22-5932

No.

ORIGINAL

In The Supreme Court of The United States

Nicholas Casavelli,
Nicolina Castelli,
Petitioners,

v.

Respondents.
Donna J. Johanson,
Estate of Gary T. Johanson,

On Petition for a Writ of Certiorari to
the Arizona Supreme Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Nick Casavelli and Nicolina Castelli, (*Pro Per, Pro Se*)
10124 w. Ironwood Dr.
Sun City, Arizona 85351
480-765-7557
drjazzcat51@gmail.com

QUESTION[S] PRESENTED

Can states pass laws that challenge the power of Congress to regulate constitutional rights?

If the State of Arizona can legally apply the Arizona Revised Statute § 12-3201 to pro per Defendants constitutionally, when there has been no prior litigation between the parties, no history of vexatious litigation, no documented record of Substantive Findings of Frivolousness of either party and no finality in the current live litigation. If the state of Arizona applies the vexatious litigant law to a Defendant prior to finality and makes the determination public, does this violate the Sixth Amendment of the United States Constitution through the Due Process Clause of the Fourteenth Amendment.

If the State of Arizona can maintain a statutory law that is ambiguous and serves no compelling state interest when applied to pro per Defendants.

If the State of Arizona can hold hearing[s] in advance of the officially noticed date without proper notice to all parties of the scheduled hearing change, to determine if a litigant is to be determined vexatious in their absence.

If the State of Arizona applies the A.R.S. § 12-3201 to a pro per Defendant, then narrowly tapers the restrictions through an Appellate Court order on remand to nullify the application of A.R.S. § 12-3201 statute to render any restrictions inert and to be limited to the current live litigation only. Making any determination of vexatiousness only referenceable.

Does Making any determination referenceable violate a pro per Defendant's Right of Access to Justice Under the Rule of Law when the errant ruling will inhibit the right to file a Wrongful Institution of Civil Proceedings, See *Ackerman v. Kaufman*, 41 Ariz. 110, 112-114, 15 P.2d 966, 967 (1932).

Parties to the Proceeding

The petitioner are Nicholas Casavelli and Nicolina Castelli,

Respondents are Donna J. Johanson and Estate of Gary T. Johanson.

In The Supreme Court of The United States

No.

Nicholas Casavelli and Nicolina Castelli, Petitioner

v.

Donna J. Johanson et al.

On Petition for a Writ of Certiorari to the Arizona Court of Appeals

Petition For a Writ of Certiorari

The Petitioners, Nicholas Casavelli and Nicolina Castelli respectfully petitions for a writ of certiorari to review the judgment of the Arizona Court of Appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals is attached as Exhibit "1".

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2022. a petition for rehearing was denied on July 26, 2022. The jurisdiction of this Court is invoked under 28 U.S. Code § 1254 (1).

LIST OF RELATED CASES

ARIZONA COURT OF APPEALS

	Filed	Remanded
CV SA-21-0166	August 27th, 2021	March 29th, 2022
CA-CV 21-0207	March 17th, 2022	Still pending Writ of Cert.
CA-CV 20-0650	November 5th, 2020	November 15th, 2021
CA-CV 20-0436	August 24th, 2020	November 17th, 2020
CA-CV 19-0534	July 10th 2019	October 30th 2019

ARIZONA SUPREME COURT

	Filed	Remanded
CV-22-0070-PR	March 15th, 2022	pending Writ of Cert.
CV-21-0248-PR	October 6th, 2021	March 29th, 2022
CV-21-0035-PR	March 15th, 2021	November 15th, 2021

NINTH FEDERAL DISTRICT COURT OF ARIZONA

	Filed	Remanded
CV-20-00497-PHX-JAT	March 9th, 2020	Under appeal

NINTH CIRCUIT COURT OF APPEALS

	Filed	Remanded
	(21-15051 consolidated with 21-16268)	
CV 21-15051	January 9th, 2021	pending petition for rehearing
CV 21-16268	August 2nd, 2022	pending petition for rehearing

STATUTORY PROVISIONS INVOLVED

Pertinent Provisions of Arizona Revised Statute § 12-3201

et seq *Delong v. Hennesey*, 912 F.2d 1144, 1147 (9th Cir. 1990)

et seq *Madison v. Groseth*, 279 P.3d 633, 638 (Ariz. Ct. App. 2012).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

APPENDIX

STATEMENT

This case presents a recurring question of great Public importance.

If the State of Arizona can constitutionally apply the Arizona Revised Statute § 12-3201 to pro per Defendants legally, when there has been no prior litigation between the parties, no history of vexatious litigation and no finality in the current live litigation.

A District Court is empowered to enjoin litigants who have abusive histories of litigation or who file frivolous lawsuits from continuing to do so. See 28 U.S.C. § 1651(a). Section 1651 states that "[t]he Supreme Court and all courts established by Act of Congress may issue writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). "'A District Court not only may, but should, protect its ability to carry out its constitutional functions against the threat of onerous, multiplicitous, and baseless litigation.'" *Safir v. United States Lines, Inc.*, 729 F.2d 19, 24 (2nd Cir. 1986), quoting *Abdullah v. Gatton*, 773 F.2d 487, 488 (2nd Cir. 1985). Federal courts possess the inherent power "to regulate the activities of abusive litigants by imposing *carefully tailored restrictions* under the appropriate circumstances." *Delong v. Hennesey*, 912 F.2d 1144, 1147 (9th Cir. 1990). Enjoining litigants from ***filing new actions*** under 28 U.S.C. § 1651(a) is one such restriction that the District Court may take. *DeLong*, 912 F.2d at 1147. A Defendant who has

been enjoined under § 1651 from filing new actions is deemed a "vexatious litigant" for federal purposes.

This is the criteria set by the Federal Courts, basing the criteria on the *Delong v. Hennesey*, 912 F.2d 1144, 1147 (9th Cir. 1990) caselaw and the Four (4) principals derived from *Delong*. These principals consist of; **1)** Notice, **2)** Adequate Record for Review, **3)** Substantive Findings of Frivolousness, **4)** Breadth of the Order.

The key component in a vexatious litigant statute is: *Enjoining litigants from filing new actions.* This is accomplished under 28 U.S.C. § 1651(a).

ARIZONA-2014-HB2021

Under Arizona Revised Statute § 12-3201 the definition is vague and only gives the broadest of boundaries and nothing in specific for any type of guidelines. *See* A.R.S. § 12-3201 in its entirety in **Appendix "D"**. This is the eviscerated version that was passed into law on April 16th, 2014 by Governor Jan Brewer.

The Original bill introduced as Arizona-2014-HB2021(*see* **Appendix "E"**) reads entirely different, in ¶ A. reads; A. In any litigation pending in any court in this state, at any time until final judgment is entered, ***a defendant may move the court,*** on notice and hearing, for an order designating a person a vexatious litigant. The court on its own motion, on notice and hearing, may designate a person a vexatious litigant.

After all the amendments the bill read in ¶ A.; A. *In a noncriminal case, at the request of a party or on the court's own motion, the presiding judge of the superior court or a judge designated by the presiding judge of the superior court may designate a pro se litigant a vexatious litigant.*

These *amendments* (https://legiscan.com/AZ/bill/HB2021/2014) of Arizona-2014-HB2021 (**Appendix "F"**) completely undermine the purpose of a vexatious litigant statute, and completely voids the standards set forth by the Federal Courts in multiple circuits and do not comply with other states who has vexatious litigant laws. Other states vexatious litigant laws are similar if not exact as *introduced* as *House Bill Arizona-2014-HB2021* (see Appendix "E"), this is much more specific and tailored with guidelines that are not vague. When impinging one's Constitutional Rights clarity is a must.

STANDARD

In *De Long v Hennessey*, the Federal Courts made it clear how a litigant was to be determined of vexatious conduct by setting forth the *De Long* Principals.

The statute is a by produce of the Ninth Circuit's 1990 holding in *De Long v Hennessey*, in which the Court found four principles for courts to follow when placing the vexatious litigant label on a pro se litigant:

To satisfy due process, the litigant must be afforded **(1)** notice and an opportunity to oppose the order; The **(2)** court must create an adequate record for appellate review that includes a listing of all cases and motions leading the

court to enter the order; The **(3)** court must make substantive findings as to the frivolous or harassing nature of the litigant's actions; and The **(4)** order must be narrowly tailored to closely fit the specific vice encountered.

The Arizona criteria is; (**1**) repeated filing of ***court actions*** solely or primarily for the purpose of harassment; or (**2**) unreasonably expanding or delaying court proceedings; or (**3**) filing or defending court actions without substantial justification; or (**4**) engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant; or (**5**) a pattern of making unreasonable, repetitive and excessive requests for information; or (**6**) repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.

FEDERAL PREEMPTION

Usually, if there is a conflict between federal law and state law, this problem is solved by the ***supremacy clause*** (Article VI, Paragraph 2 of the U.S. Constitution) (they are the supreme laws of the land as stated by the constitution) and the federal law wins out.

While states can give people more rights than federal law, states ***cannot be more restrictive*** than Federal laws. State laws may not infringe on Federal law, meaning that if a right is afforded to Washington State residents on a federal level, the state legislature may not infringe on those rights. Here, the Federal Court[s] have afforded California residents right[s] on a Federal level

concerning vexatious litigant laws. Arizona's vexatious litigant laws are in complete contrast to rights given at the Federal Level and oppose the rights given by the United States Constitution.

When the state law and federal law are in alignment, the state may choose to grant more rights. But in cases where the state law contradicts the federal law, attempting to limit activity, the federal law wins out.

Enjoining litigants from filing new actions under 28 U.S.C. § 1651(a) is one such restriction that the District Court may take. DeLong, 912 F.2d at 1147. A Defendant who has been enjoined under § 1651 from filing new actions is deemed a "vexatious litigant" for federal purposes.

California and federal decisions that have considered the question have found the statute (Code Civ. Proc. § 391(b)) to be constitutional. (*Wolfgram v. Wells Fargo Bank*, 53 Cal.App.4th 43 (1997); *Wolfe v. George*, 486 F.3d 1120 (9th Cir. 2006).).

California and Federal decisions do not align with Arizona's decisions, Arizona's is adverse as stated *supra*, Arizona's vexatious litigant law was originally fashioned after California's vexatious litigant law when submitted to legislation, after amendments, the bill which is current law is not aligned with other jurisdictions and Federal Courts.

Arizona Vexatious Litigant law[s] creates absolute immunity for litigants represented by attorney[s] and elevates A.R.S. § 12-3201 Vexatious Litigant Statuary Law above the right to Petition Clause of the First Amendment.

MADISON V. GROSETH

Since 2013 Arizona has adopted Madison v. Groseth 279 P.3d 633, 635 (Ariz. Ct. App. 2012) in determining vexatious litigants, which specifically quotes the De Long principals in ¶ 18 ¶ 18 "*In De Long v. Hennessey, the Ninth Circuit set forth principles for courts to observe when ordering pre-filing restrictions: (1) to satisfy due process, the litigant must be afforded notice and an opportunity to oppose the order, (2) the court must create an adequate record for appellate review that includes a listing of all cases and motions leading the court to enter the order, (3) the court must make " 'substantive findings as to the frivolous or harassing nature of the litigant's actions,' " and (4) the order "must be narrowly tailored to closely fit the specific vice encountered." Id. at 1147–48 (citation omitted). We agree adherence to these principles is appropriate to ensure that a litigant's access to courts is not inappropriately infringed upon, and we therefore adopt them". Madison v. Groseth*, 279 P.3d 633, 639 (Ariz. Ct. App. 2012).

In relation to the Arizona vexatious litigant law (A.R.S. § 12-3201), has relied on *Madison v. Groseth*, since 2013 on how to determine if a litigant is a vexatious litigant. In *Madison v. Groseth*, the DeLong principles are relied

upon by Arizona courts when deciding if a litigant is vexatious. The DeLong principles are the direct standards implemented and currently used by Federal Courts.

IMPROPER SERVICE

In this case (CV-2017-055490) all four of the DeLong principles were violated when applied to the Casavellis (petitioners). (1) Notice; no notice was given to the Casavellis in accordance with Arizona Rules of Civil Procedure Rule six (6) in the live litigation. Although appellee's counsel Bryan Eastin states; "*The proposed version of this was filed with the Court on February 9, 2021 and Defendants had ample time to file an objection and chose not to do so*". Nowhere, in Brian Eastin's response for the appellees did he state what date a copy of the proposed orders had been mailed to the Casavellis. To this current date there is no agreement for electronic service as defined in Ariz. R. Civ. P. 5 (c) (2) (D), the Casavellis did not consent in writing and the courts did not order any proposed orders to be served electronically and none were filed through the electronic court system (turbo court). Appellee's counsel Bryan Eastin has not shown any agreement in writing for the Casavellis agreed to be noticed electronically.

Appellees' attorney Bryan Eastin did file proposed order[s] electronically on February 8, 2021, none of them contained the alleged "*notice of lodging proposed finding of fact and conclusions of law*", which is

what the Superior Court is claiming for the determination of deeming the Casavellis vexatious defendants.

Ariz. R. Civ. P. 58 (a) Form of Judgment; Objections to Form. (1) *Proposed forms of judgment must be served on all parties and must comply with Rule 5.1(d) and 54(h).* Here, Brian Eastin and Provident law failed to notify the Casavellis of any proposed form of judgments in accord with Ariz. R. Civ. P. 5 or Ariz. R. Civ. P. 5 (c)(2)(D) specifically; "*delivering it by any other means, including electronic means other than that described in Rule 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner-in which event service is complete upon transmission*".

Appellee's counsel Bryan Eastin states he served the Casavellis in accord with "Rule 5.1(d)(2), A.R.C.P.". This is not the proper method of service by the Arizona Rules of Civil Procedure. A.R.C.P. Rule 5.1(d)(2), defined as; *Service and Filing. Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging*

or other filing if directed by the court, required by rule, or done to preserve the record on appeal."

Even if appellee's counsel, Brian Eastin did file the "*notice of lodging proposed finding of fact and conclusions of law*" as stated on February 8, 2021, a proposed order is not to be publicly viewed on the court record, as stated by attorney Bryan Eastin who stated his response was in compliance with "*Rule 5.1(d)(2), A.R.C.P.*".

What appellee's counsel filed on February 8, 2021 was a "*notice of lodging proposed forms of order*" containing three attachments, the first attachment, an unlawful proposed judgment of attorney's fees and costs in the amount of $32,172.00. *Second* attachment, and unlawful proposed judgment of attorney's fees in the amount of $2,368.70. In the *third* attachment is an identical copy verbatim of the second attachment, and unlawful proposed judgment of attorney's fees in the amount of $2,368.70. There was no "*notice of lodging proposed finding of fact and conclusions of law*" contained in the filings on February 8, 2021. The notice of lodging in proposed form was never served upon the Casavellis. This violated the first De Long principal. The Casavellis were not given adequate notice or service of the notice. The notice of "lodging proposed finding of fact and conclusions of law" was intentionally omitted in the filing on February 8, 2021. And any subsequent filing of any "lodging proposed finding of fact and conclusions of law" was not served properly on the Casavellis in accordance with Arizona Rules of

Civil Procedure, any proposed orders were hidden by a simple checkmark in the Maricopa County clerk of the court's software which hides proposed orders in compliance with A.R.C.P. Rule 5.1(d)(2).

Subsequently, under appellate review the two unlawful money judgment in the amounts mentioned *supra* were dismissed as being unlawful due to the determination of attorney's fees prior to finality in the current live litigation. This in conjunction of the Casavellis winning summary judgment, appellate court dismissing two unlawful money judgment, the Casavellis materially altering the request to deem the Casavellis as vexatious defendants via appellate court review (appellate court remanded with massive changes) and appellee's counsel Bryan Eastin billing his clients Donna J. Johanson et al. for voluntary motion to dismiss with prejudice in October 2020, "*AZTurbo Court Filing Fee Notice of Voluntary Dismissal With Prejudice*" see **Appendix "G"**. Appendix G is Provident law invoice #6110, on page 3, under expenses, the second entry is the intent to dismiss some or all claims in the Maricopa County Superior Court. These acts make the Casavellis prevailing party. How does a prevailing party defend vexatiously. How is a prevailing party vexatious?

ADEQUATE RECORD FOR REVIEW

A review of the electronic court record (ECR) anyone can see there is no determination of frivolity or harassment. There is no minute entry or orders

making any determination that any filings, motions, requests or hearings are or were of a frivolous or harassing nature. This determination cannot be made due to the lack of finality in the Maricopa County Superior Court (state court action). Appellee's counsel cannot state or give evidential support the court made an accurate or adequate record for review.

SUBSTANTIVE FINDINGS OF FRIVOLOUSNESS

Declaring the Casavellis as vexatious defendants without Substantive Findings of Frivolousness. This is exactly what the state court action did concerning the evidentiary hearing that was set for January 28, 2021. By holding the hearing one day early and in the Casavelli's absence. The Casavelli's did not have the opportunity to object to the vexatious litigant motion subversively filed by appellee's counsel Brian Eastin and Donna J. Johanson et al. the appellees and their counsel Bryan Eastin knowingly and willingly and intelligently knew the vexatious litigant motion was premature and improper and unlawful in application to the Casavellis as defendants in a litigation that had not reached finality, had not adjudicated any claims to finality.

A vexatious suit is a type of malicious prosecution action, differing principally in that it is based upon a prior civil action, . . . To establish either cause of action, it is necessary to prove want of probable cause, malice and a termination of suit in the plaintiff's favor.'" *DeLaurentis v. New Haven*, 220

Conn. 225, 248, 597 A.2d 807 (1991), *DESIMONE v. DINO*, 1998 Ct. Sup. 11607, 11609 (Conn. Super. Ct. 1998).

In *Zeller v. Consolini*, 235 Conn. 417, 424, 666 A.2d 64 (1995), the Court held, "We have held that a claim for vexatious litigation requires a plaintiff to allege that the previous lawsuit was initiated maliciously, without probable cause, and terminated in the plaintiff's favor".

Furthermore, "[a] claim that the instant case constitutes vexatious litigation is premature. "Such a claim is pled, if pled at all as a separate action when the instant case is concluded." Falcon v. U-Haul Co., 1997 Ct. Sup. 2418, (Conn. Super. Ct. 1997) Superior Court, judicial district of Hartford/New Britain, Docket No. 55724, (Apr. 9, 1997, *Hennessey, J.*) (holding that the defendants could not amend their answer to add a counterclaim of vexatious litigation since the case was still pending). *DESIMONE v. DINO*, 1998 Ct. Sup. 11607, 11609 (Conn. Super. Ct. 1998).

Here, the appellants (the Casavellis) are defendants in the state court action,

where no claims have been adjudicated and there is no finality in the state court

action. Yet, Bryan Eastin and appellees Johanson et al. filed a motion to deem the

Casavellis vexatious as defendants before the conclusion of the instant case in the

state court action. Deeming defendants vexatious in an instant case is at the very
least improper and a substantial violation of civil rights, violation of the first and
14th amendments of the United States Constitution.

Plaintiffs requesting for vexatious litigant order with any new actions being
subject to prefiling requirements is premature because this case has not proceeded
to a conclusion adverse to appellants the Casavellis. "*Defendant's request for a vexatious litigant order with any new actions being subject to pre-filing requirements, is premature because this case has not proceeded to a conclusion adverse to plaintiff.*" Sherman v. City of Davis, No. CIV S-11-0820 JAM GGH PS (E.D. Cal. Mar. 5, 2012).

The Casavellis are not vexatious defendants! The Arizona court has a vexatious litigant website (https://www.azcourts.gov/Vexatious-Litigants/List-of-Vexatious-Litigants/Maricopa), whereas, Arizona list litigants who have been deemed vexatious by the state of Arizona. The Casavellis are not on this website. The Casavellis are defendants in the state court litigation. All vexatious litigant on this website are "PLAINTIFFS", not defendants. The act of deeming defendants vexatious is unlawful and not in compliance with other similar laws in other states or with Federal vexatious litigant laws. The standard for review regarding the

constitutionality of the Vexatious Litigant Statute is whether the statute bears a

rational relationship to a valid state interest. *Wolfe v. George*, 486 F.3d 1120 (9th

Cir. 2006), see *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990).

With the improper ruling of the Maricopa County Superior Court and with the nullification in the Arizona Court of Appeals revised ruling on the vexatious litigant motion, caused an opinion to be published on the Internet i.e., Johanson v. Casavelli (https://casetext.com/case/johanson-v-casavelli), in 1 CA-CV 21-0207 (Ariz. Ct. App. Feb. 15, 2022). This opinion being published on the Internet has at the very least compromised the right to a fair trial and impartial trial, and this opinion published on the Internet through casetext for any potential juror to *Peruse*, definitively has the ability to influence any juror's impartiality that could possibly be called for the state court litigation, irrespective of any designation of being published or unpublished. Constitutional harm has occurred and violated the Casavellis 14th amendment rights.

BREADTH OF THE ORDER

The Arizona appellate court did not take notice of an exhibit (**Appendix "H"**) (***copy of excerpt of phone bill***) filed with the notice of appeal filed on March 17, 2021 in the Maricopa County Superior Court, giving the reason for

not recognizing the exhibit referencing "*GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) (stating an "*appellate court's review is limited to the record before the trial court*"). The exhibit was attached to the notice of appeal the notice of appeal was filed on March 17, 2021 appellee's counsel Brian Eastin filed a motion to strike the notice of appeal on March 31, 2021. Appellants, the Casavellis filed a response to the motion to strike on April 5, 2021. The electronic index of record was sent to the appellate court on April 15, 2021. On April 22, 2021 in a minute entry Commissioner Jacki Ireland on Sally Schneider Duncan's behalf, sat an oral argument for July 26, 2021 and 9 AM.

Because the vexatious litigant finding and resulting limitations in this case are part of the judgment and relate solely to the issues in the lawsuit, the court essentially granted the appellees injunctive relief, which is appealable. A.R.S. § 12-2101(A)(5)(b).

The trial court judge, Sally Schneider Duncan did not stop any litigation in the Maricopa County Superior Court because of the Casavellis filing a notice of appeal on March 17, 2021. What Sally Schneider Duncan did was postpone any ruling[s] on the "motion to strike the notice of appeal" and a "motion to stay" and several other motions until July 26, 2021. The Superior Court did not acknowledge the loss of jurisdiction to the appellate court by the Casavellis filing the notice of appeal on March 17, 2021, is a violation of the "*Determination of Matters Within Sixty Days; Report. Every matter submitted*

for determination to a judge of the superior court for decision shall be determined and a ruling made not later than sixty days from submission thereof, in accordance with Section 21, Article VI of the Arizona Constitution." Rule 91 - Superior Courts and Clerks, Ariz. R. Sup. Ct. 91. This act of postponing the adjudication of the pending motions and not recognizing the notice of appeal violated the Casavellis Constitutional Rights to due process and the Casavellis Rights under the Arizona Constitution. The notice of appeal was filed on March 17, 2021 and the ruling of the court of appeals was entered on February 15, 2022, a petition for rehearing was filed with the Arizona Supreme Court on March 15, 2022, the petition for rehearing was denied on July 26, 2022. Jurisdiction has not been returned to the Maricopa County Superior Court since the filing of appeal CV-21-0207 which is now pending this writ of certiorari.

As the Maricopa County Superior Court did not recognize the appellate court authority and continued forward, the exhibit attached to the notice of appeal filed on March 17, 2021 was a part of the record and adjudicated on July 26, 2022 by a telephonic hearing during the deprivation of jurisdiction of the Maricopa County Superior Court. This act essentially made the notice of appeal a part of the official court record and therefore, Arizona Court of Appeals should have taken notice of the exhibits attached to the notice of appeal filed March 17, 2022. This is especially true, for reasons, on November 1, 2021, Arizona Court of Appeals requested a supplemental

index; "*Pursuant to ARCAP Rule 11.1 (b)(2) and ARCP 31.9(d), the Court requests the Clerk of the Superior Court to prepare a supplemental index of any filings not already transmitted to the Court, including minute entries, transcripts and exhibits, and to transmit the supplemental index, along with copies of all such filings, for receipt by the Court within 10 days of this notice*". If the appellate court could not take notice of the exhibit attached with the notice of appeal filed on March 17, 2022, why is the appellate court requesting a supplemental index of any filings not already transmitted to the appellate court. The rationale of omitting one document filed timely and contained within the first index, then requesting a supplemental index for any filings on the record post filing of the notice of appeal filed on March 17, 2020, is irrational.

This appendix "**H**" is key to the determination the Maricopa County Superior Court held a hearing in the Casavellis absence with the intent to deem the Casavellis vexatious defendants without adequate notice, without affording the Casavellis adequate defense, and without adequate and accurate review of the court record. These acts violate Casavelli's United States constitutional right to due process and the right to due process under the Arizona Constitution.

The Maricopa County Superior Court ordered appellee's counsel Brian Eastin author the order to deem the Casavellis vexatious defendants. Bryan Eastin is

the opposition's counsel in the state court litigation and has a vested interest in the state court litigation.

The appellate court mimicked if not copied verbatim the words in the motion to deem Casavellis vexatious defendants. There were no substantial findings or no warnings throughout the state court litigation on the official court record. On page 6 of **Appendix "A"** Arizona Court of Appeals addresses vexatious litigant orders must be narrowly tailored; ¶15 "*Here, the court ordered that Appellants "are prohibited from filing any new causes of action in any Arizona Court without leave of the Presiding Judge or his/her designee without first furnishing security equal to all outstanding unpaid judgments in this matter plus $10,000.00 in the within case, and security in the amount of $5,000.00 in any other new litigation that [Appellants] seek to file alleging the same or derivative facts or law." The court further ordered that Appellants are prohibited "from filing any new pleading, motion or other document in any non-criminal case in which judgment concluding the case has been entered without leave of the Presiding Judge or his/her designee."*

¶16 *In Madison, we cited to the federal standards governing vexatious-litigant orders set forth in* ***De Long v. Hennessey***. *Madison, 230 Ariz. at 14,* ¶ *18. Applying these standards, unpublished decisions of this Court have approved, as narrowly tailored, orders which impose pre-filing restrictions covering the case at issue or the parties involved in the current litigation.*

Paragraph ¶15 and ¶16 of the appellate court memorandum decision violates the Casavellis constitutional right[s] under Arizona Rules of the Supreme Court 111(c) by covert means of claim preclusion and/or issue preclusion, while claim preclusion can bar a party from raising a claim he or she failed to raise in a prior action, issue preclusion can bar only matters argued and decided in a prior lawsuit, this is accompanied by the erroneous basis for deeming the Casavellis vexatious defendants i.e. There were not eight motions seeking to remove appellees counsel, two motions to remove Bryan Eastin as a necessary witness and two motions to remove Bryan Eastin and Provident law for forged documents and fraud.

The appellate court essentially nullified the vexatious litigant order and in doing so violated the Casavellis constitutional rights of redress with prejudice, if this order stands the Casavellis are prejudice to file any claims against the appellees and their counsel Bryan Eastin for wrongful institution of civil proceedings or any other claims that has arisen during the past five years in this litigation. The prefiling instructions as defined in **Appendix "A"**; "*The superior court's vexatious-conduct findings focus exclusively on Appellants' conduct in their litigation with the Johansons. See supra ¶ 12. Therefore, an order prohibiting them from filing "any new causes of action in any Arizona court," even in matters not involving the same plaintiffs or issues involved in the current litigation,* ***is not narrowly tailored*** *to address Appellants' vexatious behavior. As a result, we affirm*

the ***pre-filing restrictions in the vexatious-litigant order to the extent they apply to the current case and plaintiffs*** *but vacate the portion of the order as it applies to any broader pre-filing restrictions*". The Casavellis have been filing motions in the state court action for five years, therefore the court has given permission to file in the current live litigation, this action nullifies any vexatious litigant order other than reference, therefore, this court should grant review of this writ of certiorari and order the Arizona supreme Court of Appeals to reverse the decision Arizona Court of Appeals has made in determining the Casavellis vexatious defendants. Order revision of A.R.S. § 12-3201 to comply with Federal standards and in alignment with other state laws.

When comparing Arizona's vexatious litigant law to California's vexatious litigant law or any other states vexatious litigant law, A.R.S. § 12-3201 is much more restrictive, biased and insulative than any other state's law in relation to the vexatious litigant law in Arizona.

In Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007) the court held "*However, such pre-filing orders are an extreme remedy that should rarely be used*". De Long, 912 F.2d at 1147. Courts should not enter pre-filing orders with undue haste because such sanctions can tread on a litigant's due process right of access to the courts. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004); *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990); *see* also *Logan v. Zimmerman Brush Co.*, 455 U.S.

422, 429, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (noting that the Supreme Court "traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances"); 5A Charles Alan Wright Arthur R. Miller, Federal Practice and Procedure § 1336.3, at 698 (3d ed. 2004). A court should enter a pre-filing order constraining a litigant's scope of actions in future cases only after a cautious review of the pertinent circumstances. Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148; see *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

The Arizona Court of Appeals referenced the De Long principles four times in its Memorandum Decision and cited to the Federal Standards set forth in De Long four times, and yet the Arizona appellate court's ruling rendered the vexatious litigant order moot except for reference. There would be no prejudiced against either party for the United States Supreme Court to overturn the Arizona appellate court's decision deeming the Casavellis as vexatious defendants and set guidelines for A.R.S. § 12-3201, as the appellate court's decision limited and then mooted all restrictions to the current live litigation and opposing party, restricted to this litigation in the state court action only.

SALLY SCHNEIDER DUNCAN

Due to the act[s] stated *supra*, the presiding judge in the state court action, Sally Schneider Duncan opted for early-retirement due to not meeting judicial performance standards when the time arrived of Sally Schneider Duncan's judicial performance review for retention.

CONCLUSION

The state of Arizona deemed the defendants (Nicholas Casavellis and Nicolina Castelli) in a state court litigation vexatious defendant[s]. This was achieved by the opposing party (Donna J. Johanson et al.) and their attorney Bryan Eastin, filing a motion in the Superior Court prior to any claims being litigated, prior to finality and having an interlocutory award converted into a judgment and awarding attorney's fees on the interlocutory award before any claims had been litigated or any finality of any claims. These acts caused the petitioner's (the Casavellis) to file an appeal the Arizona Court of Appeals, whereas, the Arizona Court of Appeals instantly dismissed the two unlawful money judgment levied against the Casavellis. The hearing was held on January 27, 2021 in the Maricopa County Superior Court, the court held this hearing during the time an appeal had been filed, and the Superior Court had been divested of jurisdiction. The Arizona Court of Appeals was notified in the appeal of the acts committed in the Superior Court while divested of jurisdiction, Arizona Court of Appeals did not and would not acknowledge

the Superior Court was without jurisdiction when deeming the Casavellis as vexatious defendants. Sally Schneider Duncan held a hearing one day earlier than the Casavellis were noticed for the intended purpose to deprive the Casavellis of the right to defend against the unlawful vexatious defendant motion filed by the appellees Johanson and their attorney Bryan Eastin. Sally Schneider Duncan and Brian Eastin decided to move forward unlawfully on deeming the Casavellis as vexatious defendants unlawfully and refuse to reconsider or vacate the vexatious defendant order. Sally Schneider Duncan refused to have a rehearing with the Casavellis present to defend against the vexatious litigant motion. The Casavellis contend the Casavellis appeared at the proper date and time that was noticed to the Casavellis as being January 28, 2021 at 9 AM, this is supported by **Appendix "H"**, an excerpt of the Casavellis phone bill calling the court at the noticed scheduled time, indicating the Casavellis waited on hold for 17 minutes for the court to initiate the hearing, the court did not initiate any hearings.

The Casavellis state the act of deeming the Casavellis as vexatious defendants is unconstitutional and deprives the Casavellis of a fair trial in the state court litigation due to the memorandum decision being published on the Internet in numerous places since February 15th, 2022. The Casavellis further state that this act violates the Casavellis constitutional rights under the first and 14th amendment of the United States Constitution. A.R.S. § 12-3201 is

vague and restrictive and is not in compliance with Federal Criteria or other States vexatious litigant laws.

For the reasons stated throughout, The Casavellis respectfully request this court grant certiorari and review this writ for the enormous importance of public interest related to how the state of Arizona applies A.R.S. § 12-3201 to litigants in Arizona court cases. The Casavellis request the Supreme Court to grant certiorari and review A.R.S. § 12-3201 and give instructions to make the Arizona revised statute A.R.S. § 12-3201 law more compliant and in accord with United States Constitution. Reverse the Arizona appellate court's decision deeming the Casavellis vexatious defendants and any other this court deems just and proper in the circumstance.

Respectfully submitted this 21st day of October 2022

Nicholas Casavelli

Nicolina Castelli

CERTIFICATE OF COMPLIANCE

No. 07-

Nicholas Casavelli, Petitioner(s)

Nicolina Castelli

v.

Donna J. Johanson, Respondent(s)

Estate of Gary T. Johanson,

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 5545 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10-20, 2022

Nicholas Casavelli

Nicolina Castelli