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 REHEARING OF AN ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI

(No. 21-55857, USCA-9)

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July 20, 2023

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Pursuant to *Sup. Ct. R.* 44.2 within 25 days Petitioner petitions for rehearing in the light of recently issued decisions of this Court from April 21, 2023, through June 30, 2023, while the original Petition was pending and denied (*Vinkov v. Bhd. Mut. Ins. Co., No. 22-1032, 2023 WL 4163248, at *1 (U.S. June 26, 2023)*). Lower courts silently denied the First Amendment rights under the Federal Constitution for Petitioner and fundamentally erred, allowing the Respondent to use federal jurisdiction contrary to Acts of the U.S. Congress, federal and state Constitutions. (See details in the original Petition within this Court docketed on April 25, 2023). First, the federal courts can only proceed to the case's merits once arbitrability issues have been resolved (*Coinbase, Inc. v. Bielski, No. 22-105, 2023 WL 4138983 (U.S. June 23, 2023),* omitted). Secondly, the First Amendment's protections belong to all (*303 Creative LLC v. Elenis, No. 21-476, 2023 WL 4277208 (U.S. June 30, 2023)*, slip op. at 17), and lower courts did not articulate any power to withdraw them from Petitioner. And finally, the lack of any injury fairly traceable to the Petitioner precludes establishing Article III standing statutorily and constitutionally. The Respondent's complaint does not meet redressability standards. *Dep't of Educ. v. Brown*, No. 22-535, 2023 WL 4277209 (U.S. June 30, 2023), *Brown* (Supreme Court has an obligation to assure itself of litigants' standing under Article III before proceeding to the merits of a case.); *United States v. Texas*, No. 22-58, 2023 WL 4139000 (U.S. June 23, 2023), *Texas* (to establish Article III standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order).

REASONS FOR GRANTING THE REHEARING

1. **R-52(a) of the American Arbitration Association Cannot be Invoked without Voidance of the Lower Courts' Decisions**

Insurance contract language excludes this dispute from court proceedings as a matter of parties' agreement (See U.S. Const. art. III, § 2 limiting federal jurisdiction to "Cases" and "Controversies"). Respondent was the sole author of the arbitration clause within the insurance contract, which states: "[a]ny 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, No. 21-55857, USCA-9). The trial court declined numerous arguments of requested stay of proceeding by Petitioner, and reviewing court declined to opine on the arguments of wrongfully denied stay within Petitioner's Opening brief. 28 U.S.C. "§ 1291 does not insulate interlocutory orders from appellate scrutiny; it simply delays review until final judgment. (*Dupree v. Younger, 143 S. Ct. 1382 (2023)* at *736).* A number of challenges to interlocutory orders were left unconsidered by the 9th Circuit, including arbitration issues, constitutional and statutory rights denials, and Article III requirements (See App.A-C. in Original Petition). *Coinbase* directs the stay of proceedings until the arbitrability issues are resolved. In this case, the arbitrability issues has never been resolved and the propriety of denied stay of proceedings requests have never been adjudicated. Lower courts failed to articulate exceptions under 28 U.S.C. § 2283 to intervene in the parallel pending issues of the state court against the same *pro se* party, Petitioner (See Denied Cert No. 22-792).

Rule 52(a) of the American Arbitration Association (AAA) prescribes (Commercial Rules): "[n]o judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate." However, the issued voidable declaration by the District Court and affirmed by the lower reviewing court create insurmountable obstacles to restore Petitioner's rights and opportunity for parties

to submit the case to AAA (*Atl. Coast Line R. Co. v. State of Fla.*, 295 U.S. 301, 55 S. Ct. 713, 79 L. Ed. 1451 (1935), Rule that what has been lost to litigant under compulsion of judgment shall be thereafter restored by adversary in event of reversal is one of general application, though not without exceptions). Petitioner seeks the judgment of this Court to effectuate voidance (vacatur) of voidable decisions of lower courts. Petitioner is "not at liberty to take the law into [his] own hands and refuse submission to the order without the sanction of a court. ... Obedience was owing while the order was in force." *Atl. Coast Line R. Co. v. State of Fla.*, 295 U.S. 301, 311, 55 S. Ct. 713, 717, 79 L. Ed. 1451 (1935) (citation is omitted). Though an erroneous judgment by a court is not void, but so long as it stands is binding on every one, an act by a court beyond the power delegated to it is a nullity, even prior to reversal. *Vallely v. N. Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116, 65 L. Ed. 297 (1920) superseded by *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275, 130 S. Ct. 1367, 1379, 176 L. Ed. 2D 158 (2010). This Court should resolve this void and voidance trap with instructions to dismiss the case by the District Court for want of jurisdiction and Respondent's failure to state the claims.

Arbitration is a substitute forum for civil litigation chosen by the Respondent. Respondent has not presented a meaningful explanation to escape arbitration after Petitioner's successful challenge of Respondent's compliance with California insurance laws before the State Commissioner. This Court should support its own ruling, preventing lower courts from considering the merits of the case in conflict to the relevant contract provisions. Even relying on *New York v. New Jersey*, 215 L. Ed. 2d 208, 143 S. Ct. 918 (2023) at 225, explaining that parties to a contract that calls for ongoing and indefinite performance generally need not continue performance after the contractual relationship has soured, or when the circumstances that originally motivated the agreement's formation have changed, does not support the issuance of the

declaration by the District Court. Respondent cannot explain why it applied for limited federal court jurisdiction, when it had a bargaining power and designed provisions that contractual disputes should be resolved via arbitration. This Respondent's conduct amounts to fraud and may be attacked at any time (*Milliken v. Meyer* (1940) 311 U.S. 457 [61 S.Ct. 339, 85 L.Ed. 278]). The principle of public policy being *ex dolo malo non oritur actio*, no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. *Ewell v. Daggs*, 108 U.S. 143, 2 S. Ct. 408, 27 L. Ed. 682 (1883). The plain language of the arbitration provision delegated coverage issues resolution to the arbitrator, not the federal courts. The federal court is not the proper entity to declare the rights of parties. Neither the lower court, nor Respondent provided reasonable explanations to override or abrogate the arbitration clause and justify the litigation race within the federal courts. Respondent's conduct precludes the relief granted by the District Court.

2. A Director of a Religious Corporation Cannot Lose His First Amendment's Right Joining Corporation Management

There are no moon errors. The outcomes of the lower courts are irrational and contrary to the law because they emphasize that Petitioner's joining the corporation management of a non-profit corporation limits his individual's rights due to rendered contractual relations with insurance carriers. It creates an unreasonable burden and hardship on Petitioner's religious rights in the light of 42 U.S.C. § 2000bb-l(c) and 42 U.S.C. § 2000cc(a). Otherwise, the currently issued decision supports Petitioner's claims and arguments of erroneous rulings by the lower courts. "Nor, this Court has held, do speakers shed their First Amendment protections by employing the corporate form to disseminate their speech." (*303 Creative*, slip op. at 17). Moreover, in *Bridges v. Wixon*, 326 U.S. 135

(1945), *Bridges*, this Court grants the First Amendment protection for aliens, to whom Petitioner did belong at the moments of exercising his duties and discretions and lawsuit filed by Respondent against Petitioner. If the *Lemon test* was abrogated during the pending appeal (*Groff v. DeJoy*, No. 22-174, 2023 WL 4239256, (U.S. June 29, 2023), slip at 7), then other authorities remain in place, and the lower courts did not explain their departure from other precedential opinions of this Court.

Thus, this Court should recognize that it is an impermissible abridgement of the First Amendment's right to speak freely, when Respondent wants to compel Petitioner how, what, when, where, to whom, and why to disseminate his speech in exchange for reasonable expectations of duty-to-defend coverage promulgated in insurance contract, including the direct promises of "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]. Petitioner's constitutionally and statutory rights should be restored by the grant of rehearing.

3. Standards of Redressability and Fairly Traceable Injury in Fact Favor to Instruct the Lower Court to Dismiss the Case for Lack of Federal Jurisdiction

The contract should be avoided by the judgment of a court of competent jurisdiction on the ground of a substantial failure of performance by the company. *City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 6, 19 S. Ct. 77, 80, 43 L. Ed. 341 (1898).* As seen above, Respondent failed to adhere to the arbitration clause it authored. This exposes substantial defects within its complaint because of the lack of sufficient allegations of traceable injury and the impossibility to redress the requested relief. The organizational standing of Respondent fails as a matter of law due to the lack of

properly alleged injuries fairly traceable to the challenged conduct of the Petitioner. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, No. 20-1199, 2023 WL 4239254 (U.S. June 29, 2023). The issuance of a declaration of rights by the District Court under the current circumstances also conflicts with this Court's prior rulings and the current decisions, for example, *Brown* and *Texas*. Respondent, requesting a declaration from the District Court, in fact, obtained an advisory opinion on the non-application of California laws, federal protections designated for volunteers. It is an improper redressability scheme within a declaratory relief action. The lower courts provided an advisory opinion on non-application of statutory and constitutional immunities for a volunteer director of a corporation, which also contradicts the jurisprudence of this Court. (*Flast v. Cohen*, 392 U.S. 83, 96 n.14, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968) (the rule against advisory opinions was established as early as 1793, and rule has been adhered to without deviation). As the religious abstention doctrine states that the courts lack meaningful standards for assessing the scope of religious duties and discretions. However, within this case, lower courts declined to follow the First Amendment requirements and issued the declaration adjudicating the performance of religious duties and discretion. Article III does not empower lower courts on such a pattern of conduct. There is no way for Respondent to establish injury in fact due to Petitioner's exercise of protected speech and his faith (*Bridges*; *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)). Thus, Respondent was not free from the obligation to meet the usual standards for redressability and immediacy under 28 U.S.C. § 2201(a) and 28 U.S.C. § 1332(a).

Besides the above mentioned, it is still a living question of law that the complaint and the nature of the lawsuit have reached the statutory amount-in-controversy requirement because Respondent has never

disclosed it generated costs of duty-to-defend coverage of more than $75,000.00 and Petitioner proved that his own costs of litigation expected to recover from Respondent have never reached the diversity amount before the Respondent's filing of declaratory relief action in the District Court (28 U.S.C. § 1332(a), Original Petition on Pages 25-28). Thus, this Petition should be granted to recognize that the lower courts rendered their decisions with the lack of statutory and constitutional authorities.

CONCLUSION

Petition should be granted. The order of the United States Court of Appeals for the Ninth Circuit should be vacated, and the case should be remanded to the United States Court of Appeals for the Ninth Circuit with instructions to dismiss *Bhd. Mut. Ins. Co. v. Vinkov*, 5:19-cv-01821-SB(SPx), 2019 U.S. Dist. LEXIS 231188 (C.D. Cal. 2019) for lack of federal jurisdiction and Respondent's failure to state the claim, or on an alternative basis, the original petition for writ of certiorari should be granted to settle open federal questions of national importance (split of authorities under the First Amendment, volunteer immunity, the discovery matters and methodology of calculation of the diversity amount).

Respectfully submitted,

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July 20, 2023

RULE 44.1 CERTIFICATE

I hereby certify that this Petition for rehearing is presented in good faith and not for delay.

Sergei Vinkov, *Pro Se.*
July 20, 2023