Docket No. 20-1102

In the Supreme Court of the United States

MICHAEL JAMES HANNA,

Petitioner,

v.

LITTLE LEAGUE BASEBALL, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA FOURTH DISTRICT DIVISION TWO

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QUESTIONS PRESENTED

Whether California's vexatious litigant statute unconstitutionally deprives a litigant of due process and access to the courts, by declaring a pro se litigant vexatious, and precluding the litigant from filing further actions absent prior permission.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

LIST OF ALL PROCEEDINGS

There are no other relevant proceedings.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Court of Appeal is partially reported at *Hanna v. Little League Baseball, Inc.*, 53 Cal.App.5th 871, 267 Cal.Rptr.3d 845 (2020) and is set forth in full in the Appendix at A1. The California Supreme Court denied further review without opinion. S264586. Its order is in the Appendix at A21.

JURISDICTION

The Court of Appeal issued its decision on August 18, 2020. The California Supreme Court denied review on November 18, 2020.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides the following:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

California's "vexatious litigant statute" (Cal. Code Civ. Proc. §§ 391-391.8), in its entirety, is reproduced in the Appendix at A22.

The key provisions relevant here are:

§ 391(b), under "Definitions," which provides that:

"Vexatious litigant" means a person who does any of the following: (1) In the immediately preceding seven-years period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person ....

§ 391.7, "prefiling order," provides that:

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed....

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay....

HOW THE CALIFORNIA STATUTE OPERATES

California's vexatious litigant statute classifies pro se plaintiffs as "vexatious" for having received five final adverse determinations in seven years, without considering whether the litigations are reasonably based. Once the litigant has met the quota, the litigant qualifies also for receiving a prefiling order of the broadest scope, which restricts the filing of any new litigation. For assessing the merits of a proposed litigation, the statute requires the presiding judge to apply

the "it appears" standard which (a) calls for speculation; (b) appeals to the judge's personal predilections; and (c) invites arbitrary rule.

In addition, the entry of such an order is not independently appealable. See *People v. Harrison,* 92 Cal.App.4th 780, 785, fn. 6, 112 Cal.Rptr.2d 91 (2001). The California Courts have held that its vexatious litigant statutes are constitutional and do not deprive a litigant of due process of law. See *Bravo v. Ismaj*, 99 Cal.App.4th 211, 120 Cal. Rptr. 2d 879 (2002).

STATEMENT OF THE CASE

Plaintiff Michael Hanna was declared to be a vexatious litigant under several subparts of the California Code of Civil Procedure section 391(b). As a result, and the trial court's determination that Hanna was not reasonably likely to succeed on the merits of this action, Hanna was ordered to furnish a $100,000 security bond. The trial court also imposed a prefiling restriction on Hanna in future litigation, requiring Hanna to seek permission from the presiding justice or presiding judge of the court if he brought a civil action as a pro se litigant.

The underlying dispute arose from a 2017 complaint Hanna filed against Little League Baseball, Inc., alleging trade libel and unfair and fraudulent business practices. Hanna alleged he was the president of a youth sports organization known as Team Hemet Baseball and Softball (Team Hemet), and in that capacity, he "executed an agreement" with Little League "for the individual '. . . right to conduct a baseball and softball program under the name "Little League"'" for one year.

In July 2017, Little League "purportedly" placed Team Hemet on a regional

hold, which "prevent[ed] any operations by [Team Hemet] until satisfied." Hanna alleged that Little League "ha[d] improperly obtained money from [Hanna], and continue[d] to improperly obtain money from the general public."

The trial court dismissed the trade libel claim on demurrer. Little League moved for an order finding Hanna to be a vexatious litigant and requiring him to furnish security, and requested the court judicially notice 14 different civil actions filed from 2009 through 2018 involving Hanna as a pro se plaintiff and a defendant. Insofar as now pertinent, Hanna challenged the vexatious litigant determination and the determination that he was not likely to succeed on the merits of the action.

The Court of Appeal affirmed the prefiling restriction placed on Hanna's filing of future actions as a pro se litigant.

No court addressed the merits of the underlying litigation. No court determined that the action was frivolous.

REASONS FOR GRANTING THE PETITION

Vague laws invite arbitrary power. Vague laws, in violation of constitutional due process, fail to provide ordinary people fair warning and leave the people in the dark about what the law demands. Vague laws also undermine the constitutional separation of powers by allowing prosecutors and courts to make it up. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1223-1224, 1227 (2018). "In our constitutional order, a vague law is no law at all." *Ibid.* When Congress or the Legislature passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress or the Legislature to try again. See *United States v. Davis*, 139 S.Ct. 2319, 2323, 2336 (2019). California's "vexatious litigant statute" is such a law.

It uses a categorical approach and vague language, leaving the underlying reasoning far from being clear. It is five loses and you are out, regardless of the merits of the dismissed cases.

Federal courts, recognizing the First Amendment right to petition the courts, reject the California rule. Rather, "orders restricting a person's access to the courts must be based on adequate justification supported in the record and narrowly tailored to address the abuse perceived." *DeLong v. Hennessey*, 912 F.2d 1144, 1149 (9th Cir. 1990). Before issuing such an order, a court must "make 'substantive findings as to the frivolous or harassing nature of the litigant's actions.'" *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431, 271 U.S. App. D.C. 172 (D.C. Cir. 1988));

see also *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990) ("plaintiff's claims must not only be numerous, but also be patently without merit"). "'To make such a finding, the district court needs to look at 'both the number and content of the filings as indicia' of the frivolousness of the litigant's claims." *DeLong*, 912 F.2d at 1148. "[L]egitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be." *In re Oliver*, 682 F.2d 433, 446 (3d Cir. 1982).

That does not occur under the California scheme. The "it appears" standard leans on the judge's intuition and imagination, and has led to the widespread dismissal of meritorious claims. Lacking sufficient guidance, the statute also requires guesswork and invites arbitrary enforcement, which, unfortunately, many California state courts have eagerly embraced. "It appears" calls on what the judge sees intuitively, and forces the judge to imagine what horrific things the plaintiff might have done to legally qualify as a "vexatious litigant."

Black's Law Dictionary defines a "vexatious litigant" as a "litigant who repeatedly files frivolous lawsuits." LITIGANT, Black's Law Dictionary (11th ed. 2019). Thus, it is commonly understood that repeatedly filing suits that are dismissed is not enough. They must be frivolous.

No fair alternative interpretation of the statute exists for constitutional avoidance to apply. Application of the canon of constitutional avoidance requires the available of fair alternatives. *United States v. Davis, supra,* at p. 2332. The canon is a tool for choosing between competing plausible interpretations of a statutory text,

resting on the reasonable presumption that Congress did not intend the alternative which would raise serious constitutional doubts. "The canon is thus a means of giving effect to congressional intent, not of subverting it." *Clark v. Martinez*, 543 U.S. 371, 381-382 (2005).

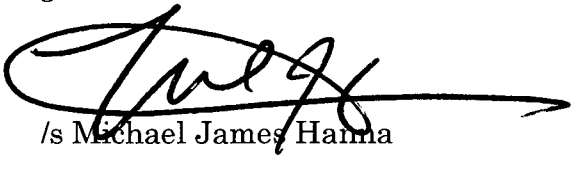
In the case of California's "vexatious litigant statute," however, courts cannot interpret away either the categorical statutory definition for "vexatious litigant," or the vague and uncertain "it appears" which requires guesswork and invites arbitrary enforcement, or the over-broad one-size-fits-all prefiling order. As such, no viable alternative exists for the constitutional avoidance canon to apply.

Declaring these statutory provisions in California's "vexatious litigant statute" unconstitutional is, therefore, a necessity. Meanwhile, California will not be at a loss because California may still simply adhere to the well-reasoned precedents of this Court and other federal courts as to what due process and separation of powers require.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: February 1, 2021



/s Michael James Hanna