction, silence, or settlement, not because the plaintiff has met the statute’s screening standard as to each challenged statement, but because the plaintiff can keep the case alive while leaving much of the pleaded conduct effectively insulated from the TCPA’s filtering function.

The panel's rule impermissibly collapses the statute's claim-specific evidentiary burden into a generalized plausibility inquiry, which the Legislature expressly rejected. The TCPA does not ask whether a plaintiff has *some* viable theory tucked somewhere in the pleadings; instead, it asks whether the plaintiff has produced "clear and specific evidence" of each element of the legal action *as pleaded*. Tex. Civ. Prac. & Rem. Code § 27.005(c). When a plaintiff pleads ten allegedly defamatory statements but satisfies his TCPA burden as to only two, the remaining eight do not justify discovery, depositions, and trial preparation. Allowing those allegations to survive dismissal simply because they share a label with proven claims converts the TCPA from a merits-screening statute into a pleading-formalism statute under which all allegations survive simply because one allegation survived. That result undermines the Legislature's determination that unmeritorious defamation claims should be dismissed early to prevent chilling effects from taking hold.

This Court should reject the panel's toothless interpretation of the TCPA and adopt a rule requiring a plaintiff who pleads multiple allegedly defamatory statements to make the required prima facie showing for each statement. Otherwise, Step Two of the TCPA ceases to operate as an early safeguard for speech and becomes a procedural formality that can be bypassed through strategic pleading and selective proof, which is precisely what the TCPA was enacted to prevent. *Lilith*

Fund for Reprod. Equity v. Dickson, 662 S.W.3d 355, 369 (Tex. 2023) (“Aware of the chilling effect that defamation lawsuits have against individuals ill-equipped to finance protracted litigation, the Legislature has armed speakers with tools to seek quick dismissal of meritless suits brought to stop public debate.”). Under the panel’s approach, the TCPA cannot “carr[y] forward the state’s commitment to the free exchange of ideas enshrined in our Texas and United States Constitutions.” *Id.*

III. THE PANEL’S RELIANCE ON A VAGUE CEASE-AND-DESIST LETTER AND CONTINUED SPEECH RISKS CREATING A ROADMAP FOR PUBLIC OFFICIALS TO MANUFACTURE “ACTUAL MALICE”

Under *Sullivan*, the actual malice standard applies in defamation cases brought by public officials over speech on matters of public concern. 376 U.S. at 282. This standard is demanding. *See, e.g., Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 120 (Tex. 2000). It turns on the defendant’s subjective state of mind at the time of publication, not whether a public official later complained, threatened suit, or demanded a retraction. *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 173 (Tex. 2003).

Biro v. Conde Nast is instructive. 963 F. Supp. 2d 255 (S.D.N.Y. 2013), *aff’d*, 807 F.3d 541 (2d Cir. 2015), *and* 622 F. App’x 67 (2d Cir. 2015). There, the district court explained that while a failure to retract in the face of a demand “may, under certain circumstances, . . . support a finding of actual malice,” that was not always the case. *Id.* at 281. Indeed, “the decision not to retract is, in and of itself, insufficient

to establish by clear and convincing evidence that a defendant acted with actual malice.” *Id.* (citing *Sullivan*, 376 U.S. at 286). For one thing, retraction necessarily occurs after publication, which “mean[s] that its probative value as to a defendant’s state of mind at the time of publication is dubious at best.” *Id.* And for another thing, a plaintiff’s refusal to retract bolsters actual malice only if the denial, or evidence submitted with it, has a “doubt-inducing quality.” *Id.* Thus, post-publication retraction demands and denials are usually beside the point because they shed no light on what the defendant believed at the moment of publication and because they frequently only contain conclusory assertions supporting their assertion that the challenged statements are false.

Other federal courts have reached similar conclusions. The Fourth Circuit has held that the “failure to retract a statement upon request generally is not probative of the speaker’s state of mind at the time of publication.” *Blankenship v. NBCUniversal, LLC*, 60 F.4th 744, 761 (4th Cir. 2023) (cleaned up). The Seventh Circuit has held that a “[petitioner’s] failure to retract upon [a] respondent’s demand . . . [was] not adequate evidence of malice for constitutional purposes.” *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013) (citing *Sullivan*, 376 U.S. at 286). And the Eleventh Circuit has said only that “a mere refusal to correct a publication falls short” of actual malice. *Klayman v. City Pages*, 650 F. App’x 744, 749–50 (11th Cir. 2016). State supreme courts also reach similar holdings. *See Holbrook v.*

Casazza, 528 A.2d 774, 780 (Conn. 1987) (holding that the refusal to retract “might be relevant” to a defendant’s mental state where there is substantial evidence of “animus” at the time of the statement); *see also Jenkins v. Liberty Newspapers Ltd.*, 971 P.2d 1089, 1099 (Haw. 1999) (holding that the failure to retract was not conclusive of actual malice).

If the First Amendment’s “breathing space” is to mean anything, courts must take care not to convert routine pre-suit tactics into a shortcut for proving actual malice. Otherwise, the law would incentivize public officials to use legal threats as a tool not merely to seek redress for provable falsehoods, but to chill political advocacy and reporting. That would defeat the purpose of requiring public-official plaintiffs from demonstrating actual malice. *Bentley v. Bunton*, 94 S.W.3d 561, 609 (Tex. 2002) (Philips, J., concurring) (“The United States Supreme Court tailored the actual malice test to discourage the self-censorship that libel law might otherwise impose on political speech.”).

The panel emphasized that Frazier sent a cease-and-desist letter generally asserting that the challenged statements were false, then it pointed to subsequent publications and Chabot’s decision to continue speaking as evidence supporting actual malice. *Chabot*, 2025 WL 2164002, at *8. That reasoning risks turning notice into guilt: once an official sends a demand letter, a speaker who continues criticizing the official—especially in the heat of public controversy—can be painted as acting

with “reckless disregard” simply because he did not yield. *Gonzales v. Hearst Corp.*, 930 S.W.2d 275, 283 (Tex. App. 1996) (rejecting argument that “refusal to print a retraction, by itself, can be clear and convincing evidence of actual malice”). But that flips the constitutional requirement on its head. The whole point of *Sullivan* is to release pressure on speakers to fall silent or retract whenever an official disputes their criticism. 376 U.S. at 268–69.

The problem is not merely doctrinal; it is practical. If a general demand letter can meaningfully substitute for statement-specific proof of subjective intent, it creates an easily replicable playbook: (1) send a letter generally declaring speech false; (2) treat any continued speech as “malicious”; and (3) leverage litigation risk to force retractions or deter further commentary. That dynamic is especially dangerous when paired with the panel’s broader “single defamation claim” approach, which allows plaintiffs to plead broadly and then narrow their evidentiary showing to a selected subset of statements while maintaining litigation pressure over the remainder.

To be sure, post-publication conduct may sometimes provide circumstantial evidence of intent, but it cannot substitute for proof that the speaker knew the statement was false or was reckless to its truth at the time of publication. *See, e.g., Biro*, 963 F. Supp. 2d at 282 (noting that “a defendant’s decision not to retract failure is not in itself enough to nudge an allegation of actual malice from conceivable to

plausible”). Treating notice plus persistence as sufficient to establish actual malice improperly collapses the constitutional inquiry into a retrospective penalty for continued speech.

Accepting the panel’s reasoning would also blur the distinction between actual malice and negligence. *Klantzman v. Brady*, 312 S.W.3d 886, 898 (Tex. App. 2009) (explaining the difference). A speaker who receives a cease-and-desist letter is not constitutionally required to accept the official’s version of events, conduct a burdensome internal investigation, or halt further commentary absent credible facts casting doubt on the speaker’s original understanding. *Bentley*, 94 S.W.3d at 595 (“[T]he mere failure to investigate the facts, by itself, is no evidence of actual malice.”). To hold otherwise would replace *Sullivan’s* subjective-knowledge standard with a rule of compelled deference to official demands. That result is irreconcilable with the First Amendment’s core function: protecting the right of citizens to criticize public officials even when those officials loudly and repeatedly insist the criticism is false. If continued speech after a demand letter suffices to show malice, then actual malice becomes a tool that public officials can activate at will.

In sum, the panel’s decision encourages public officials to use litigation and threatened litigation not as a remedy for provable defamatory falsehoods, but as a mechanism to impose costs on criticism and discourage continued debate. This result is anathema to the First Amendment.

CONCLUSION

For the foregoing reasons, this Court should grant Chabot's petition for review.

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I certify that on February 5, 2026, a true and correct copy of the above and foregoing document has been served via electronic service on all counsel of record for petitioner/appellant and respondent/appellee.

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