21-5134

NO.

IN THE SUPREME COURT OF THE UNITED STATES

WAYNE R. REINER

PETITIONER

V.

COX COMMUNICATIONS CALIFORNIA LLC Inc.

RESPONDENT

On Petition for Writ of Certiorari to The
Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

WAYNE R. REINER
Petitioner
4301 Jamboree Road #245
Newport Beach, Ca 92660
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QUESTIONS PRESENTED

In Orange County Superior Court case Reiner was determined to be a vexatious Plaintiff under CCP 391. The Court had reviewed and determined that 7 cases were statistically chosen with no review of the underlying cases as being frivolous, refiled or harassment. APPENDIX B2

Instead the court just counted the 7 cases and determined they were not resolved in Reiner's favor because he had accepted a settlement and did not take each to trial. The Court ignored that a previous Orange County Superior Court Judge had reviewed these cases and determined that Reiner W how was your take a look at that WAS NOT a Vexatious litigant under CCP 391. The Court obviously had a prejudged decision and reverse engineered the opinion. Appellate court created a formulary and a "Constitutional Gordian Knot" that for computing the number of cases determined favorable under CCP 391 determined that all pro per cases have to be taken to trial and a favorable JUDICIAL ruling obtained for the pro per plaintiff from the court. Accepting a settlement by the Pro Per Plaintiff is considered a strike against the Pro Per Plaintiff. The Appellate Court in Appellate Case No. G058487 has "Weaponized" CCP 391 to allow large Corporations to stop Pro Per litigants (and small claims Plaintiff's) from obtaining economic restitution. This formulary would appear to be contrary to the CCP 391 ethos to "clog" up the court calendar with frivolous cases. If a pro per Plaintiff receives a settlement offer that covers his economic loss, how could the Pro Per Plaintiff not accept that settlement? This is why there are mandatory settlement conferences. When the settlement has been disclosed to the Court, the court has never advised Pro Per Plaintiff that the case settlement court be a strike against the Pro Per Plaintiff for CCP 391 purposes. In several cases the Judge congratulated Reiner for settling the case. APPENDIX B1

Cox has offered Reiner a settlement which covers his economic loss but Reiner cannot accept this settlement because according to the Appellate court formulary

Reiner must take this matter to a judicial conclusion or this case will count as a strike against Reiner under CCP391. Cox has incurred more expenses than the settlement offers and has continued this case for more than two years. Reiner does believe this is how CCP 391 was intended to operate.

Reiner's lawsuits were necessitated by large financial burdens created by landlord defendants. Reiner was forced to move out and incurred moving costs close to $5,000.00 Reiner put these charges on his credit card creating a hug financial burden for the disabled, senior living on social security. The landlords refused any payment Pro Per Plaintiff sued and recovered his moving expenses and the cases were settled. The only cases decided against Plaintiff was were a Doctor operated on Plaintiff's eye and blinded Plaintiff. Plaintiff had a mental breakdown and was committed to a medical facility beyond the Medical statute of limitations in California. There is no exception for mental incapacity in the California Medical Malpractice statute. Plaintiff tried to correct this wrong but failed. The Doctors attorney refused to release Reiner's medical record for over. Three years. After the had been dismissed, the attorneys released the medical records. In the medical records the doctor admitted to blinding Reiner. Reiner had appealed and requested to augment the record with the medical records. In the instant case the Cox attorney did not know how to properly designate a record. So, he made a motion to augment. The court granted his motion

The Fourth Appellate District, Division Three previously had a Pro Per self-help group, with attorneys donating their time to assist Pro Per Appellants. The group was disbanded. I called one of the attorneys and asked why the group was disbanded. He said "Pro Per's" never win in this court".

Reiner's medical insurance carrier refused an expensive lifesaving drug. After exhausting all appeals within the insurance company, Pro Per Plaintiff sued for the drug and the insurance company improved the drug.

Prior to each case Reiner contacted the Orange County Bar Assoc "Modest means lawyer referral" none were available.

Similar to **Martin v. City of Boise, Idaho** 902 F3d 1031, (9th Cir. 2018), 720 F3d 582 149 S.Ct. 614
(2019). where criminal sanctions against homeless were not allowed for sleeping outdoors, on public property, when no alternative shelter is available. Reiner Contacted the Orange County Bar Referral "Modest Means" section and no attorney was available for referral. Applying this same logic to Reiner, if no lawyers are available to Reiner then obtaining a settlement in each case should not court against Reiner for CCP 391.

In **Re Be & K Const. Co. v NLRB** (2002) 536 U.S. 516 ,53 this court held that the first amendment provides, in relevant part that "Congress shall make no law... abridging the rights of the people... to petition the government for a redress of "grievances". We have recognized this right to the petition as one of "the most precious of the libertines safe guarded by the bill of rights." **Mine Workers v . Illinois Bar Assoc**. 389 U.S. 217, 222 (1967), and have explained that the right is implicit by the very idea of a government republican in form," United **States v. Cuikshank**, 92 US 542, 552 (1876). we based our interpretation in part on the principle that we would not lightly impute it to Congress and intent to invade... freedoms" protected by the Bill of Rights, . Such as the right to petition Id. 138"

Is the statutory law prohibiting the arbitrary selected a litigant petition to court discriminatory under **B &K Construction? Co v NLRB** (2002) 536 U.S. 515, 53 and constitutionally overbroad under **Brockett v. Spokane Arcades, zinc**. 472 U.S. 491, 105 S.Ct. 2754, 86 L.Ed 2d 394 (1956)?

United state courts entered incompatible decisions on the application of California Vexatious Litigant statute and prefiling order and pre-filing order under California code of civil procedure- CCP Sec. 391.7 to the same defendant who is proclaimed as vexatious Litigant by Superior Court by Superior Court. It has decided an important federal question in a way that conflicts with Court of Appeal and Supreme court decisions on the same matter, as to call for an exercise of this Court's

supervisory power to settle: is application of Vexatious Litigant Statute under CCP391 proper to represented by an attorney Plaintiff.

If any sanctions against poor in pro per litigant underCCP 391.7 is proper in the light of this court decisions in , **Bill Johnson's Restaurants, Inc NLRB**, 461 U.S. 731 (1983)?

This Court recognizes that the access to court recognize is a fundamental right to liberty within the meaning of the privileges and Immunities clause, but it is deemed to arbitrary chosen in pro per litigants in California courts by application of the controversial, broadly defined in unrestrained statutory law of vexatious litigant. in this Court supervisory Powers is to review and protest this essential right to all individuals, including Petitioner to this court.

PARTIES TO THE PROCEEDING

Petitioner, WAYNE R. REINER, who is appellant to the court of appeal, Fourth Appellate District division three appellate district. Respondent is Cox Communications California LLC Inc.

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STATEMENT OF JURISDICTION

There is an Appeal originating from a decision of the supreme court of the state of California, denying the petition for review of the court of Appeal, denying a pre-filing order for a vexatious litigant under Code of civil procedureCCP391 . The United States Supreme Court has jurisdiction over this matter pursuant to 28 USC 1257(a) .

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution guarantees the right to petition their government

The Eighth amendment to the Constitution-

excessive bail shall not be required nor , excessive fines-imposed or a cruel and the usual punishment inflicted.

The 14th amendment to the Constitution

Clause says that "No state shall make or enforce any law which he shall abridge the privileges or immunities of citizens of the United States. " "no state shall the night to any person within its jurisdiction the equal protection of the laws, and the right of access to the courts.

Bill of Rights

All persons within the jurisdiction of the United States shall have the same rights in every state I am territory to the fall and equal benefit of all laws and proceedings for the security of persons and property.

Code of Civil Procedure CCP Sec. 391

Vexatious s litigant is a plaintiff who maintained in propria persona files at least five litigations other than in a small claims court. A vexatious is also a person who repeatedly relitigates or attempts to relitigate the same issue or controversy against the same defendant, repeatedly files un meritorious motions, pleadings or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or Solely intended to cause unnecessary delay.

A vexatious litigant is subjected to a pre-filing order under section 391.7 .Also a defendant may move the court, upon notice and hearing for an order requiring the plaintiff to furnish security or for an order dismissing the litigation under section 391.1 .

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STATEMENT OF THE CASE

For the purpose of this petition Petitioner to this Court , Appellant and Plaintiff in lower courts Wayne R. Reiner is Called Reiner. Respondents to this Court Defendant/Respondents in the lower Courts is Called Cox Communications California LLC Inc._ is called Cox. Orange County Superior Court is called Superior Court, Court of Appeal is called Court of Appeal , Vexatious Litigant Statute is VLS.

Background Facts

ARGUMENT

1. California's original vexatious litigant law was enacted in 1963 in response to concern by the bench and bar about litigants, acting as their own attorneys, who repeatedly filed groundless actions and when they lost, relitigated the same issues over and over again. The Court then proceeded In **Tokerud v. Capitolbank Sacramento** (1995) 38 Cal App 4th 775, 779 …. "Only where the dismissal leaves some doubt regarding the defendant's liability, as where the dismissal is part of a negotiated settlement, will the dismissal not be deemed a termination favorable to the defendant. The 1963 VLS was modeled after statutes allowing courts to require the posting of security in certain derivative shareholder suits. See **Muller v. Tanner** 82 Cal. Rptr, 738, 741 n. (Ct. App. 1970) See also CAL CORP CODE Sec. 834 (providing for defendant corporations to request that plaintiffs derivative shareholders actions be required to post security for costs and fees)
2. Plaintiff filed three small claims cases and was subject to the prefiling order of Vexatious Litigant under CCP391.7, and all of the requests for prefiling order to file "notice on appeal" was denied.

3. .Consequently, VLS closes doors for Plaintiff to all California courts to seek protection from large corporations and landlords. This court in **B & K Constr. Co. v. NLRB** (2002) 536 U.S. 516 , 53 held the First Amendment speaks in terms of successful partitioning—it speaks simply of the "right of the people ..to petition the Government for a redress or griences." The broad Vexatious Litigant Statutory law takes this away for Plaintiff's right to petition for redress or act in his/her own defense. The Court of Appeal and superior Court decisions conflicting with application of Vexatious Litigant Statute under CCP Sec. 391,. It must be

considered, then the foreclosure of all access to the courts for Pro Se litigants, through statutory law of CCP 391 can't be justified by reference to state interest of equitable importance. If an appeal is afforded, the State must not so structure it as to arbitrarily deny some persons the right or privilege available to others in Cf. **Bankers Life & Casualty Co. v Crenshaw** 486 U.S. 1645, 100 L Ed. 2nd 62(1986).

4. The Vexatious Litigant Statute and prefiling order requirement under CCP Sec. 391 is only reason why the Superior Court dismisses cases in Orange County Superior Courts and small claims. Where attorneys are not required. The decision itself is not in accordance with the rule of CCP Sec. 391.1 that the motion to dismiss the case must be bases upon the ground, and supported by any evidence showing that there is not a reasonable ground supported by any evidence showing there is not a reasonable probability that the Plaintiff will prevail in the litigation against the moving defendant. This is not the case here. Consequently, VLS closes doors for Plaintiff to all courts to seek protection.
5. The Court have analyzed CCP in numerous cases and these have upheld the Constitutionality of CCP. However, this Appellate Court and trial court have refused a constitutional analysis not previously discussed. The Courts refused to analyze the previous cases they say are frivolous, as the court did and did just and did just a computational analysis (even where a previous Superior Court Judge said the cases were not within CCP391. The Court were just in a hurry to find that Reiner was " Striked out" under Sec. 391. The Court of Appeal and Superior Court decision are conflicting with application of Vexatious Litigant Statute under CCP Sec. 391. It must be considered then, that foreclosure of all access to the courts for Pro Se litigants, through the statutory law of Vexatious Litigant under CCp Sec. 391 can't be justified by reference to a state intrest of equitable importance. If an appeal is afforded, the State must not so

structure it as to arbitrarily deny some persons the right or privilege to others in Cf. **Bankers Life and Casualty C. v. Crenshaw** 486 U.S. 1645, 100 L. Ed. 2nd. 62(1988). California in **Taliaferro v Hoogs** 46 Cal Rptr. 147 (Ct. App. 1965 at 5) relies on **Cohen v. Beneficial Industrial Loan Corp** 337 U.S. 541 (69 S.Ct 1221, 33 L.Ed 1528) upholds constitutionality of VLS under CCP391 that it is without violation of the equal protection clause of the federal constitution (Amend. XIV, Sec.1) and the provisions of the state Constitution against special laws (Art I, Sec. 21) California State may set the terms on which it will permit litigation in its courts, that the restriction of 391 subdivisions (b)(1)(2) to persons proceeding in pro per is not arbitrary or unreasonable. A California Court considered whether the first Amendment right to petition invalidated the California "vexatious litigant" statute under which a litigant with a specified history of frivolous (baseless) litigation could be limited in his ability to file future suits. It upheld the statute. See **Wolfgram v. Wells Fargo Bank**, 61 Cal Rptr 2d 694, 704 (Cal . App. 1997) The statute which applies to all of a single class of persons equally is not a grant of special privilege or immunity in violation of section 21 of article I of the state Constitution, if the classification is not arbitrary, and is based on some difference in the classes having substantial relation to the purpose of the legislation **Professional Fire Fighters, Inc. c. City of Los Angeles** 60 Cal 2d 276)32 Cal Rptr 830, 384 P2d 158) The summary of the definition: the Vexatious litigant is a plaintiff who has a history of baseless litigations filed against the same defendant. Vexatious litigant is limited, but not forbidden, to file future suits, as long the case is winnable on merits. The restriction for

6. VLS shouldn't be arbitrary or unreasonable.

California VLS is NOT based on the constitutional requirement of uniform treatment of all persons under the rule of a reasonable basis for each classification **Bilyeu v State of Employees Retirement System**, 58

Cal 2d 618 (24 Cal Rptr. 562, 375 P 2d 442). The great proportions of the Pro Per litigants in California are too poor to afford an attorney. California VLS doesn't recognize these group of litigants and their rights to access to courts. Under **Beyerbach**, supra ,(236 Cal App 2d 528) State bases their beliefs on; if VLS is unconstitutional therefore any statute, which required the payment of a fee or the furnishing of security as a prerequisite to the filing of a complaint, the issuance or levying of a writ, or the procurement of a record on appeal etc. would be unconstitutional. The vague approach to the issue of the cost in court omits a right to fee waiver given by the State to poor litigants to protect their rights to "equal justice under the law" under Government Code Sec 68633, and Cal 'Rules of Court, riles 3.51, 8.26 and 8.818, wherein VLS undermines this particular State laws, which are protecting poor litigants. California VLS gives a right to file only winnable claims. Given these governmental interests, whether restrictions aimed at deterring frivolous suits pass strict scrutiny will depend . not on the compelling interest prong, but instead of the actual burden the restriction place on the filing of winning claims the implicated interests and burdens on right of access. In 1972 the Court proclaimed **in California Motor Transport v. Trucking Unlimite**d, " the right of access to the courts is indeed but one aspect of the right of petition" 104 U.S. 508, 612 (1972) See **Los Angeles County Bar Assoc v Eu** 379 F 2d. 697, 705 96 (9th Cir) 1992) (noting that the First Amendment right of petition is one of three sources of the right of court access) Jacobs, "Vornell Law Review" supra note 96 at 293 n 52(1973). It may seem surprising to equate the right of petition with respect to the judiciary, but the right had its origins in appeals to Parliament sitting as a court to redress private grievances." 48 U.S. at 743. In Bill Johnson's Restaurants, the Court said that the First Amendment interests in private litigation were "compensation for violated rights..." psychological benefits of vindication, and public airing have disputed facts."

In the **Taliaferro**, California doesn't find the VLS "on its face". Only those citizens who decline to hire lawyers, lose five suits in seven years, and then undertake a sixth suit which lack=ks merit, will be labeled vexatious. This "bullying" of any a person who is Pro Per in California court places any litigant into a legal limbo. Consequently, once a litigant is called a vexatious Plaintiff he or she loses the right to petition any protection under the law, unless, regardless if the matter is a winnable case.

7.The very broad and unambiguous definition of VLS is open to arbitrary and unreasonable power over who has a right to seek justice and petition to court. Reiner has been subjected to this arbitrary and unreasonable power of the Appellate and Trial Court. No such restriction is placed on any other party with an attorney.

8. Under the VLS the right to access under the Petition Clause in California is a right to file only winnable claims within the jurisdiction of the courts. This rule doesn't guaranty the access to court. In Bill Johnston's Restaurants the court adopted a win-lose test as the ultimate standard for imposition of damages under the labor laws. This court in 1972 in **California Motor Transport v Trucking Unlimited** said 'the right of access to the courts is indeed but one aspect of the right of petition." 404 US, 508, 612 (1972), and the First Amendment right to petition prohibits punishing persons who pursue legitimate litigation for an apparently improper purpose. When a suit presents factual issues, the plaintiff's First Amendment interest is petitioning the state for redress of his grievances is secure, but when a person is placed on the Vexatious Litigant list the litigant loses the First Amendment protection.

If Government actions or laws impact a person's ability to gain access to court to prevent a person from filing a civil suit, that this action or law is fundamentally wrong. The nature and purpose behind the restriction of VLS is its impact on the right of access to court for arbitrary selected litigants. The question is. Is VLS unconstitutional when it lacks accuracy

and targets in pro per litigants who are too poor to retain an attorney and discriminates between citizens based on suspect and wealth classifications.

a} Vexatious Litigant Statute I Impermissible Vague and Overbroad

The definition of VL under CCP391 is so poorly phrased that it does not put a person on notice of what behavior is permissible and what is outlawed. In **NAACP v.Button** 371 U.S. 415, 432-33 (1963) see discussion supra notes 61-63. The danger is tolerating in the areas of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. The threat of sanctions may deter their exercise almost as potently as the actual application sanctions. Because the First Amendment, government may regulate in the area only with narrow specificity." If the statute turns on a subjective interpretation, it is more likely to be declared impermissibly vague. See **Coates v. City of Cincinnati,** 402 U.S. 611, 616 (1971) finding as unconstitutionally vague a statute that turned on a subjective standard of "annoyance". California VLS is challenged that it is specifically the prefiling order violates due process and it is overbroad. California focus on the First Amendment and specifically, "The general rights of persons to file lawsuits as long as it does not clog the court system and impair everyone else's right to seek justice. "in **Wolfgram v. Wells Fargo Bank** 61 Cal Rptr 2d 694 (Ct. App 1997) This impermissibly vague law that a State has a right to deprive one group of litigants their right to petition so other groups of litigants can have the same right preserved under the same First Amendment is without doubt on its face and is fundamentally wrong.

b} **The discriminatory rule of who has access to the court under CCP391 is in violation of the First Amendment right of petition and due process.**

In **Crandall v. Nevada** 73 U.S. (6 Wall) 35 (1867) Court hinted that the right to access to court was tied to the right to petition. In 1823, Justice Washington, siting as circuit justice, set forth an oft-quoted statement of

these basic rights, which included the right to file civil suits in court. "we feel no hesitation in confirming these expressions to those privileges and immunities which are, in their nature, fundamental. U.S. Const Amend XIV, Sec 1.

9. The California court held that, the VLS "dies not impermissibly "chill" the right to petition and does not "penalize" the filing of unsuccessful, colorable suits". The VLS doesn't define frivolous lawsuits clearly, that it is difficult to determine the extent of the problem

. Judge William Schwarzer stated ", the total amount of behavior that would be sanctionable (as frivolous)....is not determinable by ordinary quantitative measures. T.E Willgging, the Rule 11 Sanctioning process 671 N. 130 (Federal Judicial Cir. 1988) If Judge William Schwarzer is right , that VLS is in violation of U.S, Constitution because the vagueness of regulations is discriminatory and not clear how are affecting litigants' access to court, specifically by the poor ones, who can't afford a legal representation; therefore, this law in question should not sustain.

10. As the Court explained in **Button**, the petitioner to this court may challenge the statute and court may invalidate it to avoid chilling the exercise of protected activity by others. **In Brockett v Spokane Arcades, Inc**. 472 U.S. 491, 105 S.Ct. 2794, 86 L.ed 2d 394 (1985). The Supreme Court in **Brockett** ruled that the Washington statute was overbroad because it prohibited lust-inciting materials. The Supreme Court in **Brockett** ruled that the, and it is constitutionally overbroad. Under the overbreadth rule the statutes that substantially restrict both non-protecting undertakings and activity secured under the First Amendment must be invalidated.

11. Within the Right to Access to the Court under the Petition Clause of the First Amendment defining the Right, 60 Ohio St. L.J. 557,656 (1999), the overbroad Statute of Vexatious Litigant prohibiting to petition to court,

secured by First Amendment, to arbitrary selected litigants is unconstitutional in accordance with **Brockett v. Spokane Arcades, Inc**. 472 U.S. 491 , 105 S. Ct. 2794, 86 L.ed 2d 394 (1985).

1. Is California Statutory Law of Vexatious Litigant under CCP 391 Constitutional "As Applied".

12. Cox and Reiner (Reiner providing a deeper analysis)cited ***Wolfgram*** (1977) 53 Cal App 45 discussing and analyzing that the Prefiling Order that Respondents discuss is appropriate and constitutional. NO Defendant of Petitioner has ever accused Petitioner of wasting their time, and nowhere has the court ever accused Petitioner of. wasting the court's time, more often siding with the Petitioner as in the underlying Reiner v. Cox case..
13. The court refused to dismiss any of Reiner's causes of action against Cox, stating, "Plaintiff may be able to prove a case." The Causes of Action included 1. VIOLATION OF THE CARTRIGHT ACT (BBUSINESS AND PROFESSIONS CODE 16720 ET SEQ,), 2.VIOLATION OF THE UNFAIR COMPETITION LAW (BUSINESS and Professions .code 17200 et seq,) 3. VIOLATION OF CONSUMER REMEDIES ACT (Cal Civ code 1750 et seq.) 4. Fraud, 5. Negligent misrepresentation, 6. FINANCIAL ELDER ABUSE, WELFARE CODE 15610.3 7. 7. UNRUH ACT violation of civ code sec 51-52.).
14. So even though the court upheld all Reiner's causes of action in Reiner v. Cox Orange County Superior Court--30-2019-01063705 if Reiner were to accept Cox's settlement it would be considered a strike against Reiner under CCP 391. Today
15. ***Wolfgram*** is the premier case in showing that a prefiling order does not violate the due process clause of the US Constitution. However, "Facial" vs "as applied " constitutional analysis is appropriate here.

16. Reiner having been a pro per previously. Reiner has been aware of some court's prejudices against pro per (albeit mildly). Appellant's concern was for

Constitutional due process and equal protection. Reiner in the trial court discussions with Judge Melzer addressed obtaining permission to file case and any arbitrary orders by judges. Judge Melzner said "**It's no big deal**" just present your request to a Judge. Petitioner was specifically concerned of the constitutional concept of "As Applied" in construction of CCP 391. According to the Supreme Court, "such as applied claims are **the basic building blocks of the Constitutional adjudication. Gonzales v. Carhart, 550 U.S. 124, 168 (2007).**

17. "In the conventional account of the basic principles of constitutional adjudication, constitutional challenges can be sorted into two distinct categories: "facial" challenges and "as-applied" challenges. A facial attack is typically described as one where "no applicational of the statute would be constitutional." In contrast, courts define as-applied challenge as one "under which the plaintiff argues that the statute, even though generally constitutional, operates unconstitutionally as to him or her because the plaintiff's particular circumstances. Alex Kreit, ***Making Sense of Facial and As-Applied Challenge***s 18 Wm &Mary Bill Rts. J. 657 (2010)
18. "The Court preference for as-applied constitutional challenges became evident "The Robert's Court acknowledged the centrality of severability in Ayotte/ There the court stated "generally speaking…we prefer…to enjoin only the unconstitutional applications…"***Ayotte v Planned Parenthoo***d 546 U.S. 320, 328-329 (2006). Metzger,**Facial and As-Applied Challenges Under the Roberts Court Fordham Law Journal** Vol XXXVI 773, 792
19. "The Roberts Court's preference for as applied over facial constitutional challenges became evident early on, in three decisions issued while Justice O'Connor was still a member t, **United States v. Georgia**, 546 US151 (2006) **Ayotte v. Planned Parenthood of Northern New England,**546 US320 (2006) and Wisconsin Right -to -life v. FCC. 546 U.S. 410 (2006) These cases chose to use the as-applied nature of the claims. Justice O'Conner stated in a constitutional infirmity need not lead to the statute being

invalidated…wholesale" given that "only a few applications" of the statute that "would present a constitutional problem "**Ayotte** 546 U.S. 331.

20. Lower courts have taken heed, with appellate decisions increasingly containing extensive discussion of the appropriateness of a facial versus as-applied approach. See **Warshak v United St**ates 532 F. 3d 521-531 (6th Cir2008). See Metzger **Facial and As-Applied Challenges under The Roberts Court** Fordham URB Law Journal vol. XXXVI p. 784 footnote 48.
21. Requiring "as-applied challenges be brought post-enforcement might similarly "chill individual's exercise of constitutional and further forestall their ability to challenge punitively unconstitutional measures altogether because those complying with the measure may lack standing to sue. **Abbott Labs v. Gardne**r 187 U.S. 136, 152-53 (1967). Metzger, Id at 789
22. "The Court is not opposed to granting broad relief suggests that as-applied challenges could prove a viable Mechanism for vindicating constitutional rights **WRTL.II** 551 US 449 (2007) " Metzger Id p795.
23. Reiner requested a timely refund from Airbnb. Airbnb and the homeowner refused. Reiner prepared a small claims action to have the court hear Appellant's request for a refund.
24. Plaintiff filed the VL-100 in case No.30-2020-01149147 (Appendix F) and discussed his request. Appellant's request for a $319 small claims action was denied with "a one-line denial" and even denied Reiner's fee waiver. Reiner filed an Appeal in this matter in July 2 ,2020 and the Appeal was denied Appendix J.

25. Plaintiff then tried to file another small claim case for $104 for a defective product. Plaintiff filed the Form VL-100. Case 30-2020-01146975. APPENDIX C.

26. It was denied. APPENDIX D. Here, no notice was given but Judge Larsh did note in his minute order "There are no appearance by any party" even though no notice was given and again denied Appellant $104 small claims action and then

Judge Nakamura signed the order denying Petitioner to file the small claims action.(See Appendix E)

27. Reiner requested that cases 30-2020-01149147 and 30-2020-01146975 be included with this appeal as the court requested. Appendix K and Reiner filed a motion for Joinder

28. Appendix L but was denied.Insurance companies and Pay Day Loan" Companies file thousands of small claims action every year and they are not denied access to small claims court. It's an obvious conclusion that if the Court is not allowing Reiner to file small one small claims actions certainly Reiner will be denied to limited or unlimited actions in Orange County Superior Court.

29. So even though CCP 391 is constitutional, it is being "as applied" to deny Reiner access to the Orange County Court system and denying Reiner his First Amendment right and constitutional equal protection and due process rights. The Court's decisions in **US v Georgia** 546 U.S. 320 (2006)and **WRTLI** 546 US 410 (2006), indicated the potential advantages of as-applied challenges in both. Metzger Id 776 and the extensive discussions in ALEK KREIT, **MAKING SENSE OF FACIAL AND AS-APPLIED CHALLENGES** 18 WM & MARY RTS J. 657 (2010, Gillian E. Metzger **Facial and As-Applied Challenges under The Roberts Court** Fordham URB Law Journal vol. XXXVI p 773-801 and David Faigman (2009) Defining Empirical Frames of Reference in Constitutional Cases: Unraveling As-Applied versus Facial Distinction in Constitutional Law. Hastings Constitutional Law Quarterly p 631-665 Reiner's "As Applied" First Amendment constitutional rights and Constitutional rights of Due Process and Equal Protection are being violated by this decision.

30. Further if Reiner is denied access to the small claims court, it is not unreasonable to fear Reiner's request for limited or unlimited action would be

denied and as stated above it is appropriate to consider this hear as a pre-enforcement violation before this court.

31. "In his opinion for the court Chief Justice Earl Warren framed the decision around the general findings regarding segregation's effects. The Court famously quotes the three-judge district court's finding that "Segregation with the sanction of law...tends to (retard) the educational and mental development of negro children and deprive them of some benefits they would receive in a racially integrated school system David Faigman (2009) **Defining Empirical Frames of Reference in Constitutional Cases: Unraveling As-Applied versus Facial Distinction in Constitutional Law**. Hastings Constitutional Law Quarterly p 633. Obviously, this is a mammoth case with mammoth social relevance. Appellants facts are dwarfed. However, denying Appellant access to the court, with the sanction of law, tends to retard Appellant's well-being by denying Appellant access to the court to recoup monies wrongly withheld from him, which such funds could go towards Appellant groceries, rent or utilities.
32. The signature case for the asserted preference for as-applied constitutional adjudication is **United Stated v. Salerno** 481 U.S. 739 (1987). In Salerno the Court rejected a facial challenge to the United States Bail Reform Act's pretrial detention provision, holding due process does not prohibit detentions based on predictions of future violence. The Court stated the "a facial challenge to a legislative Act is.... the most difficult challenge to mount successfully, since the challenge must establish that no set of circumstances exist under which the act would be valid Id at 746.. As this statement suggests Salerno sets forth a vision of constitutional adjudication in which the presumptive form of constitutional adjudication is the individual case. In particular ***Salerno*** preferences as-applied challenges, thus conforming to romantic notions of a restrained judiciary, one that limits the Court to deciding the specific facts before it. **Faigman ,** Id 653-654
33. "It may be for instance, that the government's regulatory interest in community safety outweighs liberty interests when the reliability of predictions of violence

exceed 90 percent. But if reliability rates were below 15 percent, the balance might swing against the government's claim. **Faigman** Id p. 658

34. If Reiner was suing persons and entities and constantly losing then maybe denying Reiner's small claims cases would be constitutional. However, if Petitioner was winning "90 percent" of his cases (its much higher) then would as the court denying his access to follow ***Salerno*** and find his denial of access to small claims court unconstitutional.
35. Reiner has appealed each case. Petitioner questions how this an effective way to process a small claims court case, wow OK cuisineand is this what CCP 391 envisioned. Reiner went through all the procedures dictated by CCP 391 and court instructions to insure Reiner's Constitutional Rights were protected.. However, Reiner "As-Applied" First Amendment, Due Process and Equal Protection Constitutional Right with CCP 391 have been violated.

REASON FOR GRANTING THE PETITION

36. In **Shalant v. Girardi** (2011)51 Cal 4th 1164 in which the it held that a VLS is applied only to actions filed by Pro See Plaintiffs, but it limits a judicial access reserved to all citizens allowing them to publicly air their disputes, seek compensation for violated rights and interests, and ultimately gain a sense of vindication.... Further, in Carl Tobias, **Civil Rights Conundrum** 26 Ga. Law REV. 901, 934 (1992) the Supreme Court has long held the that First Amendment right to petition prohibits punishing persons who pursue legitimate litigation for an apparently improper purpose. Waldman, supra note 4 at 868 (noting, "the right to obtain a remedy and to access the courts for

assistance has its genesis in the First Amendment." Note, First Amendment Right of Access, supra note 38, at 1059. Limitations applied to Pro Per litigants by VLS under CCP 391 violates Due Process of the Fourteenth Amendment.

37. In this instance the VLS is the key to deny the right in petition, reverse or change decision, delay or dismiss the case. In pro per litigant proclaimed VL does not withstand attorney's intimidation, grandiose statement against Plaintiff without any back up or support, exhibits with no analysis, unsubstantiated claims. And is inevitably is deprived the protection under the law.
38. The words "due process of law" in the fourteenth Amendment of the Constitution of the United States do not necessarily require an indictment. In Twining v. New Jersey, 211 U.S, 78,101 (1908). The words due process of law were intended to secure the individuals like Reiner from arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice"; **Anderson National Bank v. Luckett, 321 U.S. 233,244 (1944)**
39. A state is free to regulate procedure of its courts in accordance with its own conception of policy and fairness unless in so doing it offends a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' **Snyder v. Massachusetts**, 291 U.S. 97, 105 (1934); **West v Louisiana**, 194 U.S. 258,263 (1904); , **B&Q RR v. Chicago**, 166 U.S. 226 (1897) **Jordan v. Massachusetts**, 225U.S 167,176 (1912) See **Boddie v. Connecticut**, 401 U.S. 371 (1971). Here where the State monopolized the avenues of settlement of disputes between persons by prescribing judicial resolution and the where the disputes involves fundamental rights no state may deny to those persons unable to pay its fees access to those judicial avenues by claiming that person a Vexatious Litigant. Boddie v. Connecticut 401 U.S. 371 (1971) denying the rights to self-

represented litigant by broad and very vague VLS enforced by CCP is surely fundamentally wrong.

40. Statutes may be facially constitutional as CCP 391 and other similar state statue appear. However, the courts may hybridize a statute to their personal prejudice, bias or an interpretation not supported by the pedigree of the statute. Reiner believes the statute "as applied" to Reiner is unconstitutional. Reiner has read hundreds of CCP 391 cases and other state cases. The original wording in the pedigree of CCP 391 is "multiple filing of the same issue determined against the litigant ", harassment, meritless, the cases Reiner has read include, Litigant suing the judge, suing the opposing counsel, suing his ex-wife multiple times, suing his bank multiple time for an injustice, a "frivolous litigation universe" begins to unfolds. None of these descriptions apply to Reiner. In every case Reiner read the courts briefly discussed the cases used in computing the CCP 391 calculation none of Reiner's cases were discussed. No other Circuit has determined that a negotiated settlement should count as a strike against the Plaintiff, and Plaintiff found no other cases where multiple small claims cases were dismissed without a hearing, and appropriate fee waiver was dismissed without a hearing.
41. Reiner's does not meet the intended Vexatious Litigant group as CCP 391 was designed for.
42. Reiner's constitutional rights have been violated by foreclosing him from the California Superior Court,

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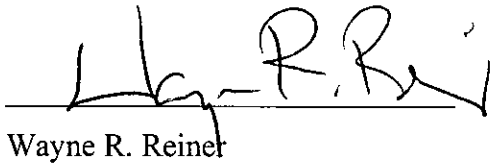
CONCLUSION

Civil Procedure CCP 391 deprives Reiner of his right to petition for redress in civil cases especially small claims cases. The Constitution pro per rights of every citizen against discriminative and unjust laws of the state by prohibiting such laws, The State must not so structure it as to arbitrarily deny to one person or group of litigants the rights or privileges available to others. The denial of rights for which the State alone id responsible is the great seminal and fundamental wrong. The coercive remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for the evil or wrong actually committed rests upon State law or State Authority for its excuse and perpetration. The prefiling order requirement for Vexatious Litigant creates of absolute immunity for represented or attorney large Corporation or wealthy litigants and elevates Vexatious Litigant Statutory Law above the Petition Clause of the first Amendment.

Based upon the additional development of the petition for Writ of Certiorari in the civil case of the person too poor to have a legal representative along with third Court to grant Certiorari to ensure certainty and consistency in the application of law by California State under the U.S. Constitution

CCP 391 has been considered Constitutional in most cases. However I have not found a case where an individual was denied access to the Orange County Superior Court, Small Claims. I ask the US Supreme to

Organize CCP391 not to be a weapon but the equitable section it was designed to be.



Wayne R. Reiner

June 28,2021