No. 20-7046

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL A. BILZERIAN,

Petitioner,

v.

SECURITIES EXCHANGE COMMMISION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted by:

Paul A. Bilzerian, *Pro Se*
Petitioner/Appellant
P.O. Box 2086
Basseterre, St. Kitts
(869) 466-8000
Email: pabilzeria@aol.com

I. Questions Presented

1. Whether a district court has the discretion to deny an *unopposed* motion to terminate a 20-year-old permanent injunction prohibiting access to any state or federal court in the United States.

2. Whether in deciding a Federal Rules of Civil Procedure Rule 65 motion to terminate a permanent injunction a district court is *required* to address (1) whether there has been a significant change in either factual conditions or in the law; and (2) whether continuing an injunction prospectively is no longer equitable.

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III. Table of Authorities

Cases

Constitutional Provisions

United States Constitution, Amendment I

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IV. Petition for Writ of Certiorari

Paul A. Bilzerian, pro se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

V. Opinions Below

The unreported decision by the United States Court of Appeals for the District of Columbia Circuit denying Petitioner's direct appeal can be found at 811 Fed.Appx. 3 (2020) as *Securities and Exchange Commission v. Bilzerian*, and is attached at Appendix at 1.

The United States District Court for the District of Columbia's order filed March 27, 2018, denying Petitioner's motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(5) is attached at Appendix at 2.

VI. Jurisdiction

Paul Bilzerian's petition for rehearing to the United States Court of Appeals for the District of Columbia Circuit was denied on June 24, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within one hundred fifty days of the judgment by the United States Court of Appeals for the District of Columbia Circuit.

VII. Constitutional Provisions Involved

United States Constitution, Amendment I:

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.

VIII. Statement of the Case

On December 22, 2000, the district court entered an order creating a receivership over all of Petitioner's assets for the purpose of satisfying a disgorgement judgment entered in 1993, and appointed a Receiver.

On June 2, 2001, Petitioner filed a Motion to Reopen Bankruptcy Case ("Motion to Reopen") in the bankruptcy court for the Middle District of Florida which sought permission to reopen his 1991 chapter 7 bankruptcy case in order to file a complaint against the Securities and Exchange Commission (SEC) and the Internal Revenue Service (IRS) to enforce an order entered by the bankruptcy court in 1994. Petitioner's proposed complaint alleged that the SEC and the IRS had violated the bankruptcy court order.

On June 25, 2001, the Receiver filed a Motion for an Order to Show Cause ("Motion for Contempt") why Petitioner should not be held in contempt for violating the Order Appointing Receiver. The Motion for Contempt argued that the filing of Petitioner's motion to reopen his bankruptcy case was in violation of the Order

Appointing Receiver.

On July 3, 2002, the bankruptcy court granted Petitioner's Motion to Reopen and gave him 45 days to file his complaint against the SEC and the IRS. That same day, after close of business and on the eve of the Fourth of July holiday, the Receiver filed a document entitled Supplemental Memorandum in Support of Motion to Show Cause Order and For Other Relief ("Supplemental Memorandum"). The "other relief" sought was a permanent injunction to prohibit Petitioner from commencing *any proceeding in any court*, including filing the proposed complaint against the SEC and the IRS.

The next business day, on July 5, 2001, at 9:35 a.m., without notice or a hearing, before Petitioner was even aware that the Receiver was seeking injunctive relief, the district court summarily entered an order that permanently enjoined Petitioner from commencing *any proceeding in any court* without the prior permission of the district court.

On July 19, 2001, again without a hearing, the district court entered a second identical permanent injunction that enjoined Petitioner from commencing *any proceeding in any court* without the prior permission of the district court. Both the July 5, 2001 and July 19, 2001 orders ("Litigation Injunctions") were affirmed on appeal and have been in effect for the past twenty years.

Five years ago, on January 28, 2016, the district court entered a final order

terminating the Receivership and discharging the Receiver. The final order also provided that, although the Receiver had collected and liquidated all of Petitioner's assets, the disgorgement judgment would continue, and the SEC was free to continue to enforce it. The final order did not terminate the Litigation Injunctions.

On June 13, 2017, Petitioner filed his Motion to Terminate Litigation Injunctions. *The SEC stated that it did not oppose the relief sought in the motion.*

On March 27, 2018, the district court denied Petitioner's unopposed Motion to Terminate Injunctions without a hearing solely on the grounds that Petitioner "has never fully satisfied the money judgment that was entered against him in this case."

On appeal, the court affirmed based on a ground not addressed by the district court. The court of appeal made a *de novo* factual finding that Petitioner had failed to demonstrate "a significant change either in factual conditions or in law." Neither the district court nor the court of appeal addressed whether it was no longer equitable that the injunctions should have prospective application. To the contrary, the *only* reason the district court gave for its order was, "*The defendant has never fully satisfied the money judgment that was entered against him in this case.*"

IX. REASONS FOR GRANTING THE WRIT

Pursuant to this Court's Rule 10(a), the Court should grant the Petition because the court of appeal "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call

for an exercise of this Court's supervisory power."

One of the most important rights under the First Amendment is the right of access to the courts. This case represents one of the most egregious eviscerations of that right in the history of the United States. For the past twenty years Petitioner has been permanently enjoined from filing any document in any state or federal court in the United States. Even after the party who obtained the injunction was discharged, and the reason for the injunction was terminated, and the only remaining adverse party consented to vacate the injunction, the district court refused to terminate the injunction solely on the grounds that Petitioner had not paid a disgorgement judgment. No consideration was given to whether there had been a significant change in factual circumstances or whether applying the injunction prospectively was equitable. The path to such an unfair result included a failure to adhere to multiple decisions of this Court. This Court should grant this Petition to address whether any court can summarily and permanently deny a citizen access to the state and federal courts in the United States for failure to pay a money judgment in full.

A. The decisions below are in conflict with *United States v. Sineneng-Smith*.

This decisions in this case are in direct conflict with this Court's unanimous decision in *United States v. Sineneng-Smith*, 140 S.Ct. 1575 (2020).

Petitioner's Motion to Terminate Litigation Injunctions was *unopposed* in the district court which, by definition, meant that both parties to the case were in

agreement that the Litigation Injunctions should be terminated. Neither party was advocating that the Litigation Injunctions should continue. Nonetheless, the district court denied the motion on an unprecedented ground not advocated by any party and which has no support in the law. The district court's decision was clearly in conflict with *United States v. Sineneng-Smith*, 140 S.Ct. 1575 (2020). This Court admonished the federal courts to adhere to the party-presentation principle because "our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Sineneng-Smith*, 140 S. Ct. at 1579. As this Court explained:

> In our adversarial system of adjudication, we follow the principle of party presentation. As this Court stated in *Greenlaw v. United States*, 554 U.S. 237, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008), "in both civil and criminal cases, in the first instance and on appeal ..., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.*, at 243, 128 S.Ct. 2559. . . . [O]ur system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.*, at 386, 124 S.Ct. 786 (Scalia, J., concurring in part and concurring in judgment).
>
> In short: "[C]ourts are essentially passive instruments of government." *United States v. Samuels*, 808 F.2d 1298, 1301 (CA8 1987) (Arnold, J., concurring in denial of reh'g en banc). They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties." *Ibid.*

United States v. Sineneng-Smith, 140 S. Ct. at 1579 (footnotes omitted).

It was an abuse of discretion for the district court to disregard the government's decision to not oppose Petitioner's Motion to Terminate the Litigation Injunctions, and advance its own unprecedented opposition, which is without support in the law, and to do so without giving any consideration to long standing precedent by this Court. Perhaps it was best expressed by Judge Arnold thirty-three years ago when he wrote:

> "Counsel almost always know a great deal more about their cases than we do, and this must be particularly true of counsel for the United States, the richest, most powerful, and best represented litigant to appear before us."

United States v. Samuels, 808 F.2d at 1301 (8th Cir. 1987).

The district court disregarded the government's decision to not oppose Petitioner's motion in conflict with *United States v. Sineneng-Smith;* denied the motion to terminate the litigation injunctions on unprecedented grounds that no other court in the history of the United States has cited – failing to satisfy in full a money judgment; and failed altogether to address the criteria established by this Court for deciding a Rule 60(b)(5) motion to terminate an injunction: whether there has been a significant change either in factual conditions or in law. The Fourth Circuit has held that modification is *required* where there has been a significant change either in factual conditions or in law. *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 122 (4th Cir. 2000).

B. The decision below is in conflict with *Anderson v. City of Bessemer City.*

The decision in this case is in conflict with this Court's decision in *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). As this Court has stated on many occasions:

> *Appellate courts must constantly have in mind that their function is not to decide factual issues de novo.*

Anderson v. City of Bessemer City, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985); *Zenith Radio Corp. v. Hazeltine Research, Inc.,* 395 U.S. 100, 123, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969); *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948).

There is no factual dispute in the record below that the Litigation Injunctions were obtained by the Receiver to protect the Receivership Estate. There was no other reason for the Litigation Injunctions to be issued. There is also no factual dispute that the Receiver was discharged, and the Receivership Estate dissolved, five years ago. Petitioner respectfully submits that these facts are the quintessential example of a change of factual circumstances.

The court of appeal's decision to affirm is based on a fact not addressed by the district court. The court of appeal made a *de novo* factual finding that Petitioner had failed to demonstrate "a significant change either in factual conditions or in law" as the basis for its decision. The court of appeal wrote:

> The district court did not abuse its discretion in denying appellant's Rule 60(b)(5) motion, because he has not demonstrated " 'a significant change either in factual conditions or in law' " that renders continued enforcement of the filing injunctions entered against him " 'detrimental to the public interest.' " *Am. Council for the Blind v. Mnuchin*, 878 F.3d 360, 366 (D.C. Cir. 2017) (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)).

In fact, the district court did not base its decision on whether Petitioner had demonstrated or failed to demonstrate "a significant change either in factual conditions or in law." The *only* reason the district court gave for its order was:

> *The defendant has never fully satisfied the money judgment that was entered against him in this case.*

The district court never addressed whether Petitioner had demonstrated or failed to demonstrate "a significant change either in factual conditions or in law." The court of appeal's decision was based on a fact never addressed by the district court. In direct conflict with many decisions of this Court, the court of appeal made a *de novo* factual finding without any support in the record that Petitioner had failed to demonstrate "a significant change either in factual conditions or in law."

C. The decisions below are in conflict with *Rufo v. Inmates of Suffolk Cty. Jail*

Fed.R.Civ.P. 60(b)(5) permits relief from a final judgment, order, or proceeding if applying it prospectively is no longer equitable. Where an injunction remains in place for many years, the court must take a flexible approach to Rule 60(b)(5) motions. *Rufo* v. *Inmates of Suffolk County Jail,* 502 U.S. 367, 381, 112

S.Ct. 748, 116 L.Ed.2d 867 (1992); *Horne v. Flores*, 557 U.S. 433, 447, 129 S. Ct. 2579, 2593, 174 L. Ed. 2d 406 (2009); *Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997, 2006, 138 L. Ed. 2d 391 (1997).

The district court denied Petitioner's motion to terminate the Litigation Injunctions on unprecedented grounds: Petitioner "*has never fully satisfied the money judgment that was entered against him in this case.*" The First Amendment right to access to the courts is not a right that must be purchased or is dependent upon a citizen's financial status. No consideration was even given as to whether it was equitable to continue to deny Petitioner's right of access to the courts. Surely before such a basic right should continue to be permanently denied, a court should be required to determine whether it is equitable to continue the injunction.

This Court has explained that the right of access is such a basic right of all citizens that it is grounded in the Constitution itself and two Amendments:

> Decisions of this Court have grounded the right of access to courts in the Article IV Privileges and Immunities Clause, *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148, 28 S.Ct. 34, 52 L.Ed. 143 (1907); *Blake v. McClung*, 172 U.S. 239, 249, 19 S.Ct. 165, 43 L.Ed. 432 (1898); *Slaughter-House Cases*, 16 Wall. 36, 79, 21 L.Ed. 394 (1873), the First Amendment Petition Clause, *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the Fifth Amendment Due Process Clause, *Murray v. Giarratano*, 492 U.S. 1, 11, n. 6, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989) (plurality opinion); *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985), and the Fourteenth Amendment

> Equal Protection, *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987), and Due Process Clauses, *Wolff v. McDonnell*, 418 U.S. 539, 576, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *Boddie v. Connecticut*, 401 U.S. 371, 380-381, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

Christopher v. Harbury, 536 U.S. 403, 415 fn.12 (2002).

The First Amendment "right of the people ... to petition the Government for a redress of grievances," which secures the right to access the courts, has been termed "one of the most precious of the liberties safeguarded by the Bill of Rights." *BE & K Const. Co. v. NLRB,* 536 U.S. 516, 524–25, 122 S.Ct. 2390, 153 L.Ed.2d 499 (2002).

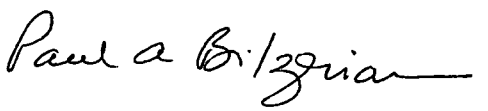
In the district court Respondent did not oppose Petitioner's motion to terminate the litigation injunctions, and neither the district court nor the court of appeal addressed the issue of whether continuing the litigation injunctions was equitable.

The Court should grant the Petition in this case to determine whether in deciding a Rule 65 motion a district court is *required* to address (1) whether there has been a significant change in either factual conditions or in the law; and (2) whether continuing an injunction prospectively is no longer equitable. The district court never addressed either issue in deciding the *unopposed* motion. The court of appeal then made an improper *de novo* factual finding with respect to the first issue and failed to address the second issue altogether.

X. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.[1]

Respectfully submitted,



Paul A. Bilzerian, *Pro Se*
P.O. Box 2086
Basseterre, St. Kitts

[1] In the event this Court were to grant this Petition, Tom Goldstein, Esq., has generously offered to give the oral argument before the Court, *pro bono*.