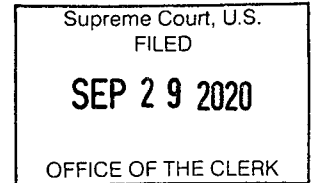


No. **20-506**



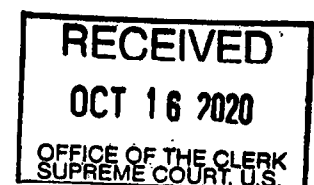
In The  
Supreme Court of the United States

**Sergei Vinkov,**  
Petitioner,  
v.  
**Mark Smith et al.,**  
Respondents

On Petition for Writ of Certiorari  
to California Supreme Court,  
Case Nos. S261198 & S263745

PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

(1) Do the lower courts have the lack of subject matter jurisdiction over a defamation lawsuit against a foreign national board director of religious organization served on voluntary basis in the light of

- a) First Amendment's Religious Clause,
- b) Volunteer Protection Act (VPA) of 1997 (42 USC §14503(a)(1)),
- c) Communication Decency Act (CDA) of 1996 (47 USC §230(c)(2))?

(2) Do lower courts violate the Due Process Clause delaying in by more than 300 calendar days the provision of written orders following an oral dismissal of affirmative relief (cross-complaint) pled by an aggrieved party to seek the judicial review in the courts of higher jurisdiction?

## **PARTIES AND RELATED PROCEEDINGS**

Petitioner Sergei Vinkov (Vinkov) is the real party in interest (a Russian citizen with a lawful permanent residency on the US soil and an individual person in his official capacity as a Congregational Council member of Trinity Lutheran Church of Hemet, California located in Riverside County (Church) on a voluntary basis in January 2018 – August 2019) and the Defendant and the Cross-Complainant in Superior Court of California, County of Riverside – a branch Southwest Justice Center, case # MCC1900188, case name "Smith vs. Vinkov", in the action filed 02/20/2019 (the state action), in which a Vinkov's Cross-Complaint was dismissed without a properly signed and filed order under the granted Anti-SLAPP [A strategic lawsuit against public participation] Motion (California Code of Civil Procedure (CCP) §425.16(b)(1)) in the Cross-Defendant's favor. Two of the Cross-Defendants in that action, Solar Forward Electric, Inc. and Mark Hilton Smith (an American citizen and an individual person in his official capacity of Chief Executive Officer), are the real parties in interest. However, the initiated action was brought on behalf of a legally non-labile entity "Solar Forward." ("doing business as" an entity which is not properly registered within Riverside and Los Angeles County and not incorporated under California Law).

Thus, the respondents are Mark Hilton Smith, Solar Forward Electric, Inc., Superior Court of California, County of Riverside<sup>1</sup>. Attorney General of the State of California will be served pursuant

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<sup>1</sup> Attn: Judge A.M. Bermudez, term ends in 2021, Department S-302, 30755-D Auld Rd, Murrieta, CA 92563, Tel. (951) 704-7566.

to 28 USC §2403(b).

Pursuant to Rule 14.1(b)(iii) of this Court, the Petitioner, Vinkov states following:

1) He is not aware of any directly related cases pending in this Court<sup>2</sup>.

2) United States Court of Appeals for the Ninth Circuit (9th Circuit) *sua sponte* dismissed Vinkov's appeal (Case No. 20-55778, "Mark Smith, et al v. Sergei Vinkov" 08/19/20).

3) The California Supreme Court discretionally denied Vinkov's petitions:

a) Case No. S261198, "VINKOV v. S.C. (SMITH)", 05/13/20". AppD.90a<sup>3</sup>.

b) Case No. S263745, "VINKOV v. S.C. (SMITH)" 09/16/20). AppC.89a.

4) The California Court of Appeal (4th District, Division 2 - "CA 4/2") denied Vinkov's requests for intervention:

a) Case No. E075396, Sergei Vinkov v. The Superior Court; Mark Smith, 07/29/20; AppE.91a.

b) Case No. E074567, Sergei Vinkov v. The Superior Court; Mark Smith, 03/05/20); AppF-G.93a-94a.

c) Case No. E074263, Mark Smith et al. v. Sergei Vinkov, was dismissed on 01/31/20. AppH.95a.

5) The United States District Court for Central District of California ("District Court") remanded

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<sup>2</sup> The pending case *Trump v. Knight First Amendment Institute*, Docket No. 20-197 in this Court may be deemed a partially related case. Although, it was settled that public officials were not protected under First Amendment (*Garcetti v. Ceballos*, 547 U.S. 410 (2006) - no protection under US Const., amend. I for public officers in exercising their official duties), the case may be consolidated to establish the demarcation line between the personal use and the business use of social media accounts if this line may be legally drawn at all.

<sup>3</sup> Letters and numbers refer to the appendices and its page.

the state action on 07/06/20 (Case No.: 5:20-cv-01070-CJC-SPx, Mark Smith et al v. Sergei Daniel Vinkov et al., remanded).<sup>4</sup>

6) The 9th Circuit dismissed Vinkov's appeal on 08/19/20 (Case No. 20-55687, "Brotherhood Mutual Insurance C v. Sergei Vinkov"). Motion for Reconsideration is pending<sup>5</sup>.

7) The District Court still keeps in its caseload the dispute regarding the duty to defend coverage directly related to the state action (Case No.: 5:19-cv-01821-CJC-SPx, Brotherhood Mutual Insurance Company v. Sergei Vinkov, started on 09/23/19).

8) The state action is active. The stay of proceedings will be requested after docketing the petition in this Court.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The petition primary relies on

- (1) Religious, Establishment, Free Expression,
- (2) Case or Controversy,
- (3) Privileges and Immunities
- (4) and Due Process clauses.

rooted in US Const. article III, art, IV, amend. I, V, XIV. Additionally, the petition involves the review of certain provisions of the Volunteer Protection Act (42 USC §14503(a)(1)),

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<sup>4</sup> The anticipated petition for certiorari is planned for filing in January 2021.

<sup>5</sup> At the moment of preparing this booklet, between 08/27/20 and 09/20/2020; correcting between 10/09/20 and 10/12/2020 the 9th Circuit remained silent. The anticipated petition for certiorari was planned for filing between 11/10/20 and 12/10/20. The petition will articulate the following question: "Does US Const., amend. I preclude lower courts from adjudicating an insurer's claims and defenses against a board director of religious organization, involving the issues of the internal governance of a religious organization?" The further status of decisions will be promptly supplied in the reply.

Communication Decency Act (47 USC §230(c)(2))  
which will be reproduced in **AppA.1a-85a** with  
other authorities supporting the necessity of  
the United States Supreme Court's intervention  
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## INTRODUCTION

The presented matters demonstrate how the government of California on behalf of its judicial branch oppresses the First Amendment rights and liberties of a non-citizen lawfully residing in the U.S., who was taking actions and making statements that directly contradict the religious beliefs and personal views of an assigned judge (AppQ.135a; AppR.146a) and an opposing party (AppO.106a).

A 1-star Yelp review<sup>6</sup> dated 19 December 2018 sparked the pending defamation lawsuit in the Southwest Justice Center - a branch of California Superior Court of California for County of Riverside filed on 02/20/19, Case No. MCC1900188 action "Smith vs Vinkov". The author of review is Vinkov, a Russian citizen lawfully immigrated to the U.S. (based on *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015)), elected for the Congregational Council of the Church<sup>7</sup> in 2018. The social media review authored by Vinkov informed the public about a company which claimed to be called "Solar Forward" in the Internet and allegedly promised money savings to the congregation after installing solar panels (AppP.132a.)<sup>8</sup>. Vinkov resigned in the summer of 2019 (California Corporations Code (CA Corp.C.) §9224(c)). There were still no money savings for the church as promised.

The lawsuit was brought on behalf of Mark

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<sup>6</sup> A full review is accessible via [shorturl.at/aRU47](https://shorturl.at/aRU47) and reproduced in AppN.114a-116a.

<sup>7</sup> The Church is a member of Pacifica Synod of the Evangelical Lutheran Church (Santa Ana, California), under the umbrella of Evangelical Lutheran Church in America (Chicago, Illinois). ELCA is a religious group tax-exempt under 26 USC §501(c)(3). A LGBTQ-friendly Christian community.

<sup>8</sup> The proposal was not supplied with any disclaimer and proper statistical indicators for computations (standard error, p-value and etc.).

Smith<sup>9</sup>, and his non-existent co-Plaintiff "Solar Forward" (collectively Plaintiffs), which had a lack of standing<sup>10</sup>, because this entity is not incorporated under California laws, and the parties did not submit the certificate of compliance with fictitious business names (CCP §116.430). Vinkov's attempts to amend the name of Plaintiffs under Riverside County Superior Court Local Rule 3125 (substitution of true names) within 3 months of the commencement of the case failed. The Plaintiffs attempted to amend their own names 14 month after complaint was filed, the motion caused the removal, which the District Court ordered to remand back (AppI.97a).

Plaintiffs alleged libel, slander and trade libel against Vinkov (AppO.106a). The Southwest declined the dismissal (CCP §438; CCP §410.10), despite the fact that the complaint was defective *prima facie* (AppR.146a) and directly contradicted judicially noticeable records, which disavowed a part of the allegations in the Plaintiffs' Complaint. The assigned judge Hon. Angel M. Bermudez ("Bermudez") stated: "All three causes of action appear to be sufficiently alleged" (AppK.100a). Only further discoveries revealed that the assigned judge Bermudez knew the legal firm which brought the action against Vinkov very well. Based on numerous constitutional and statutory provisions

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<sup>9</sup> Mark Smith has and had a multitude of businesses which makes him a limited-purpose public figure within this defamation lawsuit (Exhibits 4-5; 7; 14-28) (*Gertz v Robert Welch, Inc.* (1974) 418 US 323, 351, 94 S Ct 2997 - A limited purpose public figure is one who voluntarily injects himself or otherwise becomes involved in a public controversy. His business affiliations includes: DUE NORTH PRODUCTIONS, INC., NY; DUE NORTH PRODUCTIONS, INC., CA; SOLAR FORWARD ELECTRIC LLC, CA; PLANEMINDER LLC, CA; VOMODO, INC., WA; SOLAR FORWARD ELECTRIC, INC., CA.

<sup>10</sup> It appears that Mark Smith uses this as a marketing name in social media, a derivative of the full name of the corporation.

Vinkov formed several challenges of disqualification for cause (CCP §170.1(a)(7); CA Const., art. VI, §18.1). After the last denied challenge, Vinkov sought reviews in the state appellate jurisdiction, which were not granted (AppI-J.97a-99a). Thus, the case has reached this Court.

### DECISIONS BELOW

The California Supreme Court's (CA SC) denials *en banc* in No. S261198 on 05/13/20 and No. S263745 on 09/16/20 are unreported and reproduced at App.C-D.89a-90a.

The CA 4/2's denials in No. E075396 from 07/29/20; in No. E074567 from 03/05/20 and dismissal <sup>11</sup> in No. E074263 from 01/31/20 are unreported and reproduced at App.E-H.91a-95a.

The Superior Court's written denial of judicial recusal dated 07/14/2020 in MCC1900188 is unreported and reproduced at App.I.97a.

The Superior Court's oral strike of judicial disqualification dated 01/23/2020 in MCC1900188 is unreported and reproduced at App.J.99a.

The Superior Court's oral denial of dismissal of Plaintiffs' Complaint dated 08/15/2019 in MCC1900188 is unreported and reproduced at App.K.100a.

The Superior Court's oral dismissal of Defendant's Cross-Complaint dated 07/10/2019 in MCC1900188 is unreported and reproduced at App.L.101a.

The Superior Court's oral award of attorney fees dated 08/19/2020 in MCC1900188 is unreported and reproduced at App.M.103a.

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<sup>11</sup> Surprisingly, information removed and not available for public view on <https://appellatecases.courtinfo.ca.gov/>. The case did not have a confidential status.

## **JURISDICTION**

Cases Nos. S261198 (review denied on 05/13/2020) and S263745 (review denied on 09/16/2020) meet requirements of Order List: 589 U.S. 3/19/2020; Rule 14.5 of this Court; 28 USC §1254(1) and 28 USC §1257(a), App.B-D.86a-90a.

### **STATEMENT OF THE CASE**

#### **1. Factual Predicate of Litigation**

(i) **Period.** Underlying events led to a litigation initiated in the state court of California which captures events occurred in 2016-2019 and includes two counties - Los Angeles and Riverside. In 2016 a Russian migrant Sergei Vinkov officially joined the Church. In June 2017 the Church voted for a contractor to install solar panels to reduce the costs of utility bills, Vinkov voted against of the solar project. The projects was still approved, a contract was signed in October 2017 (AppP.132a) and the solar panels were installed in April 2018. At the end of 2017 Vinkov was invited to run for the Congregational Council (board of directors) and was elected at the Annual Meeting of the Church in January 2018. During the preparation of the budget for 2019 (AppP.128a-129a) Vinkov discovered financial discrepancies in December 2018 and reported them to the Council. At the same time Vinkov reported the discovered mismatching of figures between the promised money savings and the current utility bills.

(ii) **Parties.** Benefits from the installation of solar panels were promoted on behalf of "*Solar Forward*". At the period of promoting the benefits, in May-June 2017, within the Church, the company's business name was registered and owned by *All Valley Solar, Inc* located at Los Angeles County, from January 2013 to January 2018. This information was not disclosed prior to the voting on the solar project by the congregation, nor was it announced that the



proposed money savings were not based on the congregational utility data. The Church signed a contract with a party named "Solar Forward" in October 2017 (App.P.132a), however the contact information did not have a party called *All Valley Solar, Inc* nor did all the other contacts, including the license (499720 (C46 - SOLAR) vs 994683 (C10 - ELECTRICAL)) which belonged to Solar Forward Electric, Inc. managed by Mark Smith. Moreover, the auditor discovered a missing ledger for October 2017 in the Church's book-keepings. The contact information of *Solar Forward Electric, Inc.* was listed in the Contract (AppP.132a) and Mark Smith appeared in the social media accounts under *Solar Forward* (twitter, yelp <sup>12</sup> , facebook, google reviews).AppP.129a.

**(iii) Polemic.** Vinkov did not receive a response to a phone call and immediately posted a 1-star review in social media ("After their [Solar Forward Electric, Inc.] installation our electricity bills have been increased. All attempts to get explanation via phone failed. They don't answer." AppP.132a). Several hours later a response was given, however, the tone and the manner were not appropriate, and did not fall in the standard of business communication, which Vinkov immediately declared to the public in social media. Moreover, Vinkov continued to research the matters which provoked an inadequate reaction of the business owner, and Vinkov discovered more facts which he decided to share not only with the Church governing members, but also with other potential customers. Mark Smith disagreed with Vinkov's findings shared with the Church and online users and started to accuse him of a defamatory nature of the posts (AppP.129a).

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<sup>12</sup> At the moment of filing the lawsuit in 02/20/19 the Yelp Account was named SolarForward, no space.

Mark Smith's attempts to take down Vinkov's reviews via intimidations and threats failed. Vinkov explained to his Church members that the allegations of Mark Smith were not actionable, because Vinkov disclosed all sources of information (utility bills, websites of third parties, records of the Church, etc.), on which he relied in his statements. Meanwhile, Santa Monica (Los Angeles County) resident Mark Smith unexpectedly engaged a legal firm based in Hemet (Riverside County) Angeloff, Angeloff, & LeVine, A Professional Corporation<sup>13</sup> and launched a lawsuit (with three causes of action: libel; slander; trade libel on his behalf and on behalf of a co-Plaintiff "Solar Forward" (AppO.106a). Plaintiffs pursued a monetary relief, including punitive, in the amount of at least \$1,500,000. The Defendant Vinkov sought an affirmative relief in the amount of over \$6,000,000 dollars and an injunctive relief in the form of published apologies in the media.

## **2. Lack of Standing and Jurisdiction**

**(i) Non-existent co-plaintiff.** The complaint filed on 02/20/19 alleges three causes of action: libel; slander; trade libel on behalf of Mark Smith and co-Plaintiff "Solar Forward" (a fictional entity). Case MCC1900188 was assigned to Judicial Officer Angel Manuel Bermudez, Department S-302, Southwest Justice Center. 03/21/19 Vinkov, being unrepresented, filed his answer and cross-complaint for three causes of actions: defamation per se; unfair competitions and intentional infliction of emotional distress. The court noticed that the names of

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<sup>13</sup> This legal firm assisted Vinkov's family in 2017 in a civil dispute. Vinkov's complained. However, the California State Bar has not find a conflict of interest, all allegations of a frivolous lawsuit and malicious prosecution against the attorney Paul A. LeVine were disregarded.

the parties in the pleadings did not match). The complaint was brought on behalf of *Mark Smith* and *Solar Forward* against *Sergei Daniel Vinkov*, but the Answer and the Cross-Complaint were addressed to *Mark Hilton Smith* and *Solar Forward Electric, Inc*<sup>14</sup> on behalf of *Sergei Vinkov*. In March 2019 Vinkov requested amendments of the names of the parties (Riverside County Superior Court Local Rule (Riv.Ct.L.R.) 3125, Form RI-035). The state court amended the defendant's name in its docket, but denied to amend the plaintiff's names. Thus, for over 16 months the state court was maintaining proceedings with a non-existent Plaintiff "Solar Forward" without a required certification of compliance with the fictitious business laws (CCP §116.430 [a declaration of compliance with fictitious business name laws]).

**(ii) No actual controversy.** As seen from above, the non-existent Plaintiff Solar Forward was not entitled to initiate a lawsuit, and the Plaintiff Mark Smith could not plausibly demonstrate that it had actually suffered injury and harm (AppP.115a-134a; App.R.146a-151a). At least one cause of action, "trade libel" was voidable as a matter of law, and the others raise the issues of credibility.

The injuries, alleged by the Plaintiffs are untraceable to Vinkov's actions (App.O.106a; AppP.115a). The Plaintiffs' injury cannot be redressed by the court without violating the Establishment and Free Expressions clauses. Vinkov's reasonable conduct is governed by religious texts - App.P.132a-134a, the field of judicial administration is limited by the religious clause - *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). Thus, a state court cannot consider a case in the absence of a justifiable

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<sup>14</sup> Also, *Straight Solar Forward, Inc.* incorporated in California.

controversy (US Const., art. III, §2, cl.1; CCP §410.10).

The judicial review in California courts is designated only for justiciable controversies. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 813 [81 Cal. Rptr. 3d 461]) The concept of justiciability is a tenet of common law jurisprudence and embodies "[t]he principle that courts will not entertain an action which is not founded on an actual controversy ... ." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22 [61 Cal. Rptr. 618]). Thus, this court is deprived of subject matter jurisdiction at least to complaint brought by the Plaintiffs.

### 3. State Trial Court Outcomes

The current outcomes of the state court proceeding reveal that (a) state officials forfeited the principles of federalism of this Union dictating the lower courts to follow the decisions of the higher courts in this land, (b) state officials knowingly and willfully deprived a foreigner lawfully residing on the US soil of his constitutional rights and freedoms.

**(i) Granted Anti-SLAPP to cross-complaint 07/10/19.** Before the Plaintiff's Anti-SLAPP motion (CCP §425.16(b)(1)), the court sustained Vinkov's demurrer (CCP §430.20(a); CCP §430.20(b)). After, Vinkov, as a Russian citizen, was intentionally treated differently from American Plaintiffs who claimed protection under the First Amendment and litigation privilege. However, it was a commercial speech and *Silberg v. Anderson*, 266 Cal. Rptr. 638, 786 P.2d 365 (1990) is clear - the lack of probable cause precludes employment of litigation privilege). The state judge dismissed Vinkov's affirmative relief and denied his immunity (AppL.101a; AppK.100a). The oral dismissal of

Vinkov's affirmative relief resulted in an oral award of attorneys fees (App.M.103a)(CCP §425.16(c)(2)). Although the state court granted a stay for attorney's fees, it deprived Vinkov of the right to seek the review denying to compel records on appeal, although "the California Rules of Court require trial courts to protect the right to appellate review by ensuring there is a complete record of the proceedings" *Davis v. Superior Court*, 50 Cal. App. 5th 607, 264 Cal. Rptr. 3d 116 (2020). Thus, Vinkov posted bonds for review, but he could not get access to seek a reversal. A judge intentionally blocked an appellate review for interlocutory orders designated for a mandatory review (CCP §904.1(a)13).

**(ii) Denied dismissal of complaint 08/15/19.** As seen from the Plaintiffs' complaint, neither federal, nor California laws supported their claims (App.O.106a) The Plaintiffs failed to produce sufficient facts and retained viable legal theory (CC §438) to pursue the trial but judge Bermudez said: "*All three causes of action appear to be sufficiently alleged*" (App.K.100a) and added: "*You'll have MSJ [motion for summary judgment] opportunities.*"(App.R.150a) <sup>15</sup> The Plaintiffs' allegations did not show that their complaint was objectively reasonable (App.O.106a). There were no objective facts supporting these conclusions, nor sufficient theories overcoming the protected activity and the absence of the facts needed to be tried. (See. *Ng v. Superior Court* (1997) 52 CA4th 1010, 1024, 61

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<sup>15</sup> Federal practice prescribes that courts are not required to make "unreasonable inferences" or "unwarranted deductions of fact" to save a complaint from dismissal (*Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001)). The courts are required to consider factual allegations from the pleadings beyond the "speculative level" or a mere "suspicion" of a right of action (*Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009)).

CR2d 49 - court's unusual and inappropriate desire to keep the case were enough to doubt the impartiality of the judge). The requests for judicial notice (California Evidence Code (Ca.Ev.C.) §452(h); Ca.Ev.C. §452(d);CRC 3.1113(l)) which disavow the Plaintiffs' allegations, were left without considerations (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1474 [the court must reject allegations contradicted by judicially noticed facts]).

**(iii) Daisy-chain disqualification 04/11/19-07/14/20.** When Vinkov discovered the friendly relations between judge Bermudez and a legal firm representing the Plaintiffs, Vinkov understood that he could not enforce the rule of law on judge Bermudez. Vinkov initiated disqualification proceedings against judge Bermudez in November 2019. Vinkov failed to serve judge Bermudez within 5 business day of the filing motion <sup>16</sup>. Vinkov continued his research of the state law and presented additional facts three times to challenge the judicial impartiality (Nov-Dec 2019)<sup>17</sup>, however all of them were stricken by the same judge. The California Judicial Council and the presiding judge of the Superior Court of California for County of Riverside John Vineyard allowed Bermudez to preside over case MCC1900188<sup>18</sup>. Vinkov filed an appeal of the appealable order on 12/06/20 (CCP §904.1(a)13). Vinkov made several attempts to

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<sup>16</sup> The judge was out of the country. The California laws require personal service on a judge or his clerk if the judge is in the courthouse at the moment of the service. CCP §170.3(c)(1). Two ways of the disqualification for cause prescribed: motion and statement. All of them must be made before the trial.

<sup>17</sup> At that moment Vinkov was not skilled enough in writing the writs.

<sup>18</sup> Under CRC 10.603(c)(1) the presiding judge has the ultimate authority to make judicial assignments. Judge Vineyard and Judge Bermudez have friendly relations and long-term collegial ties.

compel the records, however judge Bermudez demonstratively declined to compel the records on appeal and denied to sign and file the orders. Subsequently, Vinkov filed the fourth statement of disqualification (AppQ.135a-145a), which was stricken and Bermudez's answer was not filed<sup>19</sup>. Vinkov could not compel the court to comply with the state and federal laws on the local level, therefore Vinkov filed the petition for writ of mandate or prohibition (CCP §170.3(d)). However, instead of expected orders Vinkov received the dismissal of his appeal from a former boss of Bermudez - Hon. R. Fields (App.H.95a)<sup>20</sup>. After the dismissal of Vinkov's appeal, he received discretionary denials (App.C-F.89a-93a) which at the final point reached this Court.

#### **4. Federal Court Ordered Remand**

**(i) Self-invented theory of alterations.** The District Court departed from the principle of party presentation, which constitutes an abuse of discretion, see *United States v. Sineneng-Smith*, 140

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<sup>19</sup> California Code of Civil Procedure §170.3(c)(4) specifies: "(4) A judge who fails to file a consent or answer [to the verified statement of disqualification] within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a)". Bermudez failed to answer timely within a 10-day period (the due date was on 01/31/2020) to Vinkov's Fourth Verified Statement of Disqualification filed on 01/21/2020 (AppO.119a) (*Rosenfield v. Vosper* (1945) 70 Cal.App.2d 217 [160 P.2d 842] - "the limitation of time for filing the answer is mandatory"). Hence he must be recused from proceedings and his previous revised rulings (*Hollingsworth v. Superior Court*, 191 Cal.App.3d 22, 236 Cal. Rptr. 193 (Cal. Ct. App. 1987)).

<sup>20</sup> De Atley, Richard K. "Minorities sought for judiciary // diversity: As dozens of positions open, a push is on for a better reflection of the Inland population.", Press-Enterprise, The (Riverside, CA), May 29, 2007, Page: A01.

S. Ct. 1575, 1578 (2020). The District Court impermissibly declined to apply a 30-day removal windows, inventing a theory that alterations of party names upon motion to amend precluded the removal<sup>21</sup>.

**(ii) Failure to enforce the rights.** The ordered remand deprived Vinkov of federal forum and locked him in the hostile and unfair environment of the state jurisdiction, despite the fact that the diversity jurisdictions were created to overcome institutional bias of the state courts<sup>22</sup>.

## **5. Appellate Courts Interventions**

**(i) State appellate courts.** The first Intervention was caused by filing a notice of appeal (CCP §904.1(a)13)(AppH.95a). The second Intervention was writ proceedings (CCP §170.3(d); CRC 8.500(b)(1), AppF-G.93a-94a; AppD.90a). The third intervention was made by the continuous wrongdoing of the lower court (CCP §170.3(d); CRC 8.500(b)(1); AppN.104a; AppE.91a; App.C.89a). Although mandamus relief is appropriate to terminate “a judicial usurpation of power” or a “clear abuse of discretion.” (*Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 381 (2004)), CA associate justices turned a blind eye on the inappropriate behavior of Judge Bermudez - denied writs<sup>23</sup>.

**(ii) 9th Circuit's dismissal.** 08/19/2020 Vinkov's appeal was dismissed. The 9th Circuit's dismissal is

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<sup>21</sup> A separated petition will be filed in January 2021.

<sup>22</sup> Benjamin J. Conley, Will the Real Real Party in Interest Please Stand Up?: Applying the Capacity to Sue Rule in Diversity Cases, 65 Wash. & Lee L. Rev. 675 (2008).

<sup>23</sup> Hon. Ming W. Chin [retired on 08/31/2020], Hon. Joshua Groban; Hon. Leondra R. Kruger; Hon. Mariano-Florentino Cuéllar; Hon. Goodwin H. Liu; Hon. Tani G. Cantil-Sakauye; Hon. Carol A. Corrigan; Hon. Frank J. Menetrez; Hon. Manuel A. Ramirez; Hon. Michael J. Raphael; Hon. Art W. McKinster, Hon. Douglas P. Miller; Hon. Richard T. Fields.



contrary to its own decisions and disobeys of the precedents of this Court<sup>24</sup> (*Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 641 (2009) - holding that a district court's order remanding a case to state court after declining to exercise supplemental jurisdiction over state-law claims is not a remand for lack of subject-matter jurisdiction for which appellate review is barred by 28 USC §§1447(c) and (d); *Scott v. Machinists Auto. Trades Dist. Lodge* 190, 827 F.2d 589, 592 (9th Cir. 1987) (*per curiam*)).

### **REASONS TO GRANT REVIEW**

#### **1. Petitioner Exhausted All Available Remedies to Safeguard Justice in State Court Jurisdiction and He Faces Irreparable Harms, Irretrievable Losses of Protections from Lawsuit, and Vindictive Conduct from State Judicial Officer is Real**

A state trial court and District Court "departed from the accepted and usual course of judicial proceedings", its outcomes require "to call for an exercise of this Court's supervisory power" in accordance with Rule 10(a).

**(i) Threat is real in its consequences.** The State of California is well-known for mismanagement of public finances in this Union (See \$54.3 billion budget shortfall in 2020<sup>25</sup>). The system of supervising the judicial integrity allows the chronicle judicial misconduct persistent for

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<sup>24</sup> Hon. Barry G. Silverman, Hon. Margaret Mckeown and Hon. Daniel Bress.

<sup>25</sup> See California Budget on <http://www.ebudget.ca.gov/> (figures presented by California Department of Finance). Additionally, The Fiscal Health of California Cities on [https://www.auditor.ca.gov/bsa/cities\\_risk\\_all](https://www.auditor.ca.gov/bsa/cities_risk_all) (figures presented by California State Auditor)

years <sup>26</sup> . Moreover, "California considers laws protecting religious freedom to be the "last gasp of a decrepit world view." <sup>27</sup> . California allows the entertainment of defamation claims against religious workers - *Brewer v. Second Baptist Church*, 32 Cal.2d 791 (Cal. 1948)), disregarding the ecclesiastical abstention doctrine (*Watson v. Jones*, 80 U.S. 679 (1871); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

Vinkov addressed Bermudez's wrongs to all branches of the state government (CA Congress, CA Offices of Attorney General, CA Judicial Council, wherein a chair has a dual position as chief of justice of CA Supreme Court, Executive Office of Superior Court of CA for County of Riverside, CA State Bar, CA Commission on Judicial Performance, State Auditor <sup>28</sup> ), including the US Congress - Committee on Judiciary, wherein Vinkov's senators (Hon. Kamala Harris - D; Hon. Dianne Feinstein - D<sup>29</sup>) hold the seats.

Bermudez continues to preside over case

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<sup>26</sup> California State Auditor states: "CJP's [California Commission on Judicial Performance] failure to take proactive steps to identify chronic misconduct increases the risk that it will fall short in its duty to protect the public." (The California State Auditor's Report 2016-137, 04/25/19 , Page 23).

<sup>27</sup> Quoting Texas's Bill of Complaint in this Court, Docket No.; 22O153, Page 1. A direct link is available: <https://www.supremecourt.gov/docket/docketfiles/html/public/22o153.html>

<sup>28</sup> There are reasonable grounds to assert that the state court remuneration policy depends on the number of cases in the courthouse, and officials are financially motivated to keep as many cases as they can and maintain them as long as they can. It conflicts California Government Code §87100.

<sup>29</sup> They both have discretions for: *Kilbourn v. Thompson*, 103 U.S. 168, 189 (1881) - employment of investigations as an aid for legislative function; *Bart v. United States*, 349 U.S. 219 (1955) investigations for purposes to protect constitutional rights.

MCC1900188 and produce rulings, despite his willful disobedience to the decisions of this Court in 2019 (See next chapter, lower court judges must follow the precedents of the Supreme Court. See, e.g., *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)); he holds the action in its department, when reassignment must be mandatory (CCP §170.3(c)(4)). The absent of review legitimates the wrongs of the lower courts, undermines the principle of federalism (limited power of the government, preemption of federal law over the state's decisions); harms the determined rights and liberties for foreigners under the US Constitution.

**(ii) Personal animosity and vindictive conduct.** Records of the state trial court indicate that Vinkov cannot rely on a clear minded and unbiased judge within the proceedings, who systematically prevents Vinkov from enforcing his state and federal rights and does not follow mandatory procedures ("[T]he right to procedural due process is "absolute". *Carey v. Piphus*, 435 U.S. 247, 259, 266 (1978).) Briefly, the wrongdoings maybe grouped as follows:

1. Impropriety prejudicial abuse of discretion (AppQ.135a;App.R.146a) (*Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988) - the appearance of bias or prejudice is sufficient to entertain the doubts on judicial impartiality, recusal is warranted if impartiality might reasonably be questioned). For example, the favoritism to a fictitious entity "Solar Forward" (pretrial proceedings have a list of rulings, wherein a non-existent entity became the prevailing party) (AppK.100a;AppR.146a;App.L.101a). Scheduling mandatory settlement conference for a party with real interest (Vinkov) with a party without real interest (Solar Forward) contrary to the state laws

(CRC 3.811(b)(8); CCP §1775.5 [amount controversy is over \$50,000]).

2. The failure to admit and honor his own disqualification under the state laws (CCP §170.1(6)(A) ["A person aware of the facts might reasonably entertain a doubt that the judge would be impartial;"] and CCP §170.1(a)(7); ["the judge ... is unable to properly conduct the proceeding."]. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972) prescribe a strict due process requirements as to the neutrality of officials performing judicial or quasi-judicial functions.

**(iii) Misconduct shielded by legal errors.**

This Court has a power to provide a holistic view on the administration of justice; determine the disobedience of its authorities and the amount of isolated episode of legal mistake or otherwise the pattern of reckless and egregious behavior of state government bodies. Certain states consider the pattern of legal errors as a serious injury for the administration of justice (S. Gray (2004) "The Line Between Legal Error and Judicial Misconduct..."). However, the pattern of legal errors may be harmless (B.Garrett, "Patterns of Error" (2017))<sup>30</sup>. This court may provide guidelines how to treat the pattern of legal errors under the prejudice prong, when the trial court intentionally and willfully delays to compel records on appellate review.

**2. This Court Has Power to Terminate  
Unconstitutional Pattern of Conduct By**

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<sup>30</sup> The beneficiary of a constitutional error must show that the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 [87 S. Ct. 824, 17 L. Ed. 2d 705, 710-711]). Adjudication matters by a biased judge is constitutional error reversible *per se*. (*People v. Rodriguez* (1996) 50 Cal.App.4th 1013 [58 Cal.Rptr.2d 108])

### Lower Courts

To preclude inconsistent practices and reduce the grey area of implementation of judicial discretions, this Court is authorized to review the presented matters under its Rule 10(b).

**(i) Binding authorities.** “[I]n America, law is king.” (The Writings of Thomas Paine, (189) at Page 99), not a judicial officer of lower court. The binding authority of this Court mandates a judicial officer of lower court to act in accordance with the decision of this Court (A lower court’s obligation to follow Supreme Court precedent is absolute. See *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). Pretrial proceedings in the California court demonstrate that the judicial officer Bermudez willfully and knowingly disregarded at least two decisions of this court, violating the principle of preemption of the national constitutional law over the state decisions. One case (*Board of Trustees of the State University of New York v. Fox*, 492 U.S. 469 (1989) - commercial speech is exempt from Free Expression Clause protection) supersedes a judicial decision in granting Anti-SLAPP motion in Plaintiffs’ favor (App.L.101a), despite the fact that the state statutes promulgated this decision in CCP §425.17(c); *Simpson Strong-Tie Co. v Gore* (2010) 49 C4th 12, 29. Moreover, the trial court required to show probability to prevail despite *Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294 305 fn.8. [175 Cal.Rptr.3d 131] does not require to do so for commercial speech cases.

Secondly, the lower court denied to dismiss Plaintiff’s defective complaint under a decision of this Court setting the malice standard in *New York Times Co. v Sullivan* (1964) 376 US 254, 280, 84 S Ct 710. The state court unreasonably saved defective pleadings from dismissal (AppK.100a; App.R.146a-151a) undermining the Due

Process Clause (*Schonfeld E. (1999) "Malicious Prosecution as a Constitutional Tort)*

Thus, the Court has power to determine the constitutionality of federal and state government actions (*Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803)). In accordance with constitutional processes in this Union, the state trial court cannot neglect the supremacy of federal laws (US Const., art. VI). In fact, the records of the state trial court evidence the egregious and vicious conduct of judge A.M. Bermudez towards a non-citizen Vinkov. The unconstitutionality of lower court's acts is clear and warrants the intervention of this Court.

**(ii) Oral vs written decisions.** The determination of jurisdiction is a fundamental condition of due process (*Twining v. New Jersey*, 211 U.S. 78 (1908) at 210-211). The state court deprived Vinkov of his liberties, property (App.K-M.100a-103) neglecting the state and federal laws. Seeking reversal is one of the ways to redress, at least partially, a monetary loss caused by the wrongs of the Plaintiffs and the state trial court. However, the state judgeships resists Vinkov's attempts to seek a reversal.

1. CA Const., art. VI, §19 prescribes a 90-day period for finalizing a judicial decision. Unsigned directly appealable orders of rendered rulings from 07/10/2019 constitute an incomplete judicial act (App.Q.135a;App.K.101a;App.M.103a).

The Plaintiffs' Anti-SLAPP motion was accompanied by a proposed order, which judge Bermudez has not signed and filed until now<sup>31</sup>. Thus, a court-ordered dismissal of Vinkov's affirmative relief in violation of CCP §581d which required a written, signed and

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<sup>31</sup> The date of ruling on motion can be not synchronized with the entry date of judgment (order) based on that motion (CRC 8.104(c)), *In re Marriage of Mosley* )

filed order. Judge Bermudez failed to exercise mandatory discretions; he did not make his ruling into proper public records.

2. Vinkov was deprived of his rights to an appeal (*Leone v. Medical Board* (2000) 22 Cal.4th 660 [94 Cal.Rptr.2d 61, 995 P.2d 191].) - a decision did not recognize an appeal as a constitutional right of litigants; in opposition, *In re Marriage of Mosley* (2010) 119 Cal.Rptr.3d 11. considers an appeal as a constitutional right). A former boss of judge Bermudez *sua sponte* terminated Vinkov's appeal (AppH.95a). Fields's decision was contrary to (CRC 8.104(d)(1) - notice of appeal filed before entered judgment deems as timely) and (*Powell v. County of Orange* (2011) 197 Cal. App. 4th 1573 - "the lack of a written order of dismissal": (a) invalidate all motions challenging dismissal as premature; (b) do not trigger an appellate deadlines); and *In re Marriage of Mosley* - "interpreting the 180-day limit to run from the date the appealable order was filed as a public record".

3. The unsigned minute order cannot be appealed. (*Allgoewer v. City of Tracy* (2012) 207 Cal.App.4th 755, 7760 [143 Cal.Rptr.3d 793]). The 9th Circuit has the same opinion (For example, *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) - district court's minute order did not evidence the finality of judicial act). However, in *Serrano v. Stefan Merli Plastering Co., Inc.*, 162 Cal. App. 4th 1014, 76 Cal. Rptr. 3d 559, 2008 a minute order considered appealable under the collateral order doctrine by state court and 9th Circuit allows review from minute order of appealable decision, but not later 180 days from the date of ruling (*ABF Capital Corp. v. Osley*, 414 F.3d 1061, 1064-65 (9th Cir. 2005)).

Based on the foregoing, this Court has power to resolve such uncertainties and inconsistency with

the administration of justice via a granted review.

**3. Challenge of Subject Matter Jurisdiction  
is Available in This Court at First  
Instance**

The matters fall in the discretions of this Court in accord of Rule 10(c), because the state courts decisions expose the potential of "conflicts with relevant decisions of this Court."

"A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance." - *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S. Ct. 906, 915 (2004)). "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." (*Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974) (citing *Bradbury v. Dennis*, 310 F.2d 73 (10th Cir. 1962), cert. denied, 372 U.S. 928 (1963))). Facial and factual attack on the Plaintiffs' complaint reveal the absence of subject matter jurisdiction to keep Plaintiff's complaint in the court's caseload (CCP §410.10), the review of the records suggests that the state trial court is egregious and hostile toward Vinkov's constitutional rights and liberties. The clear absence of the subject-matter jurisdiction makes judges subject to civil liability (*Bradley v. Fisher*, 80 U.S. 335, 351 (1872); *Stump v. Sparkman*, 435 U.S. 349 (1978)).

**(i) The modus of application of First Amendment to foreigners has a grey area.** Vinkov claims that the US Const., amend. I creates an area outside the scope of the governmental powers and his acts as a board director of a religious non-profit organization precludes subject matter jurisdiction in the lower courts (App.P.115a; App.R.146a). The Plaintiffs pleading did not frame any issues which precludes



the application of the religious clause to the state's intentional tort action (CCP §438). *Our Lady of Guadalupe School v. Morrissey-Berru* and *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012) (this decision recognizes religious autonomy as "affirmative defense", not "a jurisdictional bar", when *plaintiff states cognizable claim*, fn. 4) circumscribe the limits of judicial review for claims connected with religious liberties, it applies to religious workers. Vinkov is not a formal religious worker, but was bound by imposed religious norms and rules governing his conduct. This Court deprived lower courts of the right to adjudicate the issues of the internal governance of religious organizations (employment), but left open the application of religious liberties to non-citizens. *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873) states "a citizenship of United States, and a citizenship of the state, which are distinct from each other...". That decision(s) clarified that the Privileges and Immunities Clause protects citizens under the federal laws, not states providing an additional protection to its constituents. The scope of the definition "citizens" and its distinction from "persons" maybe revisited to clarify how the constitutional protection captures non-citizens of this country ("Not only may a man be a citizen of the United States without being a citizen of a State" - *The Slaughter-House Cases* at Page 83. However, being a citizen of the State and not being a citizen of the United States is possible.). *Bridges v. Wixon*, 326 U.S. 135 (1945) extends the protection of First Amendment Clause on noncitizens living in this country, leaving a grey area for numerous interpretations of application of the First Amendment to undocumented citizens of the states, or foreign members of religious organizations

located in the U.S. territory (these groups of citizens may be intersected). This court should provide the application of religious liberties and the scope of protection for foreigners under First Amendment's Clauses <sup>32</sup>.

**(ii) Immunity from suit vs. immunity from liability.** The California defamation tort involves the intentional publication of a statement of fact which is false, *unprivileged*, and has a *natural tendency* to injure or which causes special damage. (*Smith v. Maldonado* (1999) 72 Cal. App. 4th 637, 645 [85 Cal. Rptr. 2d 397]; California Civil Code §§ 45, 46) Vinkov asserts that he has immunity from the lawsuit and has a right to avoid the entire litigation by an intervention of this Court at least upon two federal provisions (42 USC §14503(a)(1); 47 USC §230(c)(2)) <sup>33</sup>. *Hassell v. Bird*, clarifies immunity *from suit* for social media platforms, but provides nothing on the immunity for its users. At the same time not all judicial decisions in the country construe CDA 47 USC §230(c)(2) as immunity from lawsuit (*Mainstream Loudoun v. Board of Trustees*, 2 F.Supp. 2d 783, 790 (E.D.Va. 1998) ; *General Steel Domestic Sales, L.L.C. v. Chumley*, 840 F.3d 1178, 1182 (10th Cir. 2016) *Doe v. Internet Brands, Inc.* , 824 F.3d 846, 850 (9th Cir. 2016); - examples with immunity from liability).

VPA's immunity in this particular case is blended with the nature of the services and type of

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<sup>32</sup> Presidential Executive Orders do not remove the well-known tension between "citizens" and "persons": 82 FR 21675 Promoting Free Speech and Religious Liberty; 82 FR 49668 Federal Law Protections for Religious Liberty; 85 FR 34079 - Preventing Online Censorship.

<sup>33</sup> Qualified immunity is "an immunity from suit..." *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985); but in *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982) - "from liability".

organization - a board of directors of a religious non-profit organization. Accordingly, a volunteer member of religious organizations cannot be considered outside of the Religious Clause. VPA immunity applies when a volunteer acts within the scope of the volunteer's responsibilities. Vinkov's scope of duty is circumscribed by governing documents of the Church. The internal policy of the Church accumulates religious texts: *"\*C2.03. This congregation accepts the canonical Scriptures of the Old and New Testaments as the inspired Word of God and the authoritative source and norm of its proclamation, faith, and life."* and *"C12.04. The Congregation Council shall have general oversight of the life and activities of this congregation, and in particular its worship life, to the end that everything be done in accordance with the Word of God and the faith and practice of the Evangelical Lutheran Church in America."* (App.P.124a). It means that the scope of duties is overboard and there is no specific authority which instructs lower courts how to treat the reasonableness of conduct of volunteer members of religious organizations in the USA.

The California corporation law states: "[a] director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as is appropriate under the circumstances." (CA Corp.C. §9241; generally in §§9240-9247; *Remillard Brick Co. v Remillard-Dandini Co.* (1952) 109 CA2d 405)). The state provisions do not circumvent director's beliefs how to manage non-profit religious corporations. Whether Vinkov's volunteer service and status was "ministerial" is a question of law (*Patton v. Jones*, 212

S.W.3d 541 (Tex. App. 2006) - “ministerial” exception covers all positions with duties of church governance).

The Plaintiffs' Complaint (App.O.106a) did not frame any violations clearly established statutory or constitutional rights precluding the application of the doctrine of qualified immunity (*Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)) and “ministerial” exception. Vinkov reasonably relied on the protection of First Amendment (App.P.115a), because:

In *Ogle v. Church of God*, 153 F. App'x 371, 372–73 (6th Cir. 2005) - the ministerial exception applies to a variety of claims, including defamation.

In *Kaufmann v. Sheehan*, 707 F.2d 355, 355 (8th Cir. 1983) - ecclesiastical due process and congregational reports raising defamatory claims placed out of the scope of judicial review.

In *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332-333 (4th Cir. 1997) - the civil court could not consider claims concerning "the nature, extent, administration, and termination of a religious ministry").

In *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727, 739 (Ky. 2014) - it is inappropriate for the court to review the claims, wherein “the underlying dispute about the internal governance of” the church.

Therefore, both types of immunity are involved in this case. One operates as a jurisdictional mechanism (*from lawsuit*), and the second - as an affirmative defense (*from liability*). It raises a reasonable question of their application to a foreigner without a formal religious education. The national wide judicial practice and constitutional laws show that California trial courts must have the lack of subject matter jurisdiction under the aforementioned circumstances, and the complaint against Vinkov must be dismissed (*Bowen v. Roy*, 476 U.S. 693 (1986)).

- restrictions of government on the involvement in internal affairs in ways that comport with the religious beliefs of particular citizens)<sup>34</sup>. Otherwise, because defamatory acts occurred against Vinkov, affirmative relief must be reinstated<sup>35</sup>. However, the last word is the discretion of this Court.

**4. The Digital Communications Provoke  
Open Questions of Law and this Court  
Has Discretions to Set Proper Legal  
Standard for Prosecution of Online  
Defamation Claims**

Rule 10(b) and Rule 10(c) inject discretions of this Court to resolve these matters.

**(i) Determination of standing.** US Const., art. III, §2, cl.1 needs to be clarified under cases pursuing remedies for claims arising from the Internet communication. Through the Internet communication the real names of authors can be hidden under nicknames, user names, fictitious names, profiles and accounts run by third parties, which creates additional burden on the determination of authorships of libelous statements and determination of the injured party. In the directly related case to

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<sup>34</sup> Vinkov's acts underlying the state action are congruent with the Biblical provisions: God is love – John 4:7 21; Leviticus 19:11 "You shall not steal; you shall not deal falsely; you shall not lie to one another", Colossians 3:23 "Whatever you do, work heartily, as for the Lord and not for men"; Luke 8:17 "For nothing is hidden that will not be made manifest, nor is anything secret that will not be known and come to light" and etc.; and do not violate any clear established law.

<sup>35</sup> Additionally, beside the fact that Mark Smith's statements constitutes a commercial speech, his defamatory acts are not exempt from the Religious clause, formed by Doe v. First Presbyterian Church U.S.A. of Tulsa, 2017 OK 106 (Okla. 2017) cert.denied on 01/22/19 - a formal membership as a pre-requisite in controversy raised by a web-publication. The appellee ignored 47 USC §230(c)(2).

this petition *Hassell v. Bird* California Supreme Court overlooked the issues of standing power of Plaintiffs against Defendant Bird. Although the case was resolved via default judgment, the lower courts neglected its duties to exam the standing. under *Lujan v. Defenders of Wildlife* - 504 U.S. 555, 112 S. Ct. 2130 (1992) (*Arbaugh v. Y & H Corp.* - 546 U.S. 500, 126 S. Ct. 1235 (2006) - courts have an independent obligation to determine subject-matter jurisdiction, even when parties do not challenges it). The intervention of this Court is necessary to evaluate the impact of First Amendment US Const., amend. I on cyber civil rights of Internet-users and standing for online dispute under US Const., art. III, §2, cl.1.

**(ii) Dialectic of web injuries and remedies.** *Knight First Amendment Inst. At Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 549 (S.D.N.Y. 2018) recognizes that new social media is qualified as public forum and certain speeches can be deemed protected activity. An injury in fact is questionable for online defamation cases, and this Court is in power to establish the guideline. On the one hand, certain online posts may hurt feelings or be deemed offensive for someone's values and beliefs. On the other hand, the users benefit from "free advertisement", "an immediate media coverage", "promotion" of personality or business in social media<sup>36</sup>, which demonstrates that certain statements online have dual nature. Moreover, the proof of actual malice is required for statements involving public concern

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<sup>36</sup> See the subscribers' growth of 45th US President in social media. There are a lot of defamatory comments and statement against the public figure (for instance, "Russian Hoax Narrative", see in Pirro, J. (2019). "Liars, leakers, and liberals..." ). However, a growing popularity of the President in social media only warrants his chances for re-election in 2020. Marketing value of defamation in social media is underestimated and understudied.

*(Dun & Bradstreet, Inc. v Greenmoss Builders, Inc. (1985) 472 US 749, 105 S Ct 2939; Anderson v. Liberty Lobby, Inc, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986))* appears as impossible and impracticable.

**(iii) Fake news, conspiracy theories, customer's reviews as a genre filled with subjectivity.** If the court retains the jurisdiction, in defamation lawsuits caused by online statements, the court subsequently implies the "presumption of idiotism" on the general public<sup>37</sup>. The public has critical thinking and verification procedures to distinguish fake news, false statements from trustworthy and credible information. The lower courts' attempts to regulate the markets of free circulated information abuse judicial discretions limited under the US Constitution. Fake news, conspiracy theories, customer's reviews have subjective beliefs and subjective truth and are not worth of judicial review at all (*Melaleuca, Inc. v Clark* (1998) 66 CA4th 1344 - statements concerning the content and quality of consumer goods implicate public interest). Accordingly, the lower courts must disregard all actions raised under a wide umbrella of abstract controversies (fake news claims, online defamation, conspiracy talks shows, etc.) because the court is deprived of its ability to establish the actual controversy free from speculations and subjective beliefs by parties (US Const., art. III, §2, cl.1; *Twombly/Iqbal Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009)). Fake News, Conspiracy Theories, Customer's Reviews<sup>38</sup> must be treated as a separate

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<sup>37</sup> "When printing came, the common law of slander was to be inadequate." at Page 194, see more §254 in Clark. J. L., American Law & Procedure, Vol.4. Torts.

<sup>38</sup> Retrospectively a Medieval priest Martin Luther's opposition to the Catholic Church must be treated as "a costumer review"

genre of distribution of information and accordingly free from prosecution.

## **5. Outcomes of the Review Has Nationwide Value**

**(i) Development of Non-profit Organizations.** "[V]olunteers are afraid of getting sued" (Mahoney J. "Volunteer Protection Act...", 1998 at Page 36). In the post-epidemic period, the volunteers are an essential force for the recovery of American economy (for example, volunteers contributed "6.9 billion hours, worth an estimated \$167 billion in economic value" in 2017<sup>39</sup>). The volunteer protection has benefits for all types (e.g. religious, political, sports, education) and all levels (board membership, line volunteers) of volunteering (*Groble, P. et al.* (2018) "Legislation Meets Tradition: Interpretations and Implications of the Volunteer Protection Act for Nonprofit Organizations..."; *Horwitz J. et al.*, "Letting Good Deeds Go Unpunished...", 2009.). Accordingly, the review of this Court has nationwide importance and may contribute to the development of non-profit organizations in America.

**(ii) Immigrants Equality.** The demographic situation and immigration policy in this Union

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on the governance and administration of the Church. A Renaissance-era mathematician Nicolaus Copernicus could be treated as a fake news spreader (websites could block his account, because the majority would disagree with Copernicus' discoveries and Copernicus' views would be offensive to the community standard of that time). So, the court should not apply judicial review to fake news, conspiracy theories and customer's review. The Fathers founded this Union not for the purposes of restrictions of subjective views on this World.

<sup>39</sup> Volunteering in U.S. hits record high; worth \$167 billion, the Corporation for National and Community Service's official website. Nov 13, 2018 : <https://www.nationalservice.gov/newsroom/press-releases/2018/volunteering-us-hits-record-high-worth-167-billion#:~:text=The%202018%20Volunteering%20in%20America,through%20an%20organization%20last%20year.>



formed different categories of aliens with different modes of treatment under state and federal laws. Generally, the constitutional provisions like due process and equal treatment under the law apply to all persons (*Ferreras v. Ashcroft*, 160 F. Supp. 2d 617, 629 (S.D.N.Y. 2001) - lawful permanent residents are entitled to the same constitutional rights and due process as U.S. citizens). At the same time the Due Process Clause does not impose an affirmative obligation on the state to protect its citizens. (See *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 195-96, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989)). The scope of application of constitutional liberties to foreigners living within this Union is not determined, provoking merely political speculation, rather than legal issues (Justice Alito, conc. in part and diss. in part states that political issue is not a business of judiciary - *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.* - Nos. 18-587, 18-588, 18-589, 2020 U.S. (June 18, 2020)). Thus, the granted review may contribute to the immigrants equality in the USA and stop the politization of immigrant's liberties.

**(iii) Protection of Constitution.** Although all public officers swear to support and protect the Constitution of the United States (CA Const., art. XX Misc. Subj., Sec. 3; US Const., art. VI), the American practice of checks and balances left the exclusive discretions to control the constitutionality with the judicial branch of government, because it is less injurious to political and civil liberties, individual rights and freedoms. In fact, "[t]he judiciary is the weakest of the three departments of government" (Hall J.P., *American Law & Procedure*, Vol.12. §36 Constitutional Law. at Page 35) and thereby justifies its exclusive discretions to declare the unconstitutionality of governmental acts. Moreover, it is a direct duty of

this Court to make governmental acts, including the enforcement of lower courts to comply with decisions of this Court and act in accordance with the US Constitution (*Marbury v. Madison*). Thus, the public confidence in the highest standards of judgeship of this Court and its significant role in the protection of the constitutional process of this Republic call for the review of this Court.

#### CONCLUSION

Therefore, the Court should grant review.

Respectfully submitted,

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