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No. 22-5932

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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 REHEARING

Nick Casavelli and Nicolina Castelli, (*Pro Per, Pro Se*)

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Nicholas Casavelli and Nicolina Castelli respectfully petitions for rehearing of the Court's per decision issued on January 9th, 2023.

Nicholas Casavelli and Nicolina moves this Court to grant this petition for rehearing and consider this case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44, this petition for rehearing is filed within 25 days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION

The state of Arizona had passed a law in 2014, Arizona Revised Statute § 12-3201 relating to vexatious litigant[s]. This law has/will affect approximately Eight million Arizona residents and any citizen who enters, resides, traverse or visits Arizona.

This Court has never issued an opinion, with/without briefing or argument, reversing a lower appellate court's relief where the constitutional claim received state appellate court review on an unconstitutional law related to Arizona Revised Statute § 12-3201.

ARGUEMENT

The State of Arizona has applied the Arizona Revised Statute § 12-3201 to pro per Defendants unconstitutionally, 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. The state of Arizona applied the vexatious litigant law to Defendant[s] prior to finality and made the determination public, this violates the First Amendment of the United States Constitution and the Due Process Clause of the Fourteenth Amendment.

The State of Arizona has maintained a statutory law that is ambiguous and serves no compelling state interest when applied to pro per Defendants.

The State of Arizona applied the A.R.S. § 12-3201 to a pro per Defendant[s], then narrowly tapered the restrictions through an Appellate Court review, nullifying the application of A.R.S. § 12-3201 statute to render any restrictions inert and to be limited to the current live litigation. Making any determination of vexatiousness only referenceable. These actions by the Arizona judicial system are pointless, knowing this is the result, the reasonable outcome would then simply to just dismiss the vexatious litigant motion. Instead, the Arizona judiciary which is to protect the unlawful and improper acts by rogue attorney[s] who is losing the frivolous case filed against the petitioners, the Casavellis.

When Arizona law is vague or unconstitutional, the *supremacy clause* takes effect (emphasis added).

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.

Therefore, 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 *filings 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 A.R.S. § 12-3201

Under Arizona Revised Statute § 12-3201 the definition is vague and only gives vague references and nothing in specific for any type of guidelines. A.R.S. § 12-3201 was passed into law on April 16th, 2014 by Governor Jan Brewer.

STANDARD

In De Long v Hennessy, 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 byproduct of the Ninth Circuit's 1990 holding in De Long v Hennessy, 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.

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 prevails over state law.

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 and Hawaiian residents

right[s] on a federal level concerning vexatious litigant laws. Arizona's vexatious litigant laws are in contrast to rights given at the Federal Level and Arizona law 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.

California and federal decisions that have considered the question have found the statute (Code Civ. Proc. § 391(b)) and Trs. of *Estate of Bishop V. Au*, 463 P.3d 929 (Haw. 2020), 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 align but do not align with Arizona's law. 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 or Federal Courts making the Arizona law unconstitutional.

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.

ADEQUATE RECORD FOR REVIEW

A review of the electronic court record (ECR) 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.

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 petitioners (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 1st and 14th amendments of the United States Constitution.

Plaintiffs requesting for 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 petitioners 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 plaintiffs nor are they vexatious defendants! The Arizona court has a vexatious litigant website ([## **RATIONALE**](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 <u>constitutionality</u> of the Vexatious Litigant Statute is whether the statute bears a rational relationship to a valid state interest. <u>Wolfe v. George</u>, 486 F.3d 1120 (9th Cir. 2006), see <u>De Long v. Hennessey</u>, 912 F.2d 1144 (9th Cir. 1990).</p></div><div data-bbox=)

The common sense of deeming a defendant vexatious is for one sole purpose, concealing procedural or substantive errors in the litigation.

Arizona A.R.S. § 12-3201 was enacted improperly and didn’t have proper public input, A.R.S. § 12-3201 law violates the Arizona state and U.S. Constitution equal protection clause providing exemptions for people based on being represented.

Represented litigants can be vexatious, A.R.S. § 12-3201 insulates a represented litigant as a plaintiff. For example, the State Bar of Arizona

announced on May 16, 2019 that Peter Strojnik was *disbarred* from the practice of law in that state. *See*,

<https://www.azbar.org/news/events/newsreleases/2019/05/disbarment-peterstrojnik/>

The State Bar alleged that many of the ADA lawsuits he (Peter Strojnik) filed had no basis in law and fact, were non-meritorious, and contained requests for attorneys' fees in excess of those which had been incurred. In 2018 the Bar suspended him for "milking ADA violations." By then he had filed *more than 1,700 complaints* in state court and another *160* in federal court. In most cases he sought \$5,000 in attorneys' fees collecting approximately \$1.2 million in settlements. *See*,

<https://www.azbar.org/news/events/newsreleases/2018/07/interimsuspension-peterstrojnik/>

In 2016 Peter Kristofer Strojnik was suspended by the Arizona State Bar. In that case, he told the opposing party he would publicly shame the defendants he accused of sexual harassment, including threatening protestors to demonstrate in front of the defendants' businesses. He also claimed to have scheduled meetings with law enforcement about the defendants alleged harboring of undocumented workers. *See*.

<https://www.azbar.org/news/events/newsreleases/2016/11/suspensions-peterkstrojnik/>

“Strojnik told opposing party he had devised methods of public shaming that included creating a website regarding the sexual allegations and personally posted unprofessional comments,” according to a press release from the State Bar. Officials also said that Strojnik threatened to “destroy the defendant’s business.”

This was the behavior of a duly Arizona licensed attorney.

The Casavellis are defendants in a case that was unlawfully brought against the Casavellis for the sole intended purpose to alleviate the plaintiffs in the Maricopa County Superior Court litigation from criminal charges. These claims were filed by attorney Bryan Eastin knowing they were fraudulent and unlawful claims against the Casavellis.

VEXATIOUS LITIGANT APPLIED TO CLERGY

From the outset of Bryan Eastin filing a frivolous lawsuit against the Casavellis who are ordained and have been ordained long prior to Brian Eastin filing litigation against the Casavellis in the state superior court.

This Arizona law deems priests, ministers, members of the clergy and anyone who is not represented as vexatious.

The thought process behind Bryan Eastin filing against priests, is that priests have the demeanor of lambs, and would not resist and would be an easy win against the clergy who would not resist. This is actually false,

accusing priests of wrongdoing, any priest will defend their reverence and reputation.

Brian Eastin had a former career in pastoral ministries. Bryan Eastin left pastoral ministries to become an attorney in the state of Arizona. Bryan Eastin has a jaded outlook towards any member of the clergy and is reflected throughout all litigation[s] by Bryan Eastin.

CONCLUSION

The petitioner's, the Casavellis request this court to grant this petition for rehearing and grant oral arguments and here to the writ on its merits to determine the constitutionality of A.R.S. § 12-3201, especially when applied to defendants and to members of clergy who are defendants.

The very nature of a priest is required to act as a mediator. A priest is one who represents the Divine being to His subjects and in return from them to their God. A priest acts as an ambassador, a chosen vehicle through whom God has chosen to serve the people and represent Him, on His behalf.

Truth is the bedrock of credibility. A priest "must be a righteous, vigilant person, a person who is upstanding" in leading a holy and Christian life.

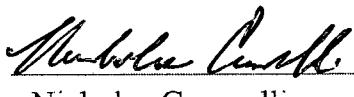
To deem a priest, minister or any member of the clergy as vexatious defies the very representation a priest represents, and is a clear attack of the clergy's first amendment constitutional right. The First Amendment states; "*Congress shall make no laws respecting an establishment of religion or prohibiting the*

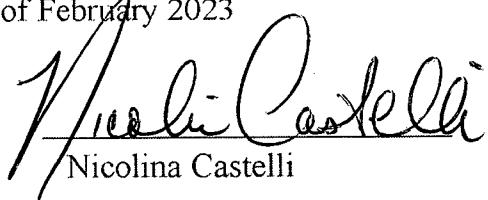
free exercise thereof.” Deeming a priest as vexatious because a frivolous lawsuit filed against the priest[s] is unconstitutional. This does not make priests exempt, the nature of a priest is not to be vexatious. For an attorney to attack religion and the representatives of religion violates the First Amendment. A.R.S. § 12-3201 when applied to a defendant who is a member of the clergy violates constitutional rights under the First Amendment and procedural due process rights under the 14th amendment.

Arizona has set no guidelines under Arizona Rules of Civil Procedure as to how A.R.S. § 12-3201 is to be applied in the court system.

The Casavellis pray this court to grant review of the Casavellis writ of certiorari and give oral argument based on the merits presented and give direction as to the constitutionality of A.R.S. § 12-3201 when applied to defendant[s], clergy or any party to litigation in the state of Arizona.

Respectfully submitted this 1st day of February 2023


Nicholas Casavelli


Nicolina Castelli

CERTIFICATE OF COMPLIANCE

No. 22-5932

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 petition for rehearing contains 2905 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 2-1, 2022

Nicholas Casavelli
Nicolina Castelli

Certification of good Faith and Intervening Circumstances

I, Dr. Nicholas Casavelli and Rev. Nicolina Castelli, Certify,

The Petition for Rehearing is for the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Furthermore, This Petition for Rehearing is not brought in bad faith, and is not interposed for an improper purpose, for harassment or delay in proceedings; and, therefore, is to ensure the prompt administration of justice, without unnecessary delay to any party.

Tuesday, February 14, 2023

Nicholas Casavelli

Dr. Nicholas Casavelli

Nicolina Castelli

Rev. Nicolina Castelli