

# Ninth Circuit Eliminates Right of Immediate Appeal from Denials of California Anti-SLAPP Motions

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**PRACTICES** Anti-SLAPP and First Amendment Rights, Media and Entertainment Litigation

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*Gopher Media, LLC v. Melone*, No. 24-2626 (9th Cir. Oct. 9, 2025) (en banc)

Sitting *en banc*, the Ninth Circuit overturned prior precedent and held that denial of an anti-SLAPP motion under California law cannot be reviewed on immediate appeal under the collateral order doctrine. The court did not address its longstanding approval of such motions in federal court.

**Key Takeaways:** In Ninth Circuit jurisdictions, state anti-SLAPP statutes remain a viable tool for challenging claims and counterclaims based on the exercise of First Amendment rights. However, the court's holding slightly diminishes the impact of an anti-SLAPP motion by precluding the resolution of these issues on immediate appeal.

**Procedural Background:** *Gopher Media* involves libel and defamation claims arising out of a contentious rivalry between two businesses that devolved into an alleged campaign of social media harassment. Gopher Media filed an anti-SLAPP motion under California law, arguing that the alleged social media statements and reviews constituted protected speech on matters of public interest. The district court denied the motion, finding that the alleged conduct stemmed from a private dispute and personal animosity. The Ninth Circuit heard the case *en banc* to assess whether California's anti-SLAPP statute applies in federal court and whether denial of a California anti-SLAPP motion qualified as a collateral order subject to immediate appeal.

**No Immediate Appeal:** Assuming that California's anti-SLAPP statute applies in federal court without deciding the question, the *en banc* court held that denials of anti-SLAPP motions under California law are not immediately appealable under the collateral order doctrine. The court reached its decision based on its conclusions that: (1) California anti-SLAPP analysis requires fact-intensive inquiries tied to the merits of the case, and (2) anti-SLAPP denials, like anti-SLAPP grants, can be effectively reviewed after final judgment. In reaching its holding, the court noted that parties may still pursue discretionary interlocutory appeals certified by the district court.

**Competing Views of Federal Court Application:** In dueling concurrences, six judges on the *en banc* panel debated whether the California anti-SLAPP statute should apply in federal court. Judges Mark Bennett and Consuelo Callahan expressed their opinion that California's statute should apply in federal court because it creates a substantive right that is neither controlled nor contradicted by federal rule. By contrast, Judges Daniel Bress, Daniel Collins, Kenneth Lee, and Patrick Bumatay reasoned that the California anti-SLAPP statute is a procedural device that irreconcilably conflicts with the Federal Rules of Civil Procedure. These judges urged the court to join the Second, Fifth, Tenth, Eleventh and D.C. Circuits, all of which refuse to consider state anti-SLAPP statutes in federal court.