No. 20-1303

In the

Supreme Court of the United States

Anthony Pappas for Congress,
a political organization created
under Title 52 of the Federal Code
and Anthony Pappas, individually,

Petitioner

-against-

Joseph Lorintz, individually and as
Supreme Court Judge of the State of New York;
Henry Kruman; Maria Pappas; TD Bank, N.A.
and the State of New York,

Respondents

Petition for Writ of Certiorari
to the United States Court of
Appeals for the Second Circuit

PETITION

March 12, 2021

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QUESTIONS PRESENTED:

1) Did the Second Circuit Court of Appeals commit serious error when it affirmed dismissal of a civil rights action challenging state actor interferences in a federal election, one that featured divorce executions upon a congressional campaign account?

2) Alternatively, did this extraordinary case seeking timely relief unavailable before the Federal Election Commission warrant a private right of action in federal court to remedy unlawful third-party conversions of federal campaign funds administered by Petitioner?

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The final order, en banc, of the United States Court of Appeals, affirming the August 26, 2019 judgment of the United States District Court for the Eastern District of New York was filed on December 16, 2020. It is not a reported opinion and is reproduced in the Appendix at 1a. An appeal was taken to the district court order which had adopted a magistrate's report and recommendation dated August 2, 2019. A panel decision was then issued by the Court of Appeals on October 15, 2020 affirming that order. Appellant, Anthony Pappas, individually and on behalf of a congressional campaign, then filed a petition for en banc review dated November 12, 2020 leading to the final order now challenged before this Court.

JURISDICTION

The summary order of the United States Court of Appeals for the Second Circuit was filed on December 16, 2020. Jurisdiction is proper under 28 USC 1254(1).

CONSTITUTION AND STATUTES

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment provides in relevant 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 the equal protection of the laws."

42 USC section 1983, Civil Rights Act of 1871, provides, in relevant part:

> Every person who under color of law of any statute, ordinance, regulation, custom or usage, of any state... subjects, or causes any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

52 USC section 30114(b) provides, in relevant part:

> (1) A contribution or donation described in subsection (a) shall not be converted by any person to personal use.
>
> (2) Conversion: For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual duties as a holder of Federal office, including-

(A) a home mortgage, rent or utility payment;

(B) a clothing purchase;

(C) a non-campaign automobile expense;

(D) a country club membership;

(E) a vacation or other noncampaign-related trip;

(F) a household food item;

(G) a tuition payment;

(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign, and

(I) dues, fees, and other payments to a health club or recreational facility.

STATEMENT OF THE CASE

Petitioners Anthony Pappas and Anthony Pappas for Congress brought an action in the United States District Court for the Eastern District of New York on July 24, 2018 pursuant to the All Writs Act, 28 USC section 1651 to challenge violations of civil rights and federal Election Law. As a candidate for Congress in New York's 14th district, he sought emergency relief when his campaign funds were seized through a property execution issued by a divorce lawyer acting under authority of a divorce court. He also sought relief under 42 USC section 1983 to remedy violations of his federal statutory and constitutional rights.

Petitioner sought emergency relief by way of a show cause application regarding the first of two notices of seizure sent to him by TD Bank earlier the same month. The bank was named in Petitioner's action in addition to his divorce judge, opposing lawyer and ex-spouse because this is where his campaign account had been opened under its own name and tax identification number. The latter two defendants were necessarily named because they actively participated in the unlawful enforcement actions regarding the campaign account. The district court was asked to restrain the seizure of funds until an injunction could be litigated.

Two weeks later, District Court Judge Joanna Seybert issued a scheduling notice to decide Petitioner's emergency application without signing his proposed show cause order. That process continued without decision until after Election Day on November 6, 2018.

Later that month, Judge Seybert offered the parties an option of filing motions on the Verified Complaint. Because of the peculiar delays, and because the seizures of donated funds could recur during this campaign and later ones, an original action was filed in the United States Court of Appeals for the Second Circuit seeking relief pursuant to Rule 21 of the Federal Rules of Appellate Procedure.

That original action was brought in the nature of mandamus but drew upon the full supervisory and equitable authority of the appeals court to direct a restraint upon the executions. Relief was denied in a one page, two sentence order issued on December 21, 2018 "because Petitioner ha(d) not demonstrated that exceptional circumstances warrant(ed) the requested relief." The court cited *In re von Bulow*, 828 F.2d 94, 96 (2nd Cir. 1987) as its lone authority. Consequently, Petitioner continued with his civil rights action.

For background on that action, in March, 2018, Petitioner was endorsed by the Republican Party committees of Queens and Bronx counties as their candidate for Congress in New York's 14th District. Accordingly, a campaign account was set up to facilitate the campaign. Petitioner, Anthony Pappas, opened this account as "Anthony Pappas for Congress."

Respondent TD Bank was entrusted with the monies deposited in this account. One month after its creation, donations began emerging from persons across the country. The nationwide draw arose unexpectedly because on June 26, 2018, Alexandria Ocasio-Cortez

defeated longtime incumbent Joseph Crowley in the Democrat primary in the same election district.

The upset victory gained national headlines as the primary winner proceeded to campaign across the country with the likes of then presidential candidate Bernie Sanders. Their joint progressive agenda caused opponents to make donations to this account for the prime objective of defeating Ms. Ocasio-Cortez in the general election. In contrast, few donations arose from within the 14th District, believed, in part, to be caused by a voter registration ratio of six-to-one in favor of Democrats. Petitioner was also a political newcomer.

The contributors donated such monies exclusively for campaign purposes, and Petitioner was prohibited by federal Election Law, with certain exceptions, from applying them for any non-campaign purpose under penalty of criminal prosecution, see 52 USC 30114(b) reprinted above. However, because of the divorce case, still ongoing after more than fourteen years, Petitioner was subjected to severe impositions which impeded his candidacy, including a restraint on all accounts, direct or indirect, for equitable distribution of marital assets.

The divorce case was filed against Petitioner in December, 2004 and the restraint on accounts was issued on December 12, 2013 by state divorce Judge Hope Schwartz Zimmerman. This restraint occurred after Petitioner filed a civil rights action, Pappas v Zimmerman, et. al. (Pappas I) in the same district court in August, 2013. It challenged, inter alia, a gag order and retaliatory impositions for the filing of complaints before various state authorities since 2010.

Respondent Henry Kruman was one of the targets of those complaints along with his client, Respondent Maria Pappas, who was allowed to assert false narratives adopted by the divorce judges assigned since 2008. Since 2013, they have issued restraining notices on individual and joint accounts belonging to Petitioner and third parties including his adult children.

Judge Zimmerman denied motions and requests by Petitioner to lift the overbroad restraints or limit their scope between the years 2014 and the time of her self-recusal in 2017. Her replacement, Respondent Judge Lorintz denied motions and requests to do the same. This left Petitioner with only a partial salary after garnishment. More bizarre, it created a condition of having restrained assets unavailable for payment of the unsatisfied portion of judgment.

The unpaid divorce judgment was a substantial amount approximating one million dollars accruing interest at 9% annually. National and local media exploited that fact during the campaign after making inquiries into Petitioner's divorce case. Without a clear understanding, they defamed the candidate as a dead beat depriving his ex-spouse of her entitlements.

Petitioner's ability to defend against such public accusations was further impaired by the referenced gag order imposed in 2011 by a prior assigned divorce judge, Stanley Falanga. That order has remained intact without modification or limitation by any of the judges assigned thereafter. In addition, Judge Lorintz has done little or nothing to expedite the judgment

satisfaction process. Petitioner has maintained that this protracted interest penalty comprises yet another punishment for his public criticisms.

The forementioned actions and inactions were asserted to be well beyond the legitimate scope of state proceedings or a good faith divorce process and far distinct from the events which formed the subject matter behind the federal court action which Petitioner brought in 2013. Stripped of their formalities they constituted a pretext to disguise the grim reality of unlawful retaliation by a state court for the exercise of free speech during a congressional campaign. That campaign could not be a subject for decision in 2013.

These and other draconian impositions were made in retaliation for Petitioner's exposure of corruption in these courts. Such conclusion was easily made by the proximity of impositions to the public criticisms coupled with their extreme and irrational nature. The impositions also placed volunteers at risk of third-party contempt of the gag order and a reluctance to be identified with the campaign.

Campaign volunteers dwindled to very few by Election Day, and donations failed to exceed $15,000. All respondents have continued to withhold and/or convert the subject campaign funds to the present day even after full notice was provided by service of the original action in July, 2018. They have essentially exploited a Federal Election Commission which lacks a statutory procedure to act timely on complaints such as this one. That Commission was otherwise burdened by a lack of quorum to act during periods relevant to this case.

REASONS FOR GRANTING WRIT

A writ is crucial in this extraordinary case to establish precedent in matters of campaign financing and to prevent state interference in federal elections. At a time when election integrity has dominated national discourse, this case presents an opportunity to show that our federal courts will take relevant action in the face of public criticism. A clear theft of campaign funds occurred with the complicity of a state judge, divorce lawyer, regulated bank and private co-conspirator. [1]

With proven bias existing in his state divorce case and discovery deprivations in the federal actions below, Petitioner remains unable to learn about bank practices that could impact similar victims. Such bias was wholly disregarded despite the ongoing abuses employed to complete the thefts. Also disregarded was the victims' position that these un-remedied thefts would harm future election prospects. In that context, dismissal of Petitioners' action was clearly improper on at least the issues of prospective declaratory and injunctive relief sought in the Verified Complaint. As

[1] The thefts in this case were regularly compared in court filings to the thefts of campaign funds surrounding the convictions of former California Congressman Duncan Hunter and his wife Margaret. The Hunter case in federal court featured donated monies used for personal expenses such as family vacation trips, theater tickets, gaming platforms and other lavish conduct resulting in more than $37,000 in overdraft bank charges. Ultimately, both Hunter and his then estranged wife were pardoned by former president Donald Trump, see Ken Stone, *Duncan Hunter's Dad and Pivotal Letter Paved Way for Presidential Pardon*, Times of San Diego, December 22, 2020. During that prosecution, the misappropriations here were effectively concealed, disregarded or excused through inaction, procedural delays and technical obstacles, setting the precedent that criminal and civil violations of federal election laws can be selectively enforced based on political influences. In essence, satisfaction of a divorce judgment was allowed as a campaign expense.

the Court of Appeals recognized, such relief is not foreclosed by sovereign or judicial immunity.

For the same reasons, preclusion rules did not form a final alternative for dismissal after various defenses were analyzed seriatim. Petitioner is maintaining here that the *en banc* and panel decisions of the Court of Appeals together with the district court order and magistrate report arose from a fear of public clamor. This then eclipsed a duty to assure justice for victim(s) having no political significance. On this basis alone, the decisions below should be reversed under the Civil Rights Act of 1871 regardless of whether a private right of action exists under the Federal Election Law. This is because the scope of law and facts among the civil rights claims is much broader than the issues strictly related to federal election law campaign financing.

Point One: Free Speech Takes Precedence Over a State Divorce Case that Corrupts the Integrity of a Federal Election Thereby Permitting Recourse in Federal Court Under 42 USC Section 1983.

In United States v McDonnell, 579 US ___ (2016), this Court, by unanimous decision, vacated a federal bribery conviction of former Virginia Governor Robert McDonnell based on First Amendment principles. Although this was a criminal prosecution, the interpretation of an election law provision was at its core. That provision, section 201(b)(3) was deemed to be overbroad in its prohibition of "official action" that could be considered a form of bribery or election influence. On balance, constitutional principles were properly given priority over legislative drafting issues.

In contrast, despite uncontroverted facts regarding the seizure of federal campaign monies, still retained to the present day, Respondents jointly assert that the civil rights violations at issue in this case are foreclosed by various technical, prudential and jurisdictional obstacles. If true, taken together, they extinguish any recourse under federal law and the Constitution.

Section 1983 of Title 42 of the United States Code provides as follows:

> Every person who under color of law of any statute, ordinance, regulation, custom or usage, of any state... subjects, or causes any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

Known as the Civil Rights Act of 1871, this federal statutory cause of action lay dormant for ninety years until this Court found that the congressional enactment meant what it stated in the landmark case of Monroe v Pape, 365 US 167 (1961). Since then, this Court has expanded the reach of this statute to civil rights actions against government officials and municipal corporations, Bivens v Six Unknown Named Agents, 403 US 388 (1971); Monell v Department of Social Services, 436 US 658 (1978); Owen v City of Independence, 445 US 622 (1980). In each case, the congressional goals behind our civil rights laws were deemed superior to state interests.

To be sure, in Snyder v Phelps, 562 US 443 (2011), Chief Justice John Roberts emphasized that "[S]peech on 'matters of public concern'...is 'at the heart of the First Amendment's protection,' " citing Dun & Bradstreet v Greenmoss Builders, 472 US 749, 758759 (1985). He also described this right as crucial to self-governance:

> The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," citing New York Times v Sullivan, 376 US 254, 270 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government," citing Garrison v Louisiana, 379 US 64, 74-75 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection," citing Connick v Myers, 461 US 138, 145 (1983).

There can be no dispute that Petitioner was exercising these crucial rights of self-governance when he properly filed a candidacy for Congress and further, that he relied on free speech to succeed with that candidacy. Yet one can search in vain throughout the eight-page decision of the Court of Appeals to find no mention of these overriding principles. Instead, facts and proceedings are carefully crafted to pigeon-hole this extraordinary case into the technical defenses raised by these respondents. They rest on a position that the federal district court below lacked subject matter jurisdiction for a decision on the merits, thereby

leaving victims to lose trust in our courts. This invariably leads to violence and self-help remedies, an all too often common occurrence this past year. The decisions below go further to promote or excuse acts of a criminal nature since the subject campaign account contained third party funds which could form no part of a marital estate or divorce court jurisdiction. [2]

The Court of Appeals managed to circumvent or conceal this "elephant in the courtroom." The drafting technique used to do this is brazen in this case. By exploiting an array of obstacles to federal court jurisdiction, the courts below effectively repealed or hopelessly diluted important enactments of Congress as applied to Petitioner and victims similarly situated, more specifically, 42 USC 1983 and 52 USC 30114(b).

A key example of this folly is the court's invention of a "domestic relations abstention" to replace a "domestic relations exception" which it invalidated recently in this very context of federal question jurisdiction, Decision pg. 5. There is no authority for this invention, and it runs contrary to the strong admonitions of the Supreme Court against the abuse of abstention practices to dismiss meritorious claims, see i.e. unanimous decisions in Exxon Mobile v Saudi Industries, 544 US 280 (2005), Marshall v Marshall, 547 US 543 (2006) and Sprint Communications v

[2] In a shocking departure from reality, the Second Circuit re-characterizes Petitioner's case as one challenging a mere "admonition" against the misappropriation of campaign funds under the Election Law, see Court of Appeals decision at pg. 7, App'x at pg. 12. If that was a correct interpretation of the provision at issue, 52 USC Section 30114(b), then the investigations, prosecutions and convictions of former Congressman Duncan Hunter, Michael Cohen and others would arguably be wholly unjustified, see footnote 1, supra.

Jacob, 571 US 69 (2013). In Marshall, our high court emphasized that "the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception." Writing for the Court, Justice Ginsberg opened her opinion with an excerpt from Chief Justice Marshall in Cohens v. Virginia, 6 Wheat, 264, 404 (1821), to wit:

> "It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should .... We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given ....."

On this premise, decisions were fashioned to permit aggrieved victims to find refuge in our federal courts as the principal forum for vindicating basic federal rights, see i.e. Colorado River Water District v. United States, 424 U.S. 800, 817 (1976)(federal courts are bound by a "virtually unflagging obligation ... to exercise the jurisdiction given to them"); Ex Parte Young, 209 US 123 (1908); Gerstein v. Pugh, 420 U.S. 103 (1975); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980); Dombrowski v. Pfister, 380 US 479 (1965) ; Roe v. Wade, 410 US 113 (1973). This case rests squarely within the scope and goal of these cases.

Point Two: Alternatively, Federal Election Law Permits a Private Right of Action in this Case.

Alternatively, respondents argue that the same rights in this extraordinary case are effectively extinguished under Federal Election Law given the exclusive

jurisdiction claimed to exist over them by the Federal Election Commission. They assert that no private right of action exists for a candidate or interested party to achieve the congressional goals behind this law. Hence, in this case at least, such goals can never be achieved.

This is because that commission lacks a timely procedural mechanism under statute to address a time sensitive complaint such as this one and is otherwise burdened by a lack of quorum to act during periods relevant to this case. Complicating matters further, the Commission lacked jurisdiction over a state court and those acting under its authority. Federal court then became the proper or exclusive avenue for recourse.

In its select and cursory opinion, the Second Circuit adopted the position of Respondents and district court by asserting that a private right of action does not exist under the Federal Election Law. However, no case on point was raised anywhere in that decision or dismissal motions before the district court, making this a case of first impression and ideal for high court adjudication.

A catalogue of cases raised and distinguished in the motions and cross motion below begins with Dekom v New York (no citation found). This was a challenge to state election requirements relating to the gathering of signatures (designating petitions) to qualify for placement on the ballot. It had nothing to do with a theft of campaign funds from a federal election account by a divorce court, lawyer and bank.

Petitioner submits that other aspects of that case actually support his claims in the pleadings. For

example, standing and sovereign immunity defenses were denied in that case, and there was nothing of the sort of invasiveness involving a theft of campaign funds needed to succeed in a congressional race.

In Hayden v Pataki, 449 F.3d 305 (2nd Cir. 2006) a felon was challenging voter disenfranchisement under state law based on his status as a criminal. The only parallel here is the status of Respondents as potential criminals. Petitioner's case is highly distinct insofar as his exercise of speech and candidacy rights are at the core of First Amendment values. There is no "compelling state interest" in promoting criminal behavior simply to satisfy a longstanding divorce judgment. Core rights under the Constitution prevail over any scheme to deny a proper remedy here.

In the next case relied upon by Respondents, Patterson v JP Morgan Chase Bank, 12-cv-2198 (SJF/GRB (2013), the outcome was based on a seizure of a private bank account having nothing to do with free speech, federal election or a campaign account. The type of agreement relied upon in Patterson and by the bank here does not authorize a theft of funds placed in a separate account having a distinct purpose under federal law. The facts are easily distinguished to make the bank a joint state actor in an intentional and unlawful conversion of funds especially after notice was clearly provided.

Finally, as a general proposition, Respondents assert that Petitioner was not an aggrieved party because he continued to exercise his free speech after the seizure of third-party funds. This is an utterly absurd

argument which has no application here because it is tantamount to voiding the First Amendment.

Respondents are effectively stating that in order to show a constitutional violation, Petitioner should have resigned or suspended his campaign without any further speech and commentary about the election at the point when the funds were seized. They are also claiming that Petitioner should have relied on an arduous legal process before the FEC, divorce court, this Court or all three to avoid waiver of crucial rights or an erroneous choice of forums.

The Petitioner did, in fact, test such recourse with an exigent application in the district court three weeks after seizure. As stated, on the state level, such resort had already been tested to no avail by motions and requests before Judge Zimmerman and/or her replacement, Judge Lorintz, to remove or modify the overbroad restraint and gag orders. These events occurred in 2016 and 2017 well after the dismissal of the 2013 action, Pappas I. That outcome was excessively relied upon to dismiss in the alternative.

In analyzing congressional intent behind a private right of action, the Supreme Court has gone through an expansive and then restrictive phase over the years. In Cort v Ash, 422 US 66 (1975), a four-factor test was established to determine whether a statute created a private right. They are: 1) whether the plaintiff fell in a class "for whose special benefit the statute was enacted" 2) whether there was an indication of an intent to deny or create such a remedy; 3) whether the remedy was consistent with the underlying purpose of

the legislation; and 4) whether the subject of the cause of action was one traditionally reserved to state law.

This test was modified in more recent decisions to place the focus more squarely on whether Congress intended to provide for a cause of action in favor of a plaintiff, Touche, Ross & Co. v Redington, 442 US 560, 575 (1979); Wright v Allstate, 500 F. 3d 390, 395 (5th Cir. 2007). Hence, Petitioner here will address the four factors together on the issue of intent.

The campaign funds at issue in this case were intended to facilitate free speech and debate on crucial federal issues. They were not monies that came into a marriage that ended with a 2004 divorce action and decree several years later. Under no set of circumstances could it be argued that Maria Pappas or her divorce lawyer had any entitlement to these donated funds. Hence it cannot be said that their conversion was proper.

The election provisos raised here had a prohibitive aspect to it insofar as conversion by "any person" or misuse by the candidate was expressly made unlawful with both civil and criminal consequences, see i.e. Jackson v Birmingham Bd. Of Educ., 564 US 167, 173 (2005)(Title IX implies a private right of action because it *prohibits* sex discrimination). The Election Law expressly prohibits third parties from achieving through the back door that which cannot be done by the candidate or his campaign. Interference with the federal election process is at the heart of this Petition.

Had Petitioner withdrawn those funds and applied them to his divorce judgment as respondents did, he

would assuredly have been prosecuted as a criminal not unlike Michael Cohen and others engaged unlawfully in campaign activity. Under Title 52, section 30114, the statute cited in the pleadings, campaign donations into such a bank account are regulated by "Permissible uses" and "prohibited use." Satisfaction of a divorce judgment is neither expressly permitted nor expressly prohibited, but "conversion" of such funds by anyone is prohibited and may constitute a criminal violation.

Petitioner would not be able to timely rectify such a theft during the four months remaining in his campaign when the first July, 2018 levy was made. His filing of a complaint with criminal and prosecuting authorities would not save his campaign. Similarly, the Federal Election Commission would not be able to act timely given the complaint and administrative process to obtain a civil remedy. Instead, Congress imposed a duty upon a candidate and committee to safeguard such funds. That, in turn, translated into a private right of action properly taken before the district court.

A private right of action is backed by the overall scheme of Title 52 and the limitations of the Federal Election Commission. The statute's purpose is to facilitate federal election campaigns, candidacies and voting rights. Its provisions make clear that use of campaign funds for a private or non-campaign purpose subjects the "person" doing so to liability. "Person" is broadly defined to include individuals, corporations and diverse organizations. All those named here fall within that definition found at 52 USC section 30101(9). It is a term not limited to candidates or their campaign staff.

Hence a private right of action is not only allowed but it is imperative to achieve the goals of Congress here.

As stated, the divorce lawyer and his client were acting, in substance, in an enforcement capacity and not as lawyer or client, see i.e. Ferri v Ackerman, 444 US 193, 202, n. 19 (1979); Kimes v Stone, 84 F.3d 1121, 1128 (9th Cir. 1996). This Court should not only find a private right but it should also rely upon a more compelling right under the Constitution. Otherwise neither would afford a remedy to encourage political speech and candidacy, see Daniel Tokaji, Public Rights and Private Rights of Action: *The Enforcement of Federal Election Laws*, Vol 44, Indiana Law Review, 114.

CONCLUSION

By reason of the foregoing, Petitioner asks this Court the Grant a Writ of Certiorari on this case together with such other relief as may be just and proper.

March 12, 2021

Respectfully submitted,

Anthony Pappas, pro se

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APPENDIX

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