No. _____

IN THE
Supreme Court of the United States

In re
THE LAW OFFICES OF NINA RINGGOLD AND NINA RINGGOLD, ***Petitioners,***

On Petition for a Writ of Mandamus to the California Court of Appeal Second Appellate District

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Whether in conflict with the clear authority of this court California local rules of court may defeat the command of 28 U.S.C. § 1446 (d) that a state court shall proceed no further without a remand order from the federal court?

2. Whether section 5 of California Senate Bill x211, which provides retroactive "super immunities" to state judges of the courts of record violates the Supremacy Clause and the Civil Rights Act of 1886? And whether the involuntary waiver of federal rights caused by this provision can be effectuated in court proceedings when the state fails to maintain a proper or adequate official record? And whether imposition of sanctions against attorneys who legitimately and in good faith raise the issue and other jurisdictional challenges on behalf of clients violates the First and Fourteenth Amendment?

3. Whether the authoring retired judge and justices of the appellate panel's failure to recuse themselves from participation in the case, due to financial and general interests, violated the Due Process Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDINGS, RULE 29.6 STATEMENT, AND STATEMENT OF RELATED CASES

The parties are Nina R. Ringgold and the Law Offices of Nina R. Ringgold. After oral argument and before decision in this case, the client of Nina R. Ringgold and the Law Offices of Nina Ringgold, Cornelius Turner, died on June 7, 2019. Cornelius Turner was an appellant, plaintiff, and cross-defendant in the underlying proceedings.

Marian Turner and Lisa Turner were appellants, plaintiffs, and cross-defendants in the underlying proceedings represented by Amy P. Lee and the Law Offices of Amy P. Lee.

The respondents on this petition are Hartford Casualty Insurance Company (appellant, cross-complainant, defendant); Craig Ponci (defendant), The Rule Company Incorporated, Ponci (defendant), Nadja Silletto Ponci (defendant), Norma Pierson Ponci (defendant), Tony Gaitan (defendant), Ponci (defendant), Elaine Albrecht Ponci (defendant).

Pursuant to Rule 14.1 (b)(iii), petitioners provide the following statement of related cases:

> *In re Law Offices of Nina Ringgold and All Current Clients Thereof on their own behalves and all similarly situated pers*ons. (United

States Supreme Court Case No. *19-359).* (herein referred to as the "voting rights case").

ASAP Copy & Print et al. v. Canon Solutions America, Inc. (United States Supreme Court Case No.19-482).

Additionally there is litigation concerning the constitutionality of Section 5 of SBX 211 in the state court by persons that (1) object to the involuntary waiver of federal rights including under the Supremacy Clause and §§ 1 and 3 of the Civil Rights Act of 1866 caused by the enactment of uncodified Section 5 of California Senate Bill SBX2 11, and (2) object to the involuntary waiver of federal rights in proceedings where the state refuses to provide a proper official record (via court reporter or audiotape) and at the same time accepts federal financial assistance.

Although there are similar issues the cases listed below are not technically directly at issue in this petition as defined by Rule 14.1 (b)(iii). The cases include*: (1) TBF Financial I v. ASAP Copy and Print*, No signed and entered judgment on class action cross-complaint (Case No. PC056074); (2) *Dorian Carter v. Tracy Sheen, Nathalee Evans Barnett*, Superior Court for the County of Los Angeles Docket No. BC458090, No final judgment and removed to the United States

District Court for the Central District of California; (3) *Dorian Carter v. Tracy Sheen, Nathalee Evans* United States District Court for the Central District of California filed April 23, 2019, Docket No. 19-cv-03217 MWF (Ex)(Civil Rights Removal); (4) *In re Aubry Family Trust,* No judgment and there cannot be entry of a final judgment until all trust assets are depleted, Superior Court for the County of Los Angeles, Docket No. PP005201; and (5) *Karim Shabazz v. Federal Express Corporation*, Superior Court for the County of Los Angeles Docket No. BC373824, Judgment dated July 7, 2008 (Petition for Review denied by California Supreme Court February 15, 2012)(Potential enforcement proceeding) (one of the holders of representative government claim on behalf of voting rights case members referenced above).

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PETITION FOR A WRIT OF MANDAMUS

Petitioners respectfully file this petition for a writ of mandamus to the California Court of Appeal for the Second Appellate District.

OPINIONS BELOW

The opinion of the California Court of Appeal, Second Appellate District in *Lisa Turner et al v. the Rule Company et al.* was rendered on July 10, 2019. It is not published in the California Reporter and is reprinted in the Appendix. (App.1-75). The opinion, in part, imposed sanctions, against petitioner Nina Ringgold, Esq. and another attorney representing the other appellants in the appeal for raising jurisdictional challenges and objections to Section 5 of California Senate Bill x211 ("Section 5 of SB x211") as frivolous. The sanction issued despite the undisputed and objective facts showing that there does not exist a remand order from a September 15, 2011 removal filed by the Rule Company Incorporated ("Rule"). (App.116-119). Also, this is despite the fact that the California Commission on Judicial Performance has twice rendered opinions that Section 5 of Senate Bill x211 is unconstitutional and by unanimous vote of this constitutional body it requested that the California State Attorney General render a formal legal opinion. (App.232-264, 317-336). The Second Appellate District's opinion denied

the request of the petitioners and their client for issuance of an order to show cause why attorney fees and costs should not be imposed against Rule due to the perpetuation of proceedings without a remand order from the federal court.

The Second District denied a request for rehearing and for disqualification on August 5, 2019. (App.78-79). The California Supreme Court as the state court of last resort denied discretionary review on August 28, 2019. (App.76-79).

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, 1651(a), 2106 or, in the alternative, under 1257(a).

CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution, Article VI, Section 2, in pertinent part states:

> This Constitution, and the Laws of the United States which shall be made in

> pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The First Amendment of the United States Constitution provides in pertinent part that:

> Congress shall make no law… abridging the freedom of speech, or of the press, the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

The Fourteenth Amendment of the United States Constitution provides in pertinent part that:

> No state shall…make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1446(d) states:

> "(d) Notice to adverse parties and State court.--Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Section 5 of California Senate Bill x211 ("Section 5 of SB x211") states:

> Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

The following constitutional, statutory, and other authorities of the State of California are also

involved or may be pertinent in this petition: Section provisions of Article VI (Judicial) of the California Constitution, §§17, 21; California Government Code §53200.3 (deemed unconstitutional)), California Rule of Court Rule 3.300(a), and Los Angeles Superior Court Local Rule 3.22.

STATEMENT

In 2008 California Government Code § 53200.3 was deemed unconstitutional. It had allowed state judges of the courts of record to be county employees. (App.384). California Constitution Article VI § 17 commands that a judge's acceptance of public employment or office shall result in automatic resignation from judicial office. (App. 383). On February 11, 2009 Section 5 of SB x211 was enacted. It purports to override the Supremacy Clause, the Civil Rights Act of 1866, and other federal law and to give retroactive "super-immunities" including immunity as to civil, criminal, or disciplinary action to state court judges of California on the ground they were provided benefits not authorized by law. The California Commission on Judicial Performance determined the statute was unconstitutional and undermined its constitutional authority. (App.232-264). It delivered its opinions to the highest law enforcement officers of the state at

the time: Jerry Brown and Kamala Harris. Brown and Harris did nothing.

In 2012 when state courthouses were being shutdown and official court reporting services were being terminated, and tremendous numbers of grievances had been filed concerning discrimination in the court, rules were developed that allowed review of judicial administrative records. In this same year racial and language minorities filed a federal class action voting rights case seeking a supervised special judicial election. The client of the petitioners, Cornelius Turner ("CTurner") from the State of Mississippi, joined the case because the case also sought injunctive relief and to establish procedures for the benefit of citizens of the State of California and other states to implement (1) the mandatory and constitutionally required disclosure and consent procedures, (2) a grievance procedure, and (3) an injunction against the involuntary waiver of federal rights caused by Section of California Senate Bill x211.[1] CTurner also joined with others that claimed that they were being subjected to retaliation and held hostage to state court proceedings for the purpose of retaliation. He and others had requested that the state court dismiss their cases without prejudice and enter an equitable

[1] See The Law Offices of Nina Ringgold and all current clients thereof. (Case No. 19-359) (hereinafter the VRA Case").

tolling order so claims could be filed in a different forum because the mandatorily required disclosures were not provided before the state court proceeding commenced. They refused to involuntarily waive federal rights particularly when the state court did not maintain an official record by court reporting or audiorecording services.

Two tracks of litigation resulted after the VRA Case was filed on March 21, 2012. Racial and language minorities on one track and current and former justices of the Court of Appeal for the Second Appellate District on the other track. The justices were indirectly challenging the VRA Case and the opinions of the Commission on Judicial Performance before their peers in the state court.

On February 20, 2014 in related litigation the California Supreme Court, California Judicial Council, presiding justice of the California Court of Appeal for the Second Appellate District, certain judges of the Superior Court, and others filed a certificate of interested parties in the federal court admitting that they had financial and non-financial interests in the matters in controversy or parties in the proceedings. (App.167-172). This admission of disqualifying interest was filed in a case of one of the lead plaintiffs in the VRA Case.[2]

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[2] See *ASAP Copy & Print v. Canon Solutions America, Inc.* (Case No. 19-482).

On August 24, 2014 members of the VRA Case (including CTurner) appeared on opposing sides before the California Supreme Court in a competing case of a current justice of the Second District on matters related to issues in the instance case and in the VRA Case. (App.338-351).

At the time of oral argument the instant case on May 10, 2019 CTurner was over ninety years old. He is a living legacy in the Civil Rights movement in the State of Mississippi. He shared an office and worked with Medgar Evers (a well known civil rights activist in that state). He is the co-founder of the Mississippi Free Press Newspaper that was the voice of the civil rights movement in the State of Mississippi and an undisputed organizing centerpiece used by the NAACP and other civil rights organizations focused on eliminating former racist Jim Crow laws in the state. (See App.175-183).

CTurner was involuntarily brought into the state when he was sued in the United States District Court for the Central District by his estranged daughter after she fell through a glass enclosure in a California property that he owned with others. After Hartford Casualty Insurance ("Hartford") rejected the tendered defense of CTurner in the personal injury action he filed a third party complaint in the federal court.

Later CTurner and his wife, Marian Turner ("MTurner") discovered that they had been paying over three times the market rate for insurance for over 20 years. They also discovered written evidence that the policy of insurance was cancelled even though Hartford admitted the policy had been written incorrectly by its agent.

After the federal court entered an order realigning the parties, the third party complaint of CTurner was dismissed without prejudice to re-filing in the state court. This left the joint insureds elders (in their late 80's and early 90's) in two separate courts. CTurner in the Superior Court of the County of Los Angeles and MTurner in the United States District Court for the Central District of California.

Prior to the federal court realignment order or re-filing in the state court CTurner never received disclosure that state the judge assigned to his case would be subject to constitutional resignation or that Section 5 of SB x211 would mandate an involuntary waiver of federal rights or provided notice that he had a right to withhold consent to a judge that was subject to constitutional resignation under California Constitution Art. VI §17. He also received no disclosure, that unlike any state in the nation, that the judges in the state courts of California would be

provided with extraordinary "super immunity" through Section 5 of SB x211.

Immediately on the heels of the federal court re-alignment order the Rule Company Incorporated ("Rule") removed the case of CTurner back to the federal court. No remand order was entered and the request of Rule for entry of a remand order was denied. Nevertheless, in violation of 28 U.S.C. §1446(d), post-removal state court Judge Ralph Dau determined that the case that Rule had removed, and a case over which he had no jurisdiction whatsoever, would be designated as a pending "lead case" (under a state court local rule) and he created void proceedings that violate 28 U.S.C. § 1446(d) at issue in the underlying appeals.

The Second District granted Rule's motion for sanctions against all counsel for the Turners indicating that the issues raised, including jurisdictional issues, were frivolous. It awarded sanctions joint and severally against the Law Offices of Nina R. Ringgold and Nina Ringgold, the Law Offices of Amy P. Lee and Amy P. Lee in the sum of $21,366 payable to Rule and $8,500 to the clerk of court. It awarded this sum even though the "redacted" declaration attached to Rule's motion for sanctions only provided billing statements supporting a request for the amount of $7,230.00. In addition, the court denied the motion of the

petitioners and client for issuance of an order to show cause on their request for payment of their fees and costs in the proceedings perpetuated by respondents without a remand order. The decision of the Second District is in conflict with the clear and unambiguous authority of this court in *National S.S. Co. v. Tugman* (1882) 106 U.S. 118, 122-123. Additionally, the decision is retaliatory and violates First and Fourteenth Amendment rights. The authoring justice and the appellate panel should have recused themselves because they had direct and indirect financial and general interests in the issues raised on appeal.

There is a brewing constitutional crisis in the California court system and the overarching concern is: Who will decide what to do about the unconstitutional public employment and public office by state court judges of the courts of record. And who will declare Section 5 of SB x211 unconstitutional? And, what objective procedures will be put in place, to safeguard the public, during implementation of the necessary special judicial election when it occurs. Additionally, the question is whether the racial and language minorities who claim that they are being retaliated for refusing to involuntarily waive federal rights under Section 5 of SB x211 will be granted the necessary protection that federal law is to provide. Objectively the fundamental jurisdictional issues, including the

undisputed fact that, there was never a remand order following Rule's September 15, 2011 removal is not frivolous and the imposition of sanctions violated First and Fourteenth Amendment rights thereby intentionally discouraging attorneys from claiming that Section 5 of SB x211 is unconstitutional (just like the Commission on Judicial Performance).

On July 22, 2010 LTurner filed a personal injury case against CTurner that was assigned to District Judge Valerie Fairbank of the United States District Court for the Central District. (2:10-cv-05435-VBF-Ex Dkt 1). On October 26, 2010 CTurner filed a third party complaint against Hartford and others. (Id. Dkt 22). LTurner amended her complaint in the personal injury case to include MTurner and Dorian Turner. (Id. Dkt 22). There was complete diversity on the complaint and third party complaint.

In the personal injury case against CTurner LTurner and CTurner entered in to an agreement to resolve their dispute through a binding dispute resolution process. The case was dismissed against DTurner. MTurner and LTurner entered into a stipulated judgment and assignment of claims to resolve their dispute. After resolving the personal injury case with MTurner and Dorian Turner, LTurner and MTurner filed a third party complaint

against Hartford and others including federal discrimination claims.

After issuing an order to show cause regarding possible realignment of the parties across the complaint and cross-complaints, Judge Fairbank entered a realignment order. (Id. Dkt 169). MTurner and LTurner amended their third party complaint to add federal discrimination claims. Judge Fairbank then determined that this third party complaint would remain in the federal court. The request to sever the third party complaints so as to maintain federal jurisdiction was denied. CTurner was not provided an opportunity to add federal discrimination claims to his third party complaint in order to remain in the same court as his jointly insured wife.

Various motions and proceedings were filed with respect to the realignment order and Judge Fairbank handled these matters as the proper and duly assigned judge through at least October 20, 2011.

To meet the limitation requirement for re-filing under the re-alignment order CTurner filed his third party complaint with the intended federal claims in the state court. This case was assigned to Judge Ralph Dau. Briefing by the parties continued in the federal court as to Judge Fairbank's

realignment order and on requests to sever the third party complaints from the personal injury case in order to maintain jurisdiction in the federal court. (i.e. See August 29, 2011 filing of CTurner Id. Dkt 235).

On the heels of the realignment order, knowing that CTurner was attempting to amend his third party complaint to match that of his jointly insured wife, Rule removed the case of CTurner back to the federal court on September 15, 2011. The jurisdiction of Judge Dau, terminated on September 15, 2011 when Rule filed its notice of removal. (App.116-162).

Judge Dau disregarded the fact that he no longer had jurisdiction and designated CTurner's state case (LASC No. BC463639) as a lead pending case in the state court. (App.120-162). After removal there no longer existed a pending case in the state before Judge Dau. Nevertheless, by Judge Dau designating a non-existing case, as a "lead case" under California Rule of Court Rule 3.300 he initiated and created the challenged void proceedings at issue. It is undisputed that no remand order on Rule's September 15, 2011 exists.

On Rule's removal the case of CTurner was assigned to Judge Otis Wright. (2:11-cv-7663-ODW-RAx). CTurner filed a notice of related case and

notice that the same case had been returned to the federal court that had been pending and assigned to Judge Fairbank.

On September 27, 2011 and despite the fact that Judge Fairbank was actively and continuing to exercise jurisdiction over the case, Judge Percy Anderson signed a transfer order over the signature line of Judge Fairbank. (App.163-166). Under the United States District Court General Order 19-03 the Case Management Committee and/or Chair had not determined that Judge Fairbank was unavailable. In fact she was actively proceeding in the case. The result was that the electronic designation was changed to Judge Anderson even when Judge Fairbank was assigned and actively managing the case. (See 2:10-cv-05435-VBF-Ex Dkt #s 254 (9/20/11), #295 (10/20/11)). There was no order signed by Judge Fairbank that declined to transfer the removed case of CTurner from Judge Otis Wright back to the original case assigned to her. There was no order of the judge or of the Case Management Committee assigning a different judge or assigning Judge Percy Anderson to the case.

Judge Percy Anderson denied Rule's request to enter a remand order of the case in the case that it had removed.

The Second District Decision sua sponte addresses a host of irrelevant issues such as the personal injury case or the removals filed by the Turners who had attempted to extricate themselves from the void proceedings formed by Judge Dau. The legal issues and the record at issue is the case solely involves the proceedings initiated and created by state court Judge Ralph Dau after Rule's September 15, 2011 removal.

REASONS FOR GRANTING THE PETITION FOR WRIT OF MANDAMUS

I. Mandamus Should Be Granted Because The Lack Of Jurisdiction Of The Lower Courts Is Clear And Indisputable Under This Court's Decision In *National S.S. Co. v. Tugman*

Mandamus aids in appellate jurisdiction when it prevents a lower court from exceeding its lawful authority. *Cheney v. U.S. Dist. Court for the Dist. Of Columbia*, 542 U.S. 367, 380 (2004). Petitioners have no other adequate means to attain the relief deserved, have satisfied their burden of showing that the right to issuance of the writ is clear and indisputable, and demonstrate that the writ is appropriate under the circumstances. *Id.* at 380-381.

Additionally the actions of the lower state courts are without jurisdiction originally and as to any collateral matter. Petitioners and their client formally filed objections at the outset and continuously throughout the proceedings. See *In re Alix*, 166 U.S. 136 (1897)(relief by writ is appropriate when it is clear no jurisdiction existed originally or as to any collateral matter).

The right to relief is clear and indisputable under this Court's decision *National S.S. Co. v. Tugman* (1882) 106 U.S. 118, 122-123. See also U.S. Const. Art. VI cl. 2, Supremacy Clause, 28 U.S.C. §1446(d). The precedent of this court holds that a state court is barred from taking any action following removal when there does not exist a remand order that pertains to the proceedings. The standard is objectively applied. There is merely review of whether or not there exists a remand order from the federal court with respect the proceeding at issue. Here, it is undisputed that there does not exist a remand order on Rule's September 15, 2011 removal.

The applicable legal standard does not allow an individual judge to "presume" that state court jurisdiction exists or for state local rules to defeat 28 U.S.C. §1446(d) and the Supremacy Clause. In the absence of a remand order applicable to the proceeding, a presumption and further acts upon an erroneous presumption without an actual remand

order are void. See *National S.S. Co. v. Tugman* at 122-123. *National S.S. Co. v. Tugman* underscores this court's position of the clarity of the law on this issue." *Id.* at 123. See also *Maseda v. Honda Motor Co. Ltd*, 861 F.2d 1248, 1254 (11th Cir. 1988) (subsequent proceedings in the state court are void *ab initio*); *Hyde Park Partners, L.P. v. Connolly*, 839 F.2d 837, 841 (1st Cir. 1988) (every order after remand is *coram non judice* even if removal is later determined to be improper).

Termination of jurisdiction immediately attaches and a state court's local rules of court are irrelevant to the legal issue of compliance with 28 U.S.C. § 1446(d). Judge Dau completely lacked jurisdiction to act in any manner in the removed case including but not limited to designating a case that was no longer pending before him or that existed in the state court as a "lead case" or relating a removed case to any other proceeding in order to create a new proceeding before a different judge. On its face California Rule of Court, Rule 3.300 has no application because there must be a "pending civil case that is related to another "pending civil case". (See App.385). A case removed to the federal court and which terminated Judge Dau's jurisdiction was not a "pending case" in the state court.[3] As a matter

[3] See also Superior Court of the County of Los Angeles, Local Rule 3.22 that specifies that if a removed case is not remanded administratively the case is merely to be recorded as completed.

of law when jurisdiction of the state court is terminated by federal removal jurisdiction there is no pending state court case for the state court judge to act in.

Because Judge Dau and respondents persisted in disregarding the lack of a remand order, to prevent the prejudice, petitioners filed a dismissal of the case before Judge Dau. All subsequent proceedings without a remand order, even the dismissal, are *void ab initio*. The decision indicates that this dismissal post-removal only filed as a defensive measure to Judge Dau acting in the absence of jurisdiction meant "there was no longer a state action the federal court could remand." (App.32). However, this analysis fundamentally disregards the precedent of this court and the fact that there was no jurisdiction at all in the state court until and unless jurisdiction was restored. In other words there was no pending or existing case before Judge Dau to be dismissed until and unless jurisdiction was returned by the federal court.

National S.S. Co. v. Tugman expressly holds that one is entitled to protest against the exercise of jurisdiction by the state court. Therefore, the appeals of CTurner were not frivolous and the

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(App.386). This further confirmed that Judge Dau had no jurisdiction to continue to act in a case not pending before him after Rule's removal.

sanctions imposed for raising valid legal arguments concerning the lack of jurisdiction was improper.

II. Under The Supremacy Clause And The Civil Rights Act Of 1866 California Courts Cannot Force Objecting Racial And Language Minority Court Users To Involuntarily Waive Federal Rights In Proceedings That Lack A Proper Official Record

Court users (whether citizen of the State of California or of another state) should be notified of the involuntary waiver caused by uncodified section 5 of SB x211, that their case has been assigned to judge subject to constitutional resignation under California Constitution Art. VI §17, and disclosure and consent forms should be provided at the filing window or other procedures adopted to comply with California Constitution Art. VI §21.[4] At least some temporary process should have been implemented as proposed in the voting rights case. Instead, the state court suspended all local rules, adopted a "Bring your Own Court Reporter Policy" without an adequate procedure as to persons that could not afford the new policy or would need to designate transcripts after determination that an appeal will be filed. Also, the failure to disclose the existence of

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[4] See *Rooney v. Vermont Investment Corporation*, 10 Cal.3d 351 (Cal. 1973), *People v. Tijerina,* 1 Cal.3d 41 (Cal. 1969).

Section 5 of SB x211 or that the person presiding in a case was subject to constitutional resignation was relevant to determination of the issue realignment and severance in the federal court. There was a basis for citizen of another state to argue that the state court was not an adequate forum. In light of the state court's receipt of substantial federal financial assistance and the need to adequately determine federal claims or defenses, there was an obligation to provide an official recording method to preserve a record of the involuntary waiver of federal law and involuntary waivers that relate to judicial disqualification or constitutional judicial resignation.[5] Even if the "Bring your Own Court Reporter Policy" is nondiscriminatory on its face it is grossly discriminatory in its operation and effect. See *Griffin v. Illinois* (1956) 351 U.S. 12, 17 n 11, *Boddie v Connecticut* (1971) 401 U.S. 371.

Under the Civil Rights Act of 1866 all citizen are to have the same right in every state to the equal benefit of all laws. However, section 5 of SB x211 puts in place a system in California that does not provide for equal benefit of all laws. Considering ERISA and federal tax law, there could not have been credible doubt that public employment by

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[5] See CJEO, Formal Opinion 2013-002 (2013), *Disclosures on the Record When There is no Court Reporter or Electronic Recording of the Proceedings*, California Supreme Court Committee on Judicial Ethics Opinion.

judges of state courts of record existed with counties such as the County of Los Angeles. At oral argument the authoring justice attempted to minimize the detrimental effect of Section 5 of SB x211 by indicating that the provision was uncodified. However, it is precisely the fact that the "super immunity provision" is uncodified that causes substantial harm. (See App.112 RJN #11).

Section 5 of SB x211 attempts to give California a special exception to the Supremacy Clause and the Civil Rights Act of 1866 and to re-write an entire body of civil rights law concerning municipal liability. See *Monell v. Dept of Social Services of City of New York,* 436 U.S. 658, 660 (1978). A discriminatory policy can be one of action or inaction or result from deliberate indifference to the need for action. *City of Canton v. Harris,* 489 U.S. 378, 386-388 (1989); *Bryan County Com'rs v. Brown*, 520 U.S. 397, 520 (1997). States cannot allocate responsibilities to local entities when doing so would have the effect of undermining federal rights. See *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960).

Section 5 of SB x2ll requires a surrender of rights guaranteed by the federal and state constitution, and shields a judge subject to constitutional resignation from the mandatory and constitutionally required disclosures under the state

constitution and deprives the court user of the opportunity withhold consent. Racial and language minorities have the right under the Section 1 and 3 Civil Rights Act of 1866 to refuse to consent to proceedings when they have a good faith belief and position that the person conducting the proceeding is subject to constitutional resignation. Particularly when placed in its proper historical context Section 5 of SB x211 is directly related to efforts to dilute minority voting in judicial elections and correspondingly diversity in the state judiciary. Racial and language minorities should not be deprived of the mandatory right to withhold consent to proceedings before a judge subject to constitutional resignation or to proceedings without disclosure of the existence of the Section 5 of SB x211 that causes an involuntary waiver of federally protected rights.

This court should grant this petition because the California Supreme Court filed an admission in the federal court that it has disqualifying interests. (App.167-172). Its Committee on Judicial Ethics has rendered an opinion specifying circumstances when automatic judicial resignation occurs and the opinion involves a situation that is not as direct and clear as the instant case.[6] In essence, the highest court of the

[6] See CJEO Formal Opinion 2017-011, Judicial Service On A Nonprofit Charter School Board, California Supreme Court Committee on Judicial Ethics Opinion p. 14-16. (App.378-382)

State of California has deferred decision to this court. This court should determine the issue of whether section 5 of SB x211 is constitutional.

III. Mandamus Should Be Granted Because Fundamental Jurisdiction Was Lacking Due To The Acceptance Of Public Employment And Office Under California Constitution Article VI §17 And Lack Of Consent Under California Constitution Article VI §21 And Due To The Admission Of Disqualifying Interests Filed By The California Supreme Court And Other Members Of The State Judiciary In The Federal Court

The appellate panel of the Second District does not address the legal issues raised and in an extraordinary manner the authoring judge raised an issue that only pertains to her personal interest and was not at issue in the trial court. The decision erroneously states that appellants were challenging "the ability of retired judges to engage in post-retirement public employment". (App.33). Nothing of the sort was ever raised in the case because no retired judge was involved in the trial court proceedings. Instead, it was in the VRA Case, where the legal issue was raised that the Chief Justice of the Supreme Court could not fill vacancies of judicial office. Instead, only the Governor of the state can temporarily fill judicial seats vacant by

constitutional resignation until the requested monitored judicial election could be implemented.[7] It was also raised in the VRA case that judges subject to automatic constitutional resignation from judicial office or had violated the mandatory disclosure requirements of the California Political Reform Act (which impacted retired judges and justices) would have to meet the requirement to run for office and their names would have to appear on the ballot.

The decision does not address the issues raised and briefed in both the trial and appellate court. First the decision attempts to reframe the legal issues actually raised by petitioners as pertaining to judicial compensation. This is not the

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[7] Former Governor Jerry Brown could have made temporary appointments to fill vacancies of judicial office caused by mandatory constitutional judicial resignation after California Government Code §53200.3 was deemed unconstitutional or implemented other measures pending implementation of the required monitored judicial election. There was never a reason to enact Section 5 of SB x211 and to refuse to respond to the California Commission on Judicial Performance. When there is a constitutional vacancy of judicial office it is the Governor not the Chief Justice of the Supreme Court who makes appointments to fill vacancies of office until judicial election. See *Lungren v. Davis*, 234 Cal.App.3d 806, 825 (Cal. 1991)(the framers clearly intended that the people reserve the right to elect judges and that the emergency method of filing vacancies of judicial office by the Governor only allows an appointment until an election), See also Cal. Const. Art VI §16(d)(2).

issue raised by the appeals. Second, the decision attempts to infer that a federal court had already determined the legal issues raised when this is not the case. (See App.34).[8] Therefore, the indication that there is agreement with fellow jurist is not linked to any legal issue directly at issue in the state court. Finally the remainder of the decision disregards and never addresses the actual legal arguments made by petitioners.

Petitioners did not cite to noncitable sources. Instead, they addressed the applicable legal authorities. They also requested both mandatory

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[8] Citing to a decision in a petition of the Turners and their counsel to remove under the Civil Rights Removal Statutes the Second District decisions indicates the arguments of petitioners were labeled "nonsensical" in the federal court. However, no removal filed by the Turners made any legal determination concerning whether acceptance of public employment and office by state court judges resulted in constitutional judicial resignation. The Turners and their counsel argued that they were de facto defendants because they were being forced to participate in a void proceeding which did not have a remand order from the federal court. They further argued that the Turners were defendants on the cross-complaint filed by Hartford in the void proceedings and that removal under the Civil Rights Act of 1866 allowed removal by "persons" and "state officers". Finally, they argued that under Cal. Code of Civil Procedure §382 if the consent of a person cannot be obtained then s/he may be joined as a defendant.

and discretionary judicial notice of applicable law and matters.[9] The trial court denied judicial notice of all items including matters for which mandatory notice is required. (i.e. state and federal legal authorities including the state and federal constitution, state and federal statutory authority (including but not limited to Senate Bill x211 chaptered on February 20, 2009, the Supremacy Clause, 28 U.S.C. §1446 (d), and the 1866 Act).

Although there is no authority which has directly addressed Section 5 of SBX 211, there is ample legal authority that expressly addresses California Constitution Art. VI §17 and §21 and the Second District cannot simply ignore well-established legal authorities in order to maintain an unconstitutional condition in the state court to the detriment of court users.

The cited established law is clear that there is an immediate self-effectuating judicial vacancy of office upon public employment or office under the plain language of California Constitution Art VI. §17. See *Abbott v. McNutt*, 218 Cal. 225 (Cal. 1933); *Alex v. County of Los Angeles*, 35 Cal.App.3d 994 (Cal. 1973). See Cal. Attorney General Opn 83-607, 66 Cal. Attorney General 440. Court users do not have to move to disqualify or prove a financial interest. A

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[9] See Appellant Appendix Vol 26-27 BS 7514-7747, Vol. 28 (BS 7834-7872), Opening Brief p.22-24.

constitutionally resigned judge has to disclose and obtain consent before attempting to assert jurisdiction after a constitutional vacancy of judicial office. Cal. Const. VI §21. Instead of developing a viable and effective constitutional solution, section 5 of SB x211 was born and was an unconstitutional attempt to nullify the state constitution while violating the Supremacy Clause, the Civil Rights Act of 1866 and other federal law.

Without disclosure to the parties to the proceedings and consent of the parties to the proceedings, there is a complete absence of jurisdiction. See *Rooney supra*, *People v. Tijerina supra.* These arguments are extensively developed in the record. The authorities clearly establish that constitutional vacancies of judicial office have occurred, confirm that mandatory disclosure and consent procedures are required and establish that court users of other states cannot be compelled to involuntarily waive federal rights. The Second District chose to disregard the valid arguments made and to penalize and retaliate by imposing sanctions when there was no basis to do so. California Code of Civil Procedure §410.10 prohibits a court from exercising jurisdiction on any basis which is inconsistent with the United States Constitution.

The direct relevance of the items for which judicial notice was sought is apparent from the

sampling in the appendix. For example since 1983 the Formal Opinion of the State Attorney General interpreted Art. VI §17, §21 of the California Constitution to prohibit public employment (except for a teaching position during the term of judicial office) even when there is a resignation prior to expiration of the term of judicial office). (App. 184-211). In other words a judge could not evade the operation of Article VI §17 by resigning before expiration of a term of office.[10] This opinion relies upon the authorities cited by the petitioners including *Alex v. County of Los Angeles* which held:

> "We are living through a period of massive distrust and loss of confidence in all major institution of government, including the judiciary.
>
> "The approximately 20 million citizens of California, speaking through the initiative process at the ballot box, the approximately 40,000 attorneys in California, speaking through the

[10] See also News Release California County of Santa Clara Office of the District Attorney, "Carr Sworn in as District Attorney in Historic Ceremony, Resumes Her Search For A New Chief Assistant" (January 9, 2017) (https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2007/carr-sworn-in.aspx); *State ex rel. Metcalf*, 15 R.I. 505, 509 (R.I. 1887).

> committees of the California State Bar; and the approximately 1000 judges in California, speaking through the Judicial Council and the California Conference of Judges, want their trial judges to be free of the 'suspicion' of being warped by political bias. They want their trial judges to 'tend the store' and not be divergent from the impartial performance of their work by extrajudicial activities such as running for public office. These desires are reflected in section 17 and thus tend to foster confidence in our courts which is indispensable." *Alex v. County of Los Angeles* at 1008-1009.

Identical to petitioners the opinion emphasized that the rational for the interpretation was articulated over 100 years ago in *People v. Sanderson*, 30 Cal. 160 (Cal.1866) and by the Constitutional Revision Commission in its materials in 1965 in 1966.

The California Ballot Pamphlet for the General Election in November 8, 1988 which amended California Constitution Art. VI §17 informed the voters that that "[t]he Constitution prohibits judges of courts of record from accepting public employment or public office outside their

judicial position during their term of office. ….The prohibition applies during the time the judge is actually in office and during the entire term for which the judge was selected, even if the judge has resigned part way through the term." (App.215-216).

After California Government Code §53200.3, which had allowed judges of the courts of record to be employees of the counties, was deemed unconstitutional, the constitutional body governing judicial performance determined that Section 5 of SB x211 was unconstitutional. Its opinion concluded that the Legislature did not have authority to retroactively immunize all state court judges from authorizing or receiving compensation from the county and that Section 5 of SB x211 was invalid and unconstitutional. (App.235-238, 319-323).

The state court decision and judgment and denial of the petition for review in the case of *Candace Cooper v. Controller of the State of California*, and the appearance of CTurner and members of the VRA Case in the California Supreme Court in the case of *Gilbert v. Chiang* is relevant to demonstrate the competing cases filed by justices of the Second District and the VRA Case. It demonstrates a conflict between the competing legal positions of retired and current justices and current racial and language minority court users. (App.265-316 337, 338-351).

In the case of Candace Cooper the court adopted the legal position of the petitioners and similar to petitioners relied upon the voting materials given to the electorate expressly stating that acceptance of public employment and office outside judicial office during the term of office was prohibited. (App.293-296). It also relies upon the same legal authorities cited by petitioners. (i.e. App.298).

The California Supreme Court Committee on Judicial Ethics Opinion on May 2, 2017 also addressed the interpretation of Article VI Section §17 and that acceptance of public employment or public office is a resignation from the office of judge. (App.378-382).

Petitioners not only addressed the relevant applicable law, and properly requested mandatory judicial notice of decisional, constitutional, and public statutory law of California and of the United States in the trial and the appellate court, they also properly requested judicial notice of court records and other items properly within the scope of discretionary notice (and comparable to the notice taken in cases of the justices in competing cases), (i.e. the formal opinions of the California Attorney General and ethics opinions of the Committee on Judicial Ethics of the California Supreme Court).

Given the admission of disqualification of the California Supreme Court and the showing that fundamental jurisdiction was lacking due to existing constitutionally mandated judicial resignation and the fact petitioners' client did not consent to proceedings before a judge pro tempore under California Constitution Art VI §21 or to waive federal rights under Section 5 of SB x211, the state court lacked fundamental jurisdiction. The jurisdictional arguments made by petitioners were not frivolous on a clear objective basis.

IV. The Imposition Of Sanctions Against Petitioners And Other Conduct Violated The First And Fourteenth Amendment

Petitioners claim they are being subjected to extraordinary retaliation in violation of the First Amendment rights including the right to speak freely against government action; and the right of association to advance institutional reform, the right to constitutional disclosure and to withhold consent, voting rights, and truthful and fair electoral information in judicial elections (including on the ballot itself). Government threats to free speech and association constitute an "extraordinary circumstance" warranting mandamus review. See, e.g. *Perry v. Schwarzenegger*, 591 F.3d 1126 (9th Cir. 2009)(mandamus to protect campaign strategy

communications from discovery, due to the effect of discouraging exercise of the right to associate); *Chase v. Robson*, 435 F.2d 1059 (7th Cir. 1970)(mandamus to protect free speech of litigants). "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *N.A.A.C.P v. Alabama,* 357 U.S. 449, 460 (1958), See also *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963).

The elder Turners filed their appeals in 2013 and early 2014, after the VRA Case was filed. All briefing in the appeals was concluded by April 2016 and oral argument was set for all appeals on August 16, 2016. (App.173-174). Despite the advanced age of CTurner and MTurner the court delayed determination of the case for close to three years. Then after CTurner died on June 7, 2019 after oral argument on May 10, 2019, the court unreasonably refused a brief stay so that a personal representative could be appointed. Immediately petitioners filed a notification of death and reasonably requested a temporary stay to allow the personal representative of the estate of CTurner to obtain information about the case to determine whether a substitution would be required or appropriate. Even though there was an extensive record the court did not rule on the requested stay, but rather mentioned its denial in its July 10, 2019 decision. The court prevented the estate of the client of petitioners any reasonable

opportunity to investigate the claims that could be asserted against the estate to make a decision concerning substitution. This was even though the appeals had been filed over five years earlier and oral argument had been delayed for close to three years.

The sanction itself and the amount was improper and evidence of bias and retaliation. First the issues raised on appeal, based on the merits and on lack of jurisdiction, objectively had merit. Even if an appeal could conceivably lack merit does not establish that it is frivolous. See *Dodge, Warren & Peters Ins. Services, Inc. v. Riley*, 105 Cal.App.4th 1414, 1422 (Cal. 2003). The sanction imposed violated the First Amendment because it is intended to discourage attorneys from raising issues that challenge judicial conduct and/or from seeking a special judicial election or objecting to the super immunity provision of Section 5 of SB x211.

Additionally the sanction violates the First and Fourteenth Amendment and is evidence of bias and retaliation. Petitioners obtained a certified copy of the sanction motion filed by Rule from the Clerk of Court. Under California Rule of Court, Rule 8.276(b) a party may move for sanctions but it must include a declaration supporting the amount. The attached declaration had redacted billing statements for an unspecified appeal. The amount of the billing

contained an amount which totaled $7,230.00. The declaration did not support a request for the amount of $21,366.00 and petitioners were prohibited from seeing the redacted items that included the information identifying the matters reflected on the billing statement. Therefore, under the Fourteenth Amendment petitioners did not have substantive or procedural due process to contest the sanction motion. Also, because the court lacked jurisdiction from inception due to the lack of a remand order, the requested order to show cause filed by petitioners and their client for an award of attorney fees and costs, should have been granted because Rule could not produce and file a remand order. The legal standard and procedure adopted to impose sanctions against petitioners evidenced bias and retaliation in violation of the First and Fourteenth Amendment.

V. The Refusal Of The Authoring Retired Judge And Other Panel Members Of The California Court Of Appeal For The Second Appellate District To Recuse Conflicts With Established Due Process Precedent Of This Court

Under the Due Process Clause recusal is required even when the judge does not have a direct or positive interest in a case.[11] A fundamental factor

[11] See *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973)(due process violated when the decision makers had an indirect general

is whether there is a serious risk of actual bias based on objective and reasonable perceptions. *Caperton* at 884. Both direct and indirect financial interests and general interest in the outcome of the case required recusal. The author of the decision, Judge Dunning (ret), demonstrated actual bias and direct and indirect financial and general interest in the outcome. She had a self-interest in re-framing the legal issues to address her particular personal concern as a retired judge–when that was not an issue in the case. Also, she indirectly was attempting to inject legal argument on her particular interest of concern because of the legal issue that only the Governor could fill judicial vacancies of office raised in the VRA Case. Obviously she was not siting on the case by assignment of the Governor. Moreover, since the remaining panel members were subject to recusal there did not exist a concurrence of a qualified three-judge panel.

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interest of sufficient substance that was in competition with the parties); *Aetna Life Insurance Company v. Lavoie*, 475 U.S. 813 (1986)(due process violated by participation of a judge in a case when he had an indirect interest in the outcome); *Caperton v. A. T. Massey Coal Co., Inc.* 556 U.S. 868, 884 (2009)(due process violated due to the serious risk of actual bias based on an objective perception that a person with a personal stake in the case had a significant influence in placing the judge on the case); *Ward v. Monroeville*, 409 U.S. 57 (1972)(due process violated because the mayor had institutional interest in adjudication of traffic fines which contributed to the city's finances).

The disqualifying interests at issue are significant because it originates from the institution and decision makers. The requirement of an impartial decisionmaker transcends the concern of the likelihood of error. *United Retail & Wholesale Emp. v. Yahn & McDonnell*, 787 F.2d 128, 138 (3rd Cir. 1986). Recusal was required because petitioners and their client had a right to an impartial tribunal.[12]

Decisionmakers on the panel of judges rendering the July 10, 2019 decision included former judges of the Superior Court of the County of Los Angeles that have an interest in the declaration of vacancy of judicial office and the monitored special judicial election sought in the VRA Case. Judge Dunning (ret.) had a financial interest in her recent and future assignment in the Court of Appeal as a retired judge. She could be replaced by the Governor making temporary appointments pending a special judicial election. All panel members would be impacted by the public disclosure and posting of the opinions rendered by the California Commission on Judicial Performance and the potential fines and

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[12] See *Gibson supra*, *Ward supra*, *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process….To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.")

penalties under the California Political Reform Act sought in the VRA Case. "Under a realistic appraisal of psychological tendencies and human weakness", the interest at stake "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented". *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). There was a direct financial and general interest in impairing the value of the VRA Case and in the implementation of the relief sought therein, and therefor an interest in indicating the appeal was frivolous. Hence, the legal position, viewpoints, and grievances, concerning institutional discrimination were undermined during an important public debate and constitutional contest. This viewpoint discrimination intended to drive out certain ideas in the in the general public violates petitioners' First Amendment rights.

A. Financial Interests

The justices and judges located in the County of Los Angeles have a direct financial interest in the VRA Case and in the issues raised in the state court appeal. Many are the source of the claimed civil rights and constitutional injury and should not be in a position to directly or indirectly rule on matters that involve their personal general interests.

The Due Process Clause precludes a judge

with a "direct, personal, substantial, pecuniary interest in reaching a conclusion against" a party. See *Tumey v. Ohio, 273 U.S. 510,523 (1927).* In *Tumey* the mayor of a village had the authority to sit as a judge and try those accused of violating state law prohibiting possession of alcoholic beverages. He received a salary supplement for performing these duties and the funds for that compensation derived from the fines assessed. The Due Process Clause required disqualification not only because of the direct pecuniary interest but also due to the possible motive to convict and to graduate the fine to help the financial needs of the village. *Id.* at 535. In *Ward* the mayor received no money and the fines assessed went into the town's general fund. Nevertheless, this court held that there was a possible temptation to make the mayor partisan in making high contributions to the village's finances. *Id.* at 60.

B. Financial Interests That Are Not Direct

The financial stake which requires recusal does not need to be direct or positive as in the case of *Tumey*. See *Gibson* at 579. In *Gibson* a state administrative board composed of optometrists had a pecuniary interest of sufficient substance so that it was determined that it could not preside over a hearing against competing optometrists. In part it was alleged in *Gibson* that "the aim of the Board was

to revoke the license of all optometrists in the State who were employed by business corporations", "that the Board of Optometry was composed solely of optometrists in private practice", and that "success in the Board's effort would possibly redound to the personal benefit of members of the Board." *Id.* at 578. Similarly, there is direct competition between members of the VRA Case and judge/justices that could be subject to a declaration of vacancy of judicial office and the requested monitored special judicial election. Moreover, the attorneys involved in the VRA Case on the appeal have over 30 years legal experience and would be eligible to run against judicial incumbents whose names have been improperly left of the judicial ballot (although they are subject to automatic constitutional resignation). The indirect financial interests were sufficient for disqualification. See *Gibson* at 579.

C. General Interests

In both *Aetna* and *Caperton* this Court further clarified the reach of the Due Process Clause regarding a judge's interest in a case. In *Aetna* a justice cast the deciding vote on the Alabama Supreme Court in a bad faith action against an insurance company when at the time he was a lead plaintiff in a similar case. The issue was not whether the judge was influenced but rather if sitting on the case "would offer a possible temptation

to the average…judge to…lead him not to hold the balance nice, clear and true." *Id.* at 825. The concurring opinion of Justice Brennan indicates that "an interest is sufficiently 'direct' if the outcome of the challenged proceeding substantially advances the judge's opportunity to attain some desired goal even it that goal is not actually attained in that proceedings. " *Aetna* at 830. This Court held it was the justice's participation in the case that violated due process and that the court did not need to determine if a particular judge was "influenced". *Id.* at 825. The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, 'justice must satisfy the appearance of justice.'" *In re Murchison* at 136.

In *Caperton* this court further delineated the objective standard for recusal under the Due Process Clause holding that there is a serious risk of actual bias when a person with a personal stake in a particular case has significant influence in placing the judge on the case by raising funds or directing the judge's election campaign when a case was pending or imminent.

In the determination of whether there exists a serious risk of actual bias *Caperton* requires an evaluation of the strong and inherent human nature

as this Court confronted in *Tumey* and *Ward*. See *Caperton* at 882-884. The risk of actual bias was substantial. The legal position that there should be a declaration of constitutional vacancies of judicial office and procedures established for fair judicial elections, procedures adopted for disclosures and consent required by California Constitution Art. VI §17, §21, and that Section 5 of x211 is unconstitutional, directly and indirectly impacted the general and financial interest of each decisionmaker on the panel. Justices and judges with general and financial interests in the voting rights case, the issues on appeal, or who were directly placed on the appeal by a persons with an imminent and pending interest, violated the Due Process Clause.

CONCLUSION

For the above and foregoing reasons, Petitioners respectfully request issuance of a writ of mandamus to the California Court of Appeal, Second Appellate District.

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