No. 22-1032

In the Supreme Court of the United States

Sergei Vinkov, a Congregational Council Member of the Trinity Lutheran Church of Hemet, California, ELCA (2018-2019),
Petitioner,

v.

Brotherhood Mutual Insurance Company, an Indiana corporation, Respondent

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Ninth Circuit
(No. 21-55857)

Sergei Vinkov, Pro Se
40795 Nicole Court,
Hemet, California, 92544
(951) 380 53 39
vinjkov@gmail.com

April 21, 2023

QUESTIONS PRESENTED

1) Has the United States Court of Appeals for the Ninth Circuit (9th Circuit) correctly determined the jurisdictional power of the federal court over Insurer's claims and denial of affirmative relief for a *pro se* party in duty-to-defend proceedings on the directly related pending state action under Article III requirements and U.S. Code: Title 28?

2) Whether Insurer properly obtained a judgment in the federal court against a *pro se* volunteer director of a religious federal tax-exempt corporation from pending state proceedings in the light of the U.S. Constitution (Article III, First Amendment, Due Process Laws) and Acts of US Congress, especially under the restrictions of 28 U.S.C. §2072(b); 26 U.S.C. §7428, 28 U.S.C. §1332, and 28 U.S.C. §2283?

PARTIES TO THE PROCEEDINGS

Sergei Vinkov, a Russian and American citizen (since April 2021), was the sole defendant, counterclaimant, and appellant (Petitioner) below. Petitioner submits this petition as an alien with lawful permanent residency on US soil and an individual in his official capacity as a Congregational Council member (a board director) of Trinity Lutheran Church of Hemet (The Evangelical Lutheran Church in America) ("Religious Corporation"), a California non-profit religious corporation under federal tax exemption, voluntarily in January 2018 – August 2019, who became a naturalized US citizen in April 2021 during the pending civil proceedings against him in the state and federal courts. Religious Corporation was incorporated as a non-profit organization in 1921 (CA #96978); FEIN 952158740; is a tax-exempt under 26 U.S.C. §501(c)(3); has no stock, and no parent or publicly held companies have any ownership interest in it. Religious Corporation is listed on the official roster of congregations affiliated with the Evangelical Lutheran Church in America (ELCA) and is recognized by the ELCA as being included under its Group Exception Ruling (9386) (https://community.elca.org/).

Respondent Brotherhood Mutual Insurance Company, an Indiana corporation, was the sole plaintiff, counter-defendant, and appellee below-issued insurance contract for Petitioner's entity during the period of his membership ("Insurer"). The Insurance Commissioner of California duly authorized Insurer to issue insurance policies. Insurer's principal place of business is 6400 Brotherhood Way, Fort Wayne Indiana, 46825. **(Dkt.76,Policy)**.[1]

LIST OF ALL RELATED ACTIONS

With Petitioner's Participation

SCOTUS

1. Application No. 22A818 to file petition for a writ of certiorari in excess of word limits, addressed to Justice

[1] "Dkt" refers to documents filed in the District Court, No. 5:19-cv-01821-SB-(SPx), "DktEntry" & "ER" indicate the records in 9th Circuit, No. 21-55857 stored in PACER.

Jackson and referred to the Court denied, April 17, 2023 (*Vinkov v. Bhd. Mut. Ins. Co.*).

2. Petition No. 22-792 for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, Division Two, filed February 22, 2023 (*Vinkov v. Superior Court of California, Riverside County, et al.*).

3. Application No. 22A718 for stay addressed to Justice Alito and referred to the Court denied, March 6, 2023 *Vinkov v. Bhd. Mut. Ins. Co.*, No. 22A718, 2023 WL 2357301, at *1 (U.S. Mar. 6, 2023)

4. Application No. 22A487 to extend the time to file a petition for a writ of certiorari from December 13, 2022 to February 3, 2023, submitted to Justice Kagan is granted, December 02, 2022 (*Vinkov v. Superior Court of California, Riverside County*, et al.);

5. Petition No. 21-191 for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied, October 12, 2021, (*Vinkov v. United States Dist. Court*, 142 S. Ct. 342 (2021));

6. Application No. 20A156 for stay addressed to Justice Barrett and referred to the Court denied, May 17, 2021 (*Vinkov v. United States Dist. Court*, 141 S. Ct. 2618 (2021));

7. The application No. 20A97 for stay addressed to Justice Thomas and referred to the Court is denied January 11, 2021 (*Vinkov v. United States Dist. Court*, 141 S. Ct. 1040 (2021));

8. Petition No. 20-506 for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, Division Two denied, January 11, 2021 (*Vinkov v. Smith*, 141 S. Ct. 1058 (2021)).

9TH CIRCUIT

9. Bhd. Mut. Ins. Co. v. Vinkov, No. 21-55857, 2022 U.S. App. LEXIS 27542 (9th Cir. Oct. 3, 2022) (*en banc* petition filed on 10/09/2022 is denied on 01/25/2023) (Associate Justices: J. Clifford Wallace, Ferdinand F. Fernandez, Barry G. Silverman, further *as Senior Judges Wallace, Fernandez, and Silverman* individually and collectively);

10. Vinkov v. United States Dist. Court. (*In re Vinkov*), No. 21-70559, 2021 U.S. App. LEXIS 7223 (9th Cir. Mar. 11, 2021) (Associate Justices: Milan D. Smith, Jr., Bridget S. Bade, Patrick J. Bumatay);

11. Vinkov v. United States Dist. Court for the Cent. Dist. of Cal. (In re Vinkov), No. 20-73264, 2020 U.S. App. LEXIS 36439, at *1 (9th Cir. Nov. 19, 2020) (Associate Justices: Richard R. Clifton, Sandra S. Ikuta, Kenneth Kiyul Lee);

12. Bhd. Mut. Ins. Co. v. Vinkov, No. 20-55687, 2020 U.S. App. LEXIS 26435, at *1 (9th Cir. Aug. 19, 2020) reconsideration is denied by Bhd. Mut. Ins. Co. v. Vinkov, No. 20-55687, 2020 U.S. App. LEXIS 34834, at *1 (9th Cir. Nov. 3, 2020) (Associate Justices: M. Margaret McKeown, Daniel A. Bress, Barry G. Silverman);

13. Mark Smith, et al v. Sergei Vinkov, Case No. 20-55778, (9th Cir. Aug. 19, 2020) (Associate Justices: M. Margaret McKeown, Daniel A. Bress, Senior Judge Silverman).

US DISTRICT COURT

14. Bhd. Mut. Ins. Co. v. Vinkov, No. EDCV 19-01821-CJC(SPx), renamed as 5: 19-cv-01821 SB (SPx), 2019 U.S. Dist. LEXIS 231188 (C.D. Cal. 2019) (Judges Sheri Pym (*Magistrate Pym*), Stanley Blumenfeld Jr. (*Judge Blumenfeld*), Cormac J. Carney (*Judge Carney*)) Closed on 08/10/2021.

15. Smith v. Vinkov, No. EDCV 20-01070-CJC(SPx), 2020 U.S. Dist. LEXIS 119999, at *1 (C.D. Cal. 2020) (Judges: Jesus G Bernal, *Judge Carney, Magistrate Pym*), Closed on 07/06/2020.

CALIFORNIA SUPREME COURT

16. Vinkov v. Superior Court, No. S275817, 2022 Cal. LEXIS 5408, at *1 (Sep. 14, 2022);

17. Vinkov v. Superior Court, No. S263745, 2020 Cal. LEXIS 6497, at *1 (Sep. 16, 2020);

18. Vinkov v. Superior Court, No. S261198, 2020 Cal. LEXIS 3397, at *1 (May 13, 2020);

19. Vinkov v. Superior Court, No. S261198, 2020 Cal. LEXIS 3066 (Apr. 30, 2020).

CALIFORNIA COURT OF APPEAL

20. Case No. E079115, Sergei Vinkov v. The Superior Court; Mark Smith et al., 07/25/22;

21. Case No. E075396, Sergei Vinkov v. The Superior Court; Mark Smith et al., 07/29/20;

22. Case No. E074567, Sergei Vinkov v. The Superior Court; Mark Smith et al., 03/05/20);

23. Case No. E074263, Mark Smith et al. v. Sergei Vinkov, was dismissed on 01/31/20.

CALIFORNIA SUPERIOR COURT

24. Smith v. Vinkov, MCC1900188, Superior Court, Riverside County – Southwest Justice Center, California, filed on 02/20/2019, closed without final judgment(s) on 01/24/2022 (the full docket is available in Westlaw), Presiding Judge is Angel Manuel Bermudez.

WITH RELATED QUESTIONS OR SUB-QUESTIONS PENDING BEFORE THIS COURT

25. No.22-506, Biden v. Nebraska, 214 L. Ed. 2d 274, 143 S. Ct. 477 (2022) (Standing under Article III);

26. No. 22-535, Dep't of Educ. v. Brown, 214 L. Ed. 2d 310, 143 S. Ct. 541 (2022) (Compliance with Article III standing requirements);

27. No. 21-1333 & No. 21-1496, Gonzalez v. Google LLC, 2 F.4th 871 (9th Cir. 2021), cert. granted, 143 S. Ct. 80 (2022), and cert. granted sub nom. Twitter, Inc. v. Taamneh, 143 S. Ct. 81 (2022) (Involvement of 47 U.S.C. §230 jurisdictional immunity against criminal statutes);

28. No. Coinbase Inc. v. Bielski, 214 L. Ed. 2d 298, 143 S. Ct. 521 (2022) (The legal effects of pending appeal on the pending related issues in the trial court).

29. No. 21-467, 303 Creative LLC v. Elenis, 212 L. Ed. 2d 6, 142 S.Ct. 1106 (2022) (Enforcement of silence under the First Amendment Clause).

30. No. 22-429, Acheson Hotels, LLC v. Laufer, No. 22-429, 2023 WL 2634524, at *1 (U.S. Mar. 27, 2023) (Article III standing requirements to pursue equitable claims under federal laws in the federal court).

31. No. 22-741, Faith Bible Chapel International, Petitioner v. Gregory Tucker (The scope of "ministerial exception" immunity);

32. No. 22-824, The Synod of Bishops of the Russian Orthodox Church Outside of Russia, et al., Petitioners v. Alexander Belya (The scope of "ministerial exception" to civil proceedings, including discovery);

33. No. 22-555, NetChoice, LLC, dba NetChoice, et al., Petitioners v. Ken Paxton, Attorney General of Texas (the First Amendment interpretation).

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PETITION FOR A WRIT OF CERTIORARI

The 9th Circuit's and the District Court's failure to sufficiently abide by the letter and spirit of the U.S. Constitution, numerous provisions of the Acts of U.S. Congress, and governing precedents of its own jurisdiction, and case law of this Court prompted a necessity to retain the correctional procedures to seek a petition for writ of certiorari before this Court. This petition seeks a threshold number of votes to review the case and examine equity jurisdiction and equitable powers of the lower federal courts **Apps.A-C.**

DECISIONS BELOW

The petition challenges the unpublished decision of 9th Circuit produced by Senior Judges Wallace, Fernandez, and Silverman in *Bhd. Mut. Ins. Co. v. Vinkov*, No. 21-55857, 2022 U.S. App. LEXIS 27542 (9th Cir. 2022-2023) (*en banc* petition filed on 10/09/2022 is denied on 01/25/2023) (**Apps.A-C, Dkt. No. 253, Case Dispositive Order by Judge Blumenfeld**) The Petitioner exhausted all measures to prevent further irreparable harm and to stop ongoing constitutional and statutory injuries to him personally and judicial assaults on the U.S. Constitution and Acts of U.S. Congress. (See **pages ii-v above**).

9th Circuit's ruling was prompted by the final disposition of case *Bhd. Mut. Ins. Co. v. Vinkov*, No. EDCV 19-01821-CJC(SPx), 2019 U.S. Dist. LEXIS 231188 (C.D. Cal. Aug. 10, 2021) according to 28 U.S.C. §1291. (**App.C, 08/10/2021**). Petitioner's Notice of Appeal of the judgment in the District Court filed on the same date (**Dkt. No. 256**).

JURISDICTION

9th Circuit denied *en banc* petition on 01/25/2023 (**App.A.**) and issued an unpublished memorandum of disposition of the entire appeal on 10/03/2022 (**App.B.**). This petition is filed on or before April 25, 2023, according to 28 U.S.C. §1254(1) and 28 U.S.C. §§2022&2201(a) ("[a]ny declaration shall...be reviewable").

Additionally, the jurisdiction of this Court is warranted under 28 U.S.C. §1651 to remedy a judicial departure from written laws and rules governing judicial conduct. Court's authority may be invoked under 28 U.S.C.

§2283 exceptions to aid its own jurisdiction, and to protect or effectuate its judgments. (*Leiter Minerals, Inc., v. United States*, 352 U.S. 220, 225 (1957)) (the underlying action is pending within this Court's jurisdiction, Case No. 22-792, docketed 02-22-2023). Judicial relief is authorized by 42 U.S.C. §2000bb–1(c) and 42 U.S.C. §2000cc(a). Due to the alienage status of Petitioner in the moment of filing of lawsuits against him and issuance of critical decisions abrogating his rights as a foreigner on US soil, this Court also may retain jurisdiction over the petition according to 28 U.S.C. §1350. "[T]his jurisdictional statute does not create a cause of action, ...courts may exercise common-law authority under this statute to create private rights of action in very limited circumstances." *Nestle U.S. v. Doe*, 141 S. Ct. 1931, 1935 (2021). 28 U.S.C. §1343(4) ("[t]o recover damages or to secure equitable or other relief under any Act of Congress").

Insurer attempted to invoke the District Court jurisdiction under federal diversity and declaratory relief statutes (**Dkt No. 1 (Insurer's Complaint. ¶1 at 1:24-27);** 28 U.S.C. §§1332, 2201, 2202). Petitioner opposed that: (1) diversity amount was met (**Dkts.168&228**), and (2) Insurer was able to state claims and its defenses to counterclaims (**Dkts.9-11,21-22,70,228,176&196**).

CONSTITUTIONAL PROVISIONS AND STATUTES

The questions for review touch numerous provisions of the US Constitution and Act of US Congress. However, the primary sources to claim errors of law in 9th Circuit and the District Court proceedings come from Case and Controversy (U.S. Const. art. III – "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution"), and Privileges and Immunity (U.S. Const. art. IV, §2 - "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states") under the federal Constitution. Additionally, Petition will rely on First, Fifth, Eighth and Fourteenth Amendments to U.S. Constitution. The relevant constitutional and statutory authorities can be viewed in the appendices (**App.E**).

INTRODUCTION

This case resembles the Bible story of Job, who was put under life-threatening circumstances to test his faith. The Petitioner was put in the millstone of the judicial system on the state and federal levels, and he did not lose his Heaven's blessings, and these lawsuits brought Petitioner from 'zero' to 'hero' of the First Amendment. (Vinkov, 2022). As Job's life course, Petitioner faced death, but Heavens left him in this battle ("But he knoweth the way that I take: when he hath tried me, I shall come forth as gold," Job 23:10, KJV). Petitioner's resilience to judicial errors shows that Alberto Brandolini's law applies to legal practice either because producing mistaken decisions is less effortless than its correction (Brown, 2019, p.94). Petitioner has dedicated sufficient time to researching the law, to producing legal writings, arranging many filings to pave and document each effort to correct judicial errors. Petitioner exhausted every opportunity to resolve the case with fewer costs at an early stage of litigation, but this Court was disinterested (See **pages iii-v above**).

The questions presented above and arguments below show that Petitioner "won" a jackpot of judicial errors, and, unfortunately, nobody wants to review and correct them (**App.A-C.**), despite precisely developed arguments and preserved matters in the lower court records (See **Opening and Reply Briefs**). Petitioner still contends the judgment of the District Court must be void because the trial court acted outside its constitutional and statutory capacity, for example, Case and Controversy, Immunities and Privileges, Free Exercise, Excessive Punishment, Due Law and Process clauses of U.S. Constitution, and numerous provisions of federal statutes: 28 U.S.C. §2071(a); 28 U.S.C. §2072(b); 47 U.S.C. §230(c)(2); 42 U.S.C. §14503(a)(1); 28 U.S.C. §2283; of 26 U.S.C. §7428; 28 U.S.C. §2201(a); 28 U.S.C. §1332(a); 18 U.S.C. §242; 28 U.S.C. §453; 22 U.S.C. §6401; 28 U.S.C. § 636(b)(1)(A); 42 U.S.C. §2000bb–1; 42 U.S.C. § 2000cc. 9th Circuit is not a proper entity capable of extending the scope of jurisdictional power of the federal courts to adjudicate the scope of religious duties, but it did it. Because it is apparent from the face of the records in

Apps.A-C that lower court officers failed to heed numerous binding Supreme Court precedents and its Circuit, the intervention of this Court into lower courts' proceedings is warranted.

STATEMENT OF CASE

I. Insurer Denied the Duty-to-Defend Coverage

As a general rule, where the pleadings do not raise a claim arguably within the scope of coverage, the insurer has no duty to defend. *Bhd. Mut. Ins. Co. v. Evangelical Free Church of Am.*, 572 F. Supp. 3d 694 (E.D. Mo. 2021), appeal dismissed, No. 22-1446, 2022 WL 3754861 (8th Cir. May 13, 2022). When the terms in an insurance policy are ambiguous, the construction most favorable to the insured must prevail, because the insurer prepares its own contracts and has a duty to make the meaning clear. *Bhd. Mut. Ins. Co. v. M.M.*, 292 F. Supp. 3d 1195, (D. Kan. 2017).

On 02/20/2019 the defamation lawsuit in the state court triggered duty-to-defend coverage, which was closed on 01/24/2022, but is still pending due to the lack of the final judgment on the records (See details in this **Court Docket No. 22-792**). Two plaintiffs, Commercial Speakers, in the Underlying Action, sought $1,500,000 against multiply defendants (26 fictitiously named defendants) based on social media comments of Petitioner raised from his Budget Planning Memo (**RJN in Dkt.15-2 filed 10/18/2019 Pgs.24-45**). Among all 26 defendants, only Petitioner was served with summons through substitute service of process, all others alleged 25 were never discovered and felt into the scope of Insurer's investigation (**Dkt.1**).

On 03/12/2019 Insurer was requested of coverage under the Multiple-peril insurance policy: "please find the following important legal document which triggers an obligation on your part to your named insureds Trinity Lutheran Church and Sergei Vinkov" (**Dkt 76; Dkt79 Page ID #:2275 (Notice of Claim)**. Notice of claim does not demand any specific amount but asked Insurer to step in into proceedings. In a mixed action, where some claims are potentially covered, and others are not, the

insurer has a duty imposed by law to defend the action in its entirety because to defend meaningfully, the insurer must defend immediately, and to defend immediately, it must defend entirely. (*Golden Eagle Ins. Corp. v. Rocky Cola Cafe (2001)* 94 Cal.App.4th 120 [114 Cal.Rptr.2d 16]).

Within 30 days of service of summons, Petitioner has not received assistance from Insurer and was forced to step in to proceeding to escape a default judgment and secure his legal interests. Petitioner simultaneously answered and cross-complained on 03/21/2019 in the Underlying Action as *pro se* (**Dkts.15 et seq.**). On 05/20/2019, Petitioner received the denial of his claim, which immediately formed the grounds to file a complaint against Insurer in the California Department of Insurance.

II. Department of Insurance Resolved Complaint against Insurer

According to 10 Cal. Code Regs. §2695.7(d), "[e]very insurer shall conduct and diligently pursue a thorough, fair and objective investigation." The specific nature of the obligations imposed by the covenant depends on the nature and purpose of the underlying policy and the parties' legitimate expectations arising from the contract. *Commercial Union Assur. Cos. v Safeway Stores, Inc.* (1980) 26 C3d 912, 918.

Insurance policy 04M5A0426174 was issued by the Insurer, the policyholder is Trinity Lutheran Church of Hemet, and the policy period is 06/25/2016-06/25/2019. Petitioner was elected during the Annual Congressional meeting in January of 2018 to serve as a board director of the policyholder. He submitted a resignation letter on 07/22/2019 (**Insurer's ER-1292**). The policy contains liability limits of $1 million per incident and $3 million aggregate coverage. Duty-to-Defend Clauses for the board of directors may be met in various provisions of the contract, but the most relevant portions are the following (all emphasizes omitted):

"We have the right and duty to defend a suit seeking damages which may be covered under the Commercial Liability Coverage" **[Dkt.76 Filed 07/07/20 PID 2097]**

"RELIGIOUS FREEDOM PROTECTION COVERAGE... The coverage of this Religious Freedom Protection Endorsement applies to covered claims arising out of belief-based decisions and communication" **[Dkt.76 PID#:2183]**.

"We pay all sums that a covered person becomes legally obligated to pay as damages due to personal injury to which this coverage applies. The personal injury must arise out of a defamatory act," **[Dkt.76 PID #:2166]**

"If a covered person denies intentional wrongdoing in connection with any alleged personal injury, then we will provide such covered person with the following limited Defense Coverage" **[Dkt.76 PID #:2161]**.

"We pay all sums that a covered person becomes legally obligated to pay as damages due to financial damage to which this coverage applies. The financial damage must arise out of one or more wrongful acts by a covered person in connection with leadership activity." **[Dkt.76 PID #:2141]**

"We will reimburse those defense costs incurred by a covered person who is named as a defendant in a covered lawsuit to which this coverage applies. The covered lawsuit must be filed or formally initialed in the basic territory during the policy period." **[Dkt.76 PID #:2136]**

The underlying action in the state court falls into the

provisions of the insurance contract due to the matched allegations of defamation addressed against a board director of Religious Corporation and Insurer's promise (**Dkt.1**). When Insurer denied the coverage without reservation of rights, Petitioner complained to the California Department of Insurance to enforce California laws. Petitioner, in his complaint, alleged that "coverage analysis is superficial [,]...explicit evidence of the negligent conduct includes: the failure to provide a fair investigation (they advised me to settle the case with a legally non-existent business entity) and compromising my ability to defend." (Complaint against Brotherhood Mutual Insurance Company and Kimberly Kelble, CPCU in **Insurer's ER-1316**). The complaint was resolved in Petitioner's favor, but Insurer disagreed, saying "we maintain that coverage does not exist for you" dated July 3, 2019, in **ER-252**).

The "army" of lawyers (Robert W. Brockman, Jr., David P. Berman, Rachel B. Kushner, David Kent Haber, Lee H Roistacher) were employed in response to Petitioner's small but significant victory on the state level. Instead of submitting the case to arbitration as prescribed by contract (**Dkt.1** "Any dispute between us and any insured or covered person regarding the existence or application of coverage under the terms of any liability or medical (GL or BGL) coverage form of this policy must be submitted to the American Arbitration Association," emphasis omitted, in **Insurer's ER-1472**), they have attempted to employ the federal procedures to disclaim coverage again. The harassment measures resulted in Petitioner's serious distress, which couldn't be resolved without the assistance of religious, spiritual, and mental health workers (**Petitioner's Declaration in DktEntry: 6, Page 76(63) ¶4).** Petitioner stepped into federal proceedings and stated counterclaims exceeding the diversity amount, including punitive damages available for Petitioner after exhausting the complaint before the California Department of Insurance (*Pulte Home Corporation v. American Safety Indemnity Company*, 14 Cal. App. 5th 1086, 1125- 1126, 223 Cal.

Rptr. 3d 47 (4th Dist 2017); (*Century Sur. Co. v Polisso* (2006) 139 CA4th922, 963.). Petitioner estimated exemplary damages in the amount of at least $250,000.00, which falls within the reasonable amount set by his Court (*State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408) and requested written public apologies from Insurer (**App.D**; **Insurer's ER-1013**).

III. The Federal Courts Re-decided the Issues in Insurer's Favor and Punished Petitioner with Multiple Sanctions

On the Jewish New Year Eve, Sunday, 09/29/2019 (**Dkt. 8, Proof of Service**), Insurer served a "gift" in the form of summons on a complaint filed on 09/23/2019 in the District Court **(Dkt. 1, Insurer's Complaint)**. Insurer brought a declaratory judgment action asserting that the claims of Commercial Speakers for defamation are either not covered claims under the Policy or are subject to an exclusion(s) – no duty to defend, no duty to indemnify, request for defense costs recovery request for defense costs recovery with respect to an incident which was subject of suit against Petitioner in the state court (**Dkt.1**). Insurer successfully challenged the scope of director's duties and discretions, which are primarily common law matters (Under California's "business judgment rule," directors' decisions in the day-to-day management of the corporation may not be attacked, this rule applies to the courts as well to all discretionary decisions by the board of directors. *Lewis v. Anderson*, 615 F.2d 778 (9th Cir. 1979)).

The District Court, in the course of proceedings, interpreted the law to mean the religious abstention doctrine and many other legal theories are not applicable, as well as the business judgment rule (**Apps.A-C, See Petitioner's defenses in Insurer's ER-1138-1144**). The District Court did not find any jurisdictional defects and any congressional restrictions to produce its rulings (**Apps.A-C**), despite Petitioner consequently urged the District Court on Insurer's inability to state claims (see the 3rd defense), to prove the standing to pursue the

claims and discovery, and to produce evidence in support of the diversity amount and the lack of genuine issues of facts (**Dkt.228**).

Before and during discovery proceedings, the District Court has reached a decision that Petitioner is not entitled to judgment as a matter of law in his favor, not protected from discovery or at least eligible for stay. Petitioner's discovery responses and objections are treated by the District Court as grounds for multiplied sanctions and the District Court entered judgment in favor of Insurer (**App.C**).

Petitioner had reasonable expectations of correctional power from 9th Circuit. However, it declined to entertain an immediate appeal on interim decisions denying qualified immunities from lawsuits and an injunction (**App.D**), was disinterested in correcting the District Court's conduct and settling open legal questions before and after the final judgment entered (**App.C**). Petitioner believes **Apps.A-B** demonstrate a lack of awareness among Senior Judges Wallace, Fernandez, and Silverman regarding the issues in the cases.

REASONS FOR GRANTING THE REVIEW

I. Exceptionally Important and Recurring Questions of Constitutional Law Have Reached this Court

Exceptionally important and recurring questions of constitutional law have reached this Court. This petition presents an opportunity to decide enforceability of federal statutes and guide courts in resolving difficult questions concerning the proper "exercise of governmental power." *Noriega v. Pastrana*, 559 U.S. 917, 130 S. Ct. 1002, 175 L. Ed. 2d 1098 (2010).

a. This Case is a Perfect Vehicle to Revise or Overrule the *Lemon* test.

The District Court censored Petitioner for being an equity-minded leader and stated that Petitioner's arguments were meritless (**fn.1 in Dkt.253 Petitioner's ER-13**), failed to recognize Petitioner's care about congressional finances, and spoke up on the discovered

misrepresentations in corporate records, potential fraud of the contractor, and other concerns in the form of managerial opinion (**Insurer's ER-463-465 & ER-902-903,** RJN in **Dkt.15-2** filed 10/18/2019 **Pgs.24-45;** Petitioner's Affidavit in **Dkt.39**).

Petitioner, in the course of the lower court's proceedings, relied on *Lemon v. Kurtzman* - 403 U.S. 602, 91 S. Ct. 2105 (1971), *Lemon*, (**Dkt 151,** Objections to Magistrate Pym, **Page ID #:3338**), but both lower courts, the District Court and 9th Circuit, declined Petitioner's arguments: that "[t]he District Court's judgment may not pass the test for the Establishment clause set in [*Lemon*] allowing the proceedings according to the following criteria: 1) a secular purpose for law; 2) the effect of a law must be one that neither advances nor prohibits religion; 3) the bar of government actions that cause excessive entanglement with religion" (**DktEntry 6**,Opening Brief). During the pending appeal, this Court issued *Kennedy v. Bremerton Sch. Dist.*, 213 L. Ed. 2d 755, 142 S. Ct. 2407 (2022) (*Kennedy*), explaining that the Free Exercise and Free Speech Clauses of the First Amendment work in tandem: where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities. In *Kennedy,* this Court noticed that the *Lemon test* was not helpful ("this Court has abandoned Lemon's "ahistorical, atextual" approach to discerning Establishment Clause violations"). During the preparation of this petition, this Court issued the dissent of Justice Thomas claiming expressed abandonment of the *Lemon test* as "no longer good law" in *Kennedy* (*City of Ocala, Fla. v. Rojas*, 143 S. Ct. 764 (2023), Thomas, J., dissenting in denial of petition for review). Thus, this treatment of the *Lemon test* by the current generation of this Court judges raises the necessity to revise the *Lemon test* or upgrade it to the *Vinkov test*, wherein the evaluation of the judicial branch entailments will be articulated or overrule the Lemon test in its entirety because *stare decisis* factors support this action (Barrett, 2017). So, there is no reason to keep

the precedents, which this Court and the lower courts do not follow and workability of its application raises problems for lower courts on a case by case basis. In lower court's proceedings, judicial officers failed to abide by the *Lemon test* tackling the scope of religious duties of the board director, which, according to Petitioner's arguments, brought a severe entanglement with religious matters, and restraining Petitioner, the religious speaker, to perform his duties and discretion via Web (See **Petitioner's Opening Brief and Reply Brief in 9th Circuit**). Petitioner claims the District Court censored and punished Petitioner for his religious speech and for exercising his statutory duty and discretion as a board director of a California non-profit corporation (California Corporations Code §§9240; 9241; 9247). Accordingly, this case is a perfect vehicle to overrule or revise the premises of the *Lemon test*, especially governing the conduct of religious speakers on the Internet.

b. Doctrine of Justiciability Supports the Finding of the Lack of Standing of Insurer to Press its Claims.

Constitutional restraints of federal officials to interfere with a matter of religion make Insurer claims not justiciable under Article III jurisprudence (*Medimmune, Inc. v. Genentech*, 549 U.S. 118, 127, 127 S. Ct. 764, 166 L. Ed. 2d 604 (2007) ("case or actual controversy" in Declaratory Judgment Act refers to type of "cases" and "controversies" that are justiciable under Article III). However, all judges in the lower courts ignore it (**Apps.A-C.**). The comprehensive briefing on the lack of standing of Insurer to pursue its claims is presented in **Dkt.168**. But the District Court rejected Petitioner's arguments. 9th Circuit abstained from opining on the challenged standing requirement presented in **Opening and Reply Briefs**. The District Court and 9th Circuit summarily declined to follow prescriptions of *Ashcroft v. Iqbal*, 556 U.S. 662, 678–679, 129 S. Ct. 1937,173 L. Ed. 2d 868 (2009) (allegations that are no more than legal conclusions are not considered in "plausibility" analysis);

and *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face"). Petitioner contests that Insurer's allegations of standing may not survive *Twombly* and *Iqbal's* heightened pleading standards.

The sought declaration (**App.A-C.**) is not proper a vehicle for adjudicating the scope of duties and discretions of a volunteer director of the Religious Corporation. The lower officers abrogated the requirement of this Court issuing the declaration on the religious debates (whether the use of social media by the Church members is allowed to criticize the commercial contractor under the religious prescriptions) and the advisory opinion of the non-application of the volunteer and other attached immunities from the lawsuit against equitable claims of Insurer to disclaim coverage, including lack of the First Amendment power to throw out the Insurer's deficient complaint from the federal court (**Apps.A-C.**). *Flast v. Cohen,* 392 U.S. 83, 96 n.14, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968) (rule against advisory opinions was established as early as 1793, and rule has been adhered to without deviation).

In other words, Insurer has an insufficient role in the enforcement of exclusionary contract clauses because the primary sources of execution of Petitioner's duties and discretion to govern the Religious Corporation are rooted in the Bible, corporate Constitution, corporate bylaws, California Corporation Code, and other statutes. Therefore, Insurer has the lack of standing to pursue claims requiring adjudication of the scope and manner of execution of Petitioner's duties and discretions at first instance. See more in *15 Moore's Federal Practice* - Civil §101.01- 101.62 on the doctrine of justiciability and standing requirements, including the Circuit's split on prudential standing (fn.17-22 of §101.30).

c. The District Court and 9th Circuit Rulings Support the Legal Conclusion of Overcoming Their Constitutional Power

Our Lady of Guadalupe School v. Morrissey Berru, 140 S. Ct.2049 (2020) precludes adjudicating matters that impermissibly interfere with the religious exercise and free speech clauses of the US Constitution. Petitioner continues to argue that the lower courts acted outside of their constitutional and statutory power in many episodes. The lower courts reached a decision that the use of social media by Petitioner must be forbidden in the line to exercise his duties and discretions in the course of pursuing coverage, despite the contract does not restrain the use of social media tools, and the majority of the board did not pass any restrictions on such conduct among members (**Dkt.1&76, Apps.A-C**). Moreover, the contract promises coverage for claims arising from the media activity of management and belief-based decisions, but the lower officers overturned that promise. Thus, the lower court judges infringed the First Amendment rights of Petitioner and intentionally ignored Article III jurisprudence allowing Insurer's complaint to proceed attacking an abstract scope of duties and discretions of board members of the Religious Corporation embedded in the Bible. (The District Court and 9th Circuit treated Petitioner's affidavit explaining how he reached his governing decisions as conclusory (**Apps. A-C; Dkt.39**).

d. This Case is Substantially Developed to Settle the Legal Effects of Ministerial Exceptions to Equitable Powers of the Federal Courts

Petitioner's position is not changeable, that Insurer's claims are not subject to judicial oversight, and Insurer was not able to state defense to decline proper investigation of the Petitioner's counterclaims and delay in providing of payment under the contract (**Dkts.1,21-22,38-39**). Lower courts concluded that the First Amendment does not restrain the federal court from adjudicating the scope of religious duties and discretions of the board director and researching the religiously

motivated conduct of Petitioner (**Apps.A-C**). In all proceedings below, Petitioner contends that the religious abstention doctrine deprives the District Court of reviewing the merits of Insurer's claims, and Insurer's ability to state proper claims and pursue discovery in the federal court after declining coverage without reservation of rights. Thus, Petitioner is persistently prejudiced by the final and intermediate rulings. The District Court produced an advisory opinion on the non-application of the ministerial exception protections against equitable claims pursued by Insurer (**Dkt.253, Apps.A-C.**).

Judge Blumenfeld, the last ruler in the trial court, attempted to get around the ministerial exception of the First Amendment doctrine through the reasoning that "[n]othing in the First Amendment prevents this Court from resolving a dispute turning on the secular terms" (**Dkt 199, Denial of Dismissal of Insurer's Complaint, 2/13/2021 at Pg. 2**). However, the judicial maneuver to set aside Petitioner's religious motivation and compliance with the Bible, Church's Constitution and Bylaws, to read Insurer's claims as a challenge to just a regular director of the corporation is doubtful too, because even removing the dispute from religious frameworks, Judge Blumenfeld faces the business judgment rule abstention requirements, which his ruling intentionally summary disposed of as irrelevant or as "lack any meaningful discussion or are difficult to understand" (**Dkt. 199, Pg. 2**). The District Court summarily swiped the precisely developed, detailly articulated and preserved arguments labeling them as arduous for understanding. This conclusion contradicts the records and advanced legal degree of judicial officers involved in this case (**Dkts.168&184**). Therefore, this case is the involved in this case for evaluation of religious abstention doctrine effects on decisions produced by a board director of a religious corporation to comment on the services and goods of the Church's contractor (California Corporations Code §§9240; 9241; 9247). Judge Blumenfeld claims Petitioner's "theory is meritless" as "based on the state and federal state and federal

constitutional guarantees of the free exercise of religion." The recent decision of this Court supports otherwise conclusion (*Kennedy v. Bremerton Sch. Dist.*, 213 L. Ed. 2d 755, 142 S. Ct. 2407 (2022), Free Exercise and Free Speech Clauses of the First Amendment work in tandem, at p.11) and finding that the District Court and 9th Circuit acted against the U.S. Constitution and other federal and state laws denying secured protection for Petitioner rooted in the First Amendment. Thus, the legal effects of ministerial exception and religious doctrines on the reviewability of management decisions should be settled under this case (the detailed split of authorities on this sub-question is presented in pending No. 22-741 (USCA-10), No. 22-824 (USCA-2) and No. 22-792 (California).

II. A Supervisory Power of This Court will be Properly Employed to Review this Case Because Equity Does Not Follow Law

This Court has "supervisory authority" over all federal courts. (*McNabb v. United States*, 318 U.S. 332, 341 (1943); Barrett, 2006, supervisory power of this Court extends to reversal of inferior courts' decision for mistakes or misapplications of established common law rules of procedure and evidence). Petitioner expressed his due diligence and preserved each and every error in the District Court's departure from the federal rules of evidence and civil procedures.

a. Summary Judgment Proceeding Departed from the Requirements of Federal Rules

Ruling on the motion for summary judgment (MSJ, FRCP 56) severely departed from the prescribed standard of the federal rules and must be revised by this Court under its supervisory power. Petitioner still argues that Insurer failed to meet its initial burden (**Reply Brief, Pgs. 10-12**). And the lower court's decisions are contrary to the court's records. Petitioner pointed out the genuine issues of facts within his opposition and objections (**Dkt.228**) (*Johnson v. Jones*, 515 U. S.304 (1995) - determination of factual issues genuinely in

dispute precludes summary adjudication), but the District Court acted irrationally and sided with Insurer.

The District Court's ruling on the merits under MSJ in favor of Insurer was not statutorily authorized and passed in a procedurally improper manner, without articulation of the limited scope of the exceptions under 28 U.S.C. §2283. Petitioner argues that Insurer has shown neither by clear and convincing nor predominance of evidence that Petitioner committed a tort of defamation or any other acts precluding Petitioner's entitlement to coverage. However, the District Court accepted as true Insurer's conclusionary allegations and objected declarations, and disregarded numerous authenticated Petitioner's exhibits, declarations, and affidavit which were never objected by Insurer and detailed Petitioner's defenses in support of opposition (**Dkt.253, Case Dispositive Order of Judge Blumenfeld**). A court "may limit its review to the documents submitted for the purposes of summary judgment and those parts of the record specifically referenced therein." *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1030 (9th Cir. 2001). For example, Insurer, in its attempt to disclaim coverage attempted to invoke arguments that the Petitioner acted not in his capacity as a board director (**Dkt.207**), but Petitioner clearly and in detail stated that he acted within the scope of his responsibility, including all relevant references to evidence on the records (**Dkt.39, Affidavit, Dkt.228 Opposition to MSJ**). 9th Circuit claimed that Petitioner's affidavit was conclusionary, but it did not opine on the objected declarations and defective evidences in support of Insurer's MSJ (**App.B**). The district court admitted non-admissible evidence to support its ruling (**Dkt 228-2**). But neither the District Court nor 9th Circuit how third parties' opinions may produce sufficient evidentiary allegations to overcome Petitioner's individual performance of his duties pursuant to California Corporations Code §§9240; 9241; 9247 (**Apps.A-C.**).

"California courts have repeatedly found that

remote facts buried within causes of action that may potentially give rise to coverage are sufficient to invoke the defense duty." *Pension Trust Fund for Operating Eng'rs v. Fed. Ins. Co.*, 307 F.3d 944, 951 (9th Cir.2002). At the stage of a motion for summary judgment or summary adjudication on the insurer's duty to defend, the insurer must be able to negate potential coverage as a matter of law. (*Maryland Casualty Co. v. National American Ins.* Co., 48 Cal.App.4th 1822, 1825 (Cal. Ct. App. 1996*); Anthem Electronics v. Pacific Employers Ins.* Co., 302 F.3d 1049, 1051 (9th Cir. 2002)). If triable issues of facts exist concerning whether claims are covered, the duty to defend is thereby established (Horace Mann Ins. Co. v. Barbara B., 4 Cal.4th 1076, 1078 (Cal. 1993) - "in the summary judgment proceedings demonstrated the existence of unresolved factual issues as to the insurer's potential liability").

Judicial wrongs were not limited to abuse of jurisdiction or procedural defects. Misconstrued the language of the insurance contract, disregarded the ambiguities in its language, and produced the implications that Petitioner acted outside of his of his duties and discretions warranted under religious scripts, bylaws, Church's constitution, and California law governing religious corporations and insurance disputes. Insurer's denial is based on conceivable arguments "church interests" rhetoric, which are not articulated in the insurance contract. Ambiguity of terms and vagueness of terms "church interest" and "scope of duties" should be resolved in favor of the insured in order to protect his reasonable expectation of coverage (*Miller v. American Home Assurance Co.,* 47 Cal. App. 4th 844, 849, 54 Cal. Rptr. 2d 765 (1st Dist. 1996); the terms "you, your, and yours" are ambiguous according to *St. Paul Fire & Marine Ins. Co. v. Schilli Transp. Services Inc.*, 672 F.3d 451, 458 (C.A.7 (Ind.),2012)).

Because the court must interpret and enforce insurance policies as written, when the policy provides defense coverage even when it may not provide indemnification, the court enforces the policy as written.

Bhd. Mut. Ins. Co. v. Evangelical Free Church of Am., 572 F. Supp. 3d 694 (E.D. Mo. 2021), appeal dismissed, No. 22-1446, 2022 WL 3754861 (8th Cir. May 13, 2022). The District Court disregarded numerous legal theories, evidence and contractual provisions favorable to Petitioner. Judge Blumenfeld concluded "[Petitioner]'s arguments in opposition invoke myriad legal doctrines, many that bear no clear relation to the case at hand. None persuades this Court that summary judgment is improper, and none warrants a detailed response. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir.1984) (wholly meritless arguments do not warrant extensive treatment)." (**Dkt.253 at 6**). Judge Blumenfeld reconstructed the language of the contract in favor of Insurer and abrogated the numerous evidences in support of the business judgment rule (10th and 12th defenses of Petitioner, plus Petitioner's Affidavit in **Dkts.29&39**) which serves as safe harbor for directors and deprives reviewability by the court. (Stephen, 2019). Thus, outcomes of the lower court's rulings support involvement of the supervisory power of this Court to restrain lower court officers from apparent bias toward Petitioner (**Apps.A-C.**).

b. Numerous Requests for Dismissal Wrongly Denied.

Under equitable claims, petitioner argues that exclusionary clauses can only be resolved in the federal court after the state action is fully dismissed. Thus, only two counterclaims of Petitioner fall into the District Court's adjudication because they're formed on the torts theory, not contractual (fair dealing and delay of payment). However, neither the motion to dismiss for failure to state the claims (*City of Los Angeles v. Lyons, 461 U.S. 95, 101 (1983)* – actual controversy), nor the motion based on the theory of constitutional and statutory immunities, nor Insurer's lack of standing and concrete injuries in fact (*TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021)) (*TransUnion*) motions

attacking Insurer's inability to state defense to torts have not survived the District Court's denial and 9th Circuit correction (**Opening and Reply Briefs, Apps.A-C.**). Thus, severe departure of the lower courts from the precedents of this Court warrants the intervention (**Dkts.9-11;56;168;176;184;196;228**).

c. Judges Failed to Follow the Instructions of Abstention Doctrines

Petitioner's reliance on *Brillhart factors* (Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 494, (1942)) were silently declined by 9th Circuit (**Aps. A-B., Opening Brief**). Lower judges relieved themselves from the obligations to follow the Supreme Court precedents, federal statutes and U.S. Constitution provisions, laws of California which echoes to this doctrine.

d. Joint FRCP 12(h)(2) and 55 Motion Improperly Reconstructed as Sanction Motion.

The District Court (**Dkts 176, 196**) *sua sponte* reconstructed Petitioner's joint FRCP 12(h)(2) and FRCP 55 motion as a sanctions motion (**Dkt 244**). This Court said that attacks under FRCP 12(h)(2) [failure to state defense] must be made at any time and not later than the trial on the merits, including the trial itself (*Arbaugh v. Y&H Corp.*, 126 S.Ct. 1235, 1240, 546 U.S. 500, 507 (U.S.,2006). Moreover, the motion was crafted with additional procedures imposed by the local rules (District Court Local Rule 55). The District Court resisted in the course of the entire proceedings to screen the responsive pleadings of Insurer on its ability to state the defenses to Petitioner's counterclaims (also see **Dkt 75**, left without intervention of this Court by *Vinkov v. United States Dist. Court*, 141 S. Ct. 1040 (2021)). The first attempt in **Dkt 56** to strike Insurer's answer as non-responsive was denied as moot (**Dkt.68, 05/22/20**) due Insurer's amendments as matter of course, which Petitioner contested **in Opening Brief at Pgs.58-60**. 9th Circuit silently denied to state opinion to argued question #6

(**Apps.A-B**). "Silent judgment" constitutes absolute rejection of the demand. *In re Walker*, 180 B.R. 834, 835 (Bankr. W.D. La. 1995). The intervention of this Court should be employed to restore the orderly designated procedures to evaluate the pleadings of the parties.

e. Mishandling Discovery Matters Formed Structural Errors Impacted the Final Judgment(s)

The first sanction is the denial of discovery protection. Judge Blumenfeld affirmed the denial of protection from discovery as a sanction (**Dkt.102**). It was the first episode of mishandling the discovery proceedings within the District Court. Petitioner lost his protection from discovery for failure to submit the stipulation in cross-motion (**Dkt No.105**, 10/05/2020, "motion for a protective order was not filed in the form of a joint stipulation as required for all discovery motions under Local Rule 37-2"). Petitioner, in his application for a protective order, stated:

> "the moving party had a discussion with the legal representative of BMIC via e-mail and phone regarding the problem of their discovery requests". (**Dkt. 95-2, Filed 09/08/20,** Vinkov's Notice of Cross-Motion and Cross-motion for Protective Order and a Temporary Stay of Discoveries, at 2:19-20).

Moreover, Petitioner explained in the accompanying papers that:

> "Working on joint stipulation, I have discovered additional difficulties to understand BMIC's discovery requests" (**Dkt No. 95-2,** Notice of Cross-Motion and Cross-motion for Protective Order and a Temporary Stay of Discoveries ¶12).

But Magistrate Pym, without the issuance of the Order to Show Cause, concluded:

> "The declaration accompanying the motion for a protective order does not

address any of these deficiencies." (**Dkt. 105**, also available in **Vinkov's ER-54** Magistrate Pym's Minute Order dated October 5, 2020)

Magistrate Pym's ruling occurred during the pending appeal *No. 20-55687* (reconsideration is denied on 11/03/2020). This disturbed Petitioner's rights to exercise his rights to petition before the government on denied injunction and immunities in July 2020 (Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1120 (3d Cir. 1986) - magistrate's resolution of protective order implicated First Amendment concerns are subject of plenary review; 28 U.S.C. §636(b)(1)(A)). Petitioner timely objected to each and every Magistrate Pym's ruling (**Dkts.104**), but Judge Blumenfeld sided with Magistrate Pym (**Dkt.149**). The outcomes of the lower court are shocking because the District Court produced decisions that allow the federal rules of civil procedures to preempt the state substantive law (*Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287. - insured is entitled to protection from discovery because the Insurer's discovery questions develop numerous factual issues directly related to the pending underlying action).

All major arguments on lawfulness of produced rulings are preserved in lower courts, but reviewing judges declined to state a proper analysis (**App. A-C**, **Dkts.149,188**), although the scope of authority and power of a magistrate judge are questions of law reviewed *de novo* (*U.S. v. Sanchez-Sanchez*, 333 F.3d 1065, 1067 (9th Cir. 2003)).

The second episode captured monetary sanctions for covering the cost of the first deposition. This conduct is illogical in the light of **Joint FRCP 26(F)** Report (**Dkt 37** at 9:1-2: "Each party is to bear its costs incurred under this discovery and disclosure process."). If the first sanctions were imposed due to the "lack" of stipulation on cross-motion, then second sanction overcomes the previously reached stipulation. Magistrate Pym produced rulings not supported by the existing laws and the records in front of her computer screen. 9th Circuit abstained from

adjudicating arguments on the lawfulness of discovery **(Apps.A-B.)**

The third sanctions are case-dispositive based on the previous defective rulings of Magistrate Pym and Judge Blumenfeld. 9th Circuit affirmed **(App.A-B)**, although Petitioner argued the challenged decisions **(Opening and Reply Briefs)**, when the drastic discovery sanctions imposed against a party protected from.

III. Petitioner is Still Suffering Irreparable Harms and Ongoing Constitutional and Statutory Injuries

Petitioner is entitled to judgment in his favor from this Court because under the state laws Insurer caused collateral harm to Petitioner, forcing him to litigate the matter in parallel proceedings in the District Court. Depriving funding in ongoing state proceedings Insurer egregiously, knowingly and willfully attempted and succeeded to injure and harm Petitioner's interests (for example, digging in discovery in the federal on the overlapping matter in the directly related state proceedings) and caused unnecessary workload on the federal judiciary. Thus, Insurer's breach of duty to deal fairly and in good faith is proved as a matter of proceedings in the federal jurisdiction and obtaining the judgment through fraud on the U.S. judicial system (18 U.S.C. §371; *Hass v. Henkel*, 216 U.S. 462, at 479-480 (1910); *Hammerschmidt v. United States*, 265 U.S. 182, at 188 (1924)). Insurer and its attorneys forced Petitioner to litigate coverage which was resolved in Petitioner's favor by the state agency (U.S. Const. amend. XI does not allow to pierce the California Department of Insurance's decision in the federal court). Insurer and their lawyers were obligated not to take any actions to fraud the court and vulnerability of the judicial branch of the federal government during the disruption of the court's work by the pandemic (Cal. Bus. & Prof. Code §6068 (a),(b);(d), FRAP 46(b)(1)(B), District Court Local Rule 83-2.1.22, District Court Local Form G-60, Application for Admission). This Court has an opportunity to protect the federal judiciary from malicious acts of insurance

carriers and their attorneys.

a. Judicial Branch of Federal Government Invades Constitutional Rights of Petitioner

When Judge Blumenfeld allowed Magistrate Pym to intervene in the parallel state proceedings, he abrogated provisions of 28 U.S.C. §636(b)(3) omitting requirements of 28 U.S.C. §2283 and empowering Magistrate Pym to reach a case-dispositive ruling on non-application of the First Amendment to discovery proceedings (**Dkt.149**). The District Court employed multiple sanctions weapons against Petitioner without a proper finding of bad faith, self-checkup on the lawfulness of rendered decisions, and insuring of protection of due process of Petitioner's rights substantially and procedurally (**Opening and Reply Brief, *En Banc* Petition**). Therefore, the lawfulness of intermediate rulings and the final judgments (**Apps.A-C.**) is still reasonably questionable. Due to the lack of procedural and legal options to seek damages against judicial officers, only this petition can be effectively employed to redress injuries caused by lower court's judicial officers (for example, under the Privileges and Immunity Clause of U.S. Const. art. IV, §2). The persistent deprivation of rights of litigants constitutes special and important reasons for the grant of certiorari (*Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, (1957)).

b. Judicial Officers of Lower Courts are Restrained to Deprive the Rights under Color of Law

Judicial officers created an unreasonable burden on Petitioner's religious liberties to manage his Religious Corporation, exercise his rights under the First Amendment. **Apps.A-C.** supports finding of probable cause to believe in violations of 18 U.S.C. §242 because the final judgment deprived Petitioner of liberty, living costs, without due process of law, infringed the First Amendment rights (*Bridges v. Wixon*, 326 U.S. 135 (1945) - 1A protection is available for aliens), protection from cruel punishment (U.S. Const. amend. VIII) and other

laws (**Apps.A-C.**). Lower courts declined to follow California state laws (*for example,* Cal. Code Civ. Proc. §425.16; 10 Cal. Code Regs. §2695.7(d); California Corporations Code §§9240; 9241; 9247), ignore the restrictions of the U.S. Const. amend. XI prevented federal courts from exercising jurisdiction over the decision of the state governmental entities, abrogating numerous provisions of FRCPs, FRAPs and FERs. The loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" (*Elrod v. Burns* (1976) 427 U.S. 347).

Both the RLUIPA and RFRA aim to ensure greater protection for religious exercise than is available under the First Amendment. *Ramirez v. Collier*, 212 L. Ed. 2d 262, 142 S. Ct. 1264 (2022). Judicial relief is proper pursuant to 42 U.S.C. §2000bb–1(c) and 42 U.S.C. §2000cc(a) against challenged orders (**App.A-C**), *Tanzin v. Tanvir,* 141 S. Ct. 486, (2020). Alleged legal injuries caused by unconstitutional conduct can be remedied by a court (*Axon Enter., Inc. v. Fed. Trade Comm'n*, No. 21-1239, 2023 WL 2938328, at *17 (U.S. Apr. 14, 2023)).

c. Impossibility to Recover the Costs Constitutes Irreparable Harms

This Court found that difficulties in recovering money constitute irreparable harms. (See *Mori v. International Brotherhood of Boilermakers, etc.* (1981) 454 U.S. 1301- finding irreparable harm where money "would be very difficult to recover"; or *Philip Morris USA Inc. v. Scott* (2010) 561 U.S. 1301 at 1304 - finding irreparable harm where money "cannot be recouped"). Without this Court, Petitioner will be unable to pursue his costs.

IV. Lower Courts Decisions Are Egregiously Wrong, and This Court Should Step in to Effectuate Voidance or Summary Reversal of the Final Judgment

A voidable judgment, entered by a court with the lack of subject-matter jurisdiction or procured by fraud, can

be attacked at any time, in any court, either directly or collaterally (*Milliken v. Meyer* (1940) 311 U.S. 457 [61 S.Ct. 339, 85 L.Ed. 278]). "A void judgment does not create any binding obligation." *Ex parte Rowland*, 104 U.S. 604, 617-618 (1981). The jurisdiction of the federal courts is limited not only by the Constitution but by Acts of Congress. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 98 S. Ct. 2396, 57 L. Ed. 2d 274 (1978). "Abuse of discretion" is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782 (9th Cir. 2005). There are several statutory sources of limiting the power of the federal court neglected by current judicial seat holders supporting the interventions of this Court.

d. Claims under 28 U.S.C. §2201(a) Must Comply with Article III Standing Requirements.

28 U.S.C. §2201(a) signals that action under this statute must be within court's jurisdiction and with respect to exceptions to 26 U.S.C. §7428. Lower courts failed to abide by the statute (**Apps. A-C.**).

Petitioner urged the lower courts to dismiss the case because there was no justiciable controversy (**Dkts.9-11**). However, the District Court and 9th Circuit reached the opposite decision, disregarding numerous pleading requirements regulating the finding of standing. Thus, this Court should intervene to restrain the lower courts' departure from their duties – to examine jurisdiction and comply with the guidance of this Court. (*TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, (2021) - a declaratory relief action, which among other criteria, relies on a concrete injury in fact to tangible or intangible harm; *Aslzcrqfi v. Iqbal*, 129 S. Ct. 193 7 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).

e. Insurer's Claims are Less than $75,000

The challenged decisions lack any reasoning on diversity amount (**App.B**). 9th Circuit's conclusion stated

that the diversity amount is met without indicating the source of such computation (**App.B**). If 9th Circuit steamed diversity amount from the face of the insurance contract, then 9th Circuit violated its own and this Court's precedents because the face value of the insurance contract alone is not sufficient to unlock the doors of the federal jurisdiction (*State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 87 S. Ct. 1199, 18 L. Ed. 2d 270 (1967) - mere existence of fund could not, by use of interpleader, be employed to accomplish purposes that exceeded needs of orderly contest with respect to such fund; *Naffe v. Frey*, 789 F.3d 1030, 1039 (9th Cir. 2015) - the 'legal certainty' test). If 9th Circuit found diversity amount through the face of limits, then it acted against the intentions of US Congress, establishing the limitations on federal jurisdiction. 9th Circuit's measurement of the diversity amount from the policy limits improperly invades the workload of the federal judiciary for all insurance carriers securing coverage above $75,000. See more on procedures of measurement of diversity amount and splitting authorities in 14AA Fed. Prac. & Proc. Juris. §3701 (Wright & Miller).

Petitioner, in his response to allegations on the jurisdictional amount, argued:

> "Vinkov lacks sufficient knowledge regarding the allegations what an actual controversy is and for what the amount exceeding $75,000 is charged." (**Dkt No. 29, PID 1253, (Petitioner's Answer, ¶1 at 9:10-11)**)

Petitioner brought the attention of the District Court that the lack of specific allegation on diversity amount precludes summary judgment in favor of Insurer: (1) "[Insurer]'s Complaint failed to allege that it incurred over $75,000 to invoke the diversity jurisdiction for claim recoupment"; (2) "[Insurer]'s Complaint failed to allege that [Petitioner] received the judgment against [Petitioner] equal of over $75,000 in the Underlying Action to invoke the diversity jurisdiction for declaratory relief regarding indemnification" (**Insurer's ER-137**;

##36-37 in Defendant's Statement of Undisputed Facts (Opposing Party)). Petitioner also argued in the 9th Circuit that Insurer could not aggregate all alleged damages in the Underlying Action against one defendant to satisfy the diversity amount (**Reply Brief, Pgs.21-23**).

The federal courts consider only the amount of damages that have accrued up until the point that the case was filed (*Scherer v. Equitable Life Assur. Society of U.S.*, 190 F. Supp. 2d 629, 634 (S.D.N.Y. 2002); *Russ v. Unum Life Ins. Co.*, 442 F. Supp. 2d 193 (D.N.J. 2006). Therefore, the timeline for calculation of costs incurred on defense of the case must be counted from February 20, 2019 (filing the state action MCC1900188 triggering the duty-to-defend provision of the insurance contract, **Dkt.1**) up to September 23, 2019 (filing the federal action by Insurer to relieve from the obligation to defend the state action). It is clear that the endpoint of the calculation of diversity amount is the date Insurer filed the case in the District Court, **September 23, 2019** (*Atlantic Mut. Ins.Co. v. Balfour Maclaine Int'l*, 775 F.Supp. 101,1991 U.S. Dist. LEXIS 12907 (S.D.N.Y. September 13,1991) – filing of a declaratory judgment action by an insurance company operates as a denial of a claim). Petitioner's request for judicial notice of his documented damages has not exceeded the diversity amount because his reported costs of litigation were $6,920.86 (07/22/2019), but posted conditional undertaking stay of award of attorney fees was equal to $18,370.001 (09/17/2019 ordered, posted on 09/25/2019) (**Dkt.22**). Insurer's documented position is that Petitioner is entitled to $0 (zero dollars, nothing) coverage (**Dkt 1,** "Brotherhood Mutual Insurance Company is withdrawing coverage" dated April 18, 2019 in **Insurer's ER-244,** "Brotherhood has determined that no potential for coverage exists for you" dated May 20, 2019 in **Insurer's ER-246;** "we maintain that coverage does not exist for you" dated July 3, 2019 **in ER-252**). Thus, there is no corroborated evidence in support of diversity amount of equitable claims of Insurer – 0 vs. $6,920.86. ("[Petitioner is] still be underpaid under the insurance policy" (**Insurer's ER-139**; #44 Defendant's

Statement of Undisputed Facts (Opposing Party)).

f. 26 U.S.C. §7428 Limits the District Court Jurisdiction

26 U.S.C. §7428, the Anti-Injunction Act of the Internal Revenue Code is distinct from the better-known Anti-Injunction Act, codified at 28 U.S.C. §2283, which generally prohibits the federal courts from enjoining proceedings in state courts. *Harper v. Rettig*, 46 F.4th 1, 3 (1st Cir. 2022), fn. 1. 9th Circuit also agreed when 26 U.S.C. §7428 applies, it deprives federal courts of jurisdiction. (*Kjersti Flaa, et al v. Hollywood Foreign Press Assoc.*, et al (9th Circuit, No.21-55347, 12/08/2022). (*HFPA case*). Petitioner contends that Insurer's complaint cannot circumvent a jurisdictional bar to declaratory relief related to a federal tax controversy because it attacks the scope of Petitioner's statutory duties and discretion as a board director of a federal tax-exempt organization through the insurance contract (See opposition, objections, statement of genuine disputed and undisputed facts in **Insurer's ER97-144,** Bylaws and Constitution can be found **in ER.1242-1282**).

g. 28 U.S.C. §2283 Deprives the District Court of Jurisdiction

Insurer attempted to contest the state Insurance Commissioner's decision indirectly through the lawsuit against Petitioner (**Apps.A-C**). The jurisdiction of the federal courts is limited not only by the Constitution but by Acts of Congress. *Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 98 S. Ct. 2396, 57 L. Ed. 2d 274 (1978)*. 9th Circuit and the District Court failed to articulate exceptions under 28 U.S.C. §2283, allowing to consider the merits of the case against a pro se party on the parallel pending issues of the state court (See Pending Cert No. 22-792; **Dkt.15**). Thus, both lower courts acted against the Acts of US Congress and recklessly pierced federal jurisdiction (**Apps.A-C.**). Policy of 28 U.S.C. §2283 prohibits to decide and preempt

the matter pending in the state proceedings - *Sonner v. Premier Nutrition Corp.*, 49 F.4th 1300 (9th Cir. 2022); Surprisingly, 9th Circuit declined to follow its own jurisprudence examining the abuse of discretions of the federal courts (*Empire Blue Cross & Blue Shield v. Janet Greeson's a Place for Us, Inc.*, 985 F.2d 459 (9th Cir. 1993) – the section 28 U.S.C. §2283 cannot be avoided by action which seeks judgment addressed to parties in state court suit, rather than to state court itself.).

h. 28 U.S.C. §2072(b) Bars the Court from Depriving Petitioner of His Rights

The clear prospect for a reversal exists in support of a grant of this petition. Because the Rules Enabling Act (28 U.S.C. § 2071(a); 28 U.S.C. §2072(b)) does not allow any court to deny Petitioner's substantial rights. This Court should step in to restore public confidence in judiciary integrity.

i.Volunteer's Immunity Jurisdictionally Bars Insurer's Claims

Petitioner argues that 42 U.S.C. §14503(a)(1)-(4) (VPA) shields him from Insurer's claims on jurisdictional grounds. Insurer was unable to produce allegations and provide evidence that could overcome immunity from a lawsuit. The recent decision of this Court supports Vinkov's reasoning of the jurisdictional bar of Insurer's claims, because "[w]hen Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*)" (J. Gorsuch, *Bittner v. United States*, 143 S. Ct. 713 (2023)). 9th Circuit declines to treat VPA immunity as a jurisdictional bar, but other courts concluded that the statutory purpose of VPA is to shield eligible volunteers from lawsuits and their accompanying burdens (hiring an attorney, going to court, paying court fees, dedicating time to litigation), not merely from

responsibility for monetary damages. *Am. Broad. Companies, Inc. v. Goodfriend*, 558 F. Supp. 3d 161 (S.D.N.Y. 2021) (absorbing authorities and noticing the split, including 9th Circuit practice). That reasoning comes from the fact that the VPA does not define or restrict "liability" to "liability" for certain remedies, which allows seeking broad protection, including jurisdictional.

CONCLUSION

This Court should restore the formula Law + Equity = Justice in this case. In the light of the high probability of a grant in pending No. 22-741 (USCA-10) and No. 22-824 (USCA-2), No. 22-792 (California) petitions, this case may be held until the final disposition of the related cases. Petitioner asks for a review.

Respectfully submitted,

Sergei Vinkov, *Pro Se.*
40795 Nicole Court
Hemet, California, 92544
(951) 380 53 39
vinjkov@gmail.com.
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