Orig

No.22-6373

IN THE
SUPREME COURT OF THE
UNITED STATES

ALICJA HERRIOTT
Petitioner
V.

PAUL B. HERRIOTT
Respondent

On Petition For Writ Of Certiorari
To The Supreme Court Of
The State Of California

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

U.S. Constitution

PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner respectfully petitions for a rehearing of the denial of a writ of certiorari to review the Supreme Court and the Court of Appeal. The case originates from the Superior Court declaring and denying reversal of the order declaring Defendant as a vexatious litigant. In both orders, the Court exercised only its judicial discretion and, without factual and legal grounds, declares Defendant as Vexatious Litigant; thereafter, the Court denies reversal of the order. In this case, under discretionary power, the Court denies Petitioner's fundamental right to due process and equal protection under The Fourteenth Amendment to the Constitution.

REASONS FOR REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "other substantial grounds not previously presented."

The Petition for Rehearing Petitioner shows, not presented before, the great significance of the Statute of Vexatious Litigant being applied only to Pro Se litigants; therefore, it discriminates litigants without legal representation. The central contention is that the statutory delay in obtaining the prefilling order before Pro Se Litigants can petition to Court creates a classification that constitutes an invidious discrimination denying them equal protection of the laws. See *Sherbert v. Verner,* 374 U.S. 398, 404,

83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963). where "the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws." In actual operation of the Statute, it is a non-rebuttable presumption that only Pro Se Litigants petition to the Court solely to harass an opponent or cause delay. Discrimination of Pro Se litigants for not having legal representation in California Courts violates the Due Process Clause of the Fifth Amendment, which forbids discrimination that is 'so unjustifiable as to be violative of due process." *Schneider v. Rusk*, 377 U.S. 163, 168, 84 S.Ct. 1187, 1190, 12 L.Ed.2d 218 (1964); *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). The waiting period to obtain a prefilling order infringe only on the disadvantaged class of Pro Se litigants to exercise their constitutional right to petition and penalizes them when they exercise of that right.

PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve the issue of the Statute with a clear understanding of the procedure when Court exercises its judiciary powers and declares Defendant, without any history of filed litigations, as Vexatious Litigant, Under California Code, Code of Civil Procedure § 391 the Vexatious Litigant is " In Pro Per litigant who had lost at least five pro se lawsuits in the proceedings seven years sued the same

defendants for the same alleged wrongs, and any person while acting in propria persona repeatedly files meritless papers or uses the frivolous tactical device." Petitioner submits "Application For Order To Vacate Prefiling Order And Remove Plaintiff/Petitioner[1]From Judicial Council Vexatious Litigant List." to the Court that entered the prefiling order, in the divorce case in which the prefilling order was entered[2] , to the Judge who issued the order. Under CCP.391.8, only the application filed in conjunction with filing new litigation under Code of Civil Procedure section 391.7 subjects the Vexatious Litigant to prefilling order and as a petitioner on appeal.

Petitioner, as Defendant, appeals a decision of the Superior Court declining to reverse an order declaring her a Vexatious Litigant. Even though the Defendants are not subjected to prefilling order of a Vexatious Litigant, the Court of Appeal states that her request to be removed from the Judicial Council List of a Vexatious Litigant is a separate action within the case she is Defendant, which bears the same case number; therefore, she is a petitioner, and she is subjected to the prefiling order on appeal; therefore, the appeal is dismissed. The decision of the Justice adds only to confusion and any understanding of the Statute and who is subjected to prefilling order. Petitioner, as many other Pro Se litigants, same situated, sees the Statute

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[1] Form MC-703, "Application For Order To Vacate Prefiling Order And Remove **Plaintiff/Petitioner** From Judicial Council Vexatious Litigant List," does not include defendants.

[2] In divorce case BD415-787, Herriott vs. Herriott, Petitioner is a defendant.

vague and on its face that the Court's decisions under the Statute are contrary to the perceivable rule of law.

Petitioner, in its Petition, contends that the statutory provisions of a Vexatious Litigant are unconstitutionally vague and facially as applied. No reasonable person would understand what sanctionable behavior is. Moreover, neither the Statute is clear who is a Vexatious Litigant nor provides an insufficient warning to In Pro Per litigants to justify sanctions of prefilling order under CCP391.7; Petitioner should not be required to speculate what it is sanctionable action under the Statute during regular divorce proceedings. All litigants are entitled to be informed and understand as to what the court commands or forbids. " a statute which either forbids or requires the doing of an act in terms so vague that men of ordinary intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 619, 83 L. Ed. 888 (1939); *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926).

THE STATUTE DISCRIMINATES PRO SE LITIGANTS

The great significance of the law is that the Statute targets only Pro Se litigants. Based on this sole difference, the first-class Litigant without legal representation is sanctioned with prefilling order of vexatious Litigant;

however, the second class of litigants with a legal representation is not, upon which may depend the ability to petition to Court with infringement for the one class but not for other. The central contention is that the statutory delay in obtaining the prefilling order before Pro Se Litigants can petition to Court creates a classification that constitutes an invidious discrimination denying them equal protection of the laws. See *Sherbert v. Verner,* 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963), where "the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws." In *Sherbert v. Verner*, the purpose of deterring the in-migration of indigents serves as justification for the classification created by the one-year waiting period, which is constitutionally impermissible. If a law has 'no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it is patently unconstitutional.' *United States v. Jackson*, 390 U.S. 570, 581, 88 S.Ct. 1209, 1216, 20 L.Ed.2d 138 (1968). "Any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." *Cf. Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942); *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193, 194, 89 L.Ed. 194 (1944); *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S.Ct. 412, 417, 4 L.Ed.2d 480 (1960); *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963). Alternatively, Petitioner

argues that it is impermissible for a State to delay Petition or deny prefilling order to forbid Pro Se Litigants to sue with intentions to protect defendants from meritless lawsuits does not serve a compelling governmental interest. The challenged classification may not be justified as permissible for the State to attempt to discourage Pro Se litigants from "clogging the Court's calendar.[3]." Not every lawsuit filed by litigants with legal representation is meritorious, and not every lawsuit filed by Pro Se litigants is a meritless cause of action. However, only Pro Se litigants are sanctioned with a prefilling order under CCP 391.7. In actual operation, it is a non-rebuttable presumption that only Pro Se Litigants petition to Court solely to harass an opponent or cause delay. Nothing whatever in any of Petitioner's records provides any basis in fact for such a presumption.

The waiting period to obtain or deny prefilling order infringe on the disadvantaged class of litigants to exercise a constitutional right to Petition and any classification which serves to penalize the exercise of that right. There is not a compelling governmental interest to find the Statute constitutional. *Cf. Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110,

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[3] *Wolfgram v. Wells Fargo Bank* 61 Cal. Rptr. 2d 694 (Ct. App. 1997). "The general rights of persons to file lawsuits as long does not clog the court system and impair everyone else's right to seek justice."

1113, 86 L.Ed. 1655 (1942); *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193, 194, 89 L.Ed. 194 (1944); *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S.Ct. 412, 417, 4 L.Ed.2d 480 (1960); *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963). The argument that the waiting period to obtain prefilling order to stop one class of litigants from clogging the Court's calendar" and protect defendants from meritless lawsuits are unfounded. Under traditional equal protection tests, classifying litigants according to whether they have a legal representation would seem irrational and unconstitutional.' *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369 (1911); see also *Flemming v. Nestor*, 363 U.S. 603, 80S.Ct. 1367 (1960). Discrimination of Pro Se litigants for not having legal representation violates the Due Process Clause of the Fifth Amendment, which forbids discrimination that is 'so unjustifiable as to be violative of due process." *Schneider v. Rusk*, 377 U.S. 163, 168, 84 S.Ct. 1187, 1190, 12 L.Ed.2d 218 (1964); *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). The Statute embodies punitiveness and discrimination that violate the rights of litigants petitioning to Court to equal treatment under the law. *James v. Strange*, 407 U.S. 128, 141-42 (1972).

Under the Statute Pro Se litigants, a minority of filed petitions to the Court are not uniformly treated as other litigants in relation to governmental action. *Hargrave v. Kirk,* 313 F. Supp. 944. The equal protection clause is violated if the special burden is placed on minority

litigants without legal representation by operation of the Vexatious Litigant Statute. *Valtierra v. Housing Authority of City of San Jose*, 313 F, Supp. 1. State may not attempt to limit the number of lawsuits filed to the courts by creating invidious distinctions among litigants without violating equal protection U.S.C.A. Const. 14. *Dougall v. Sugarman*, 339 F. Suppp. 906, "discrimination is unlawful when the distinction is made without sound basis and to one's detriment." *John Duguid & Sons, Inc.* v. US.,278 F. Supp. 101. "Also, deprivation of equal protection of the laws on the part of state officer may appear on face of action taken with respect to class or person and may also be shown by extrinsic evidence of the discriminatory purpose of a state officer to impose a burden on one individual or class not imposed on others." U.S. Const.14. *Haley v. Troy,* 338 F. Supp. 794. The equal protection clause forbids an arbitrary standard or a standard which is grounded on "suspect classification," but does not ensure equal treatment. U.S.C.A.Const. Amend. 14. *Jeffery v. Malcolm*, 353 F.Supp. 395. *Kennedy Park Homes Ass's v. City of Lackawanna*, 318 F. Supp. 669 affirmed 436 F. 2d 108, *Power v. Workment's Compensation Bd. Of State of NY.*, 214 F. Supp. 283. Gov. action which imposes unequal burdens or awards unequal benefits without justification is unconstitutional under the equal protection doctrine U.S.C.A. Const. Amends. 5, 14. *Hobson v. Hansen*, 269 F. Supp. 401. Prefilling order of a vexatious Litigant and denial of such an order violates In Pro Per Litigant's right to be heard by an unbiased, unprejudiced, and impartial tribunal, one of

the great American constitutional principles of equal protection and due process. *Billingsley v. Clayton*, 359 F.2d 13, "to prevent infringement of someone's fourteenth Amendment right where it is a necessity to override the specific provision of state laws to afford adequate relief, state statutes must yield." *Taylor v. Monroe County Bd.* Of Sup'rs, 421 F2d 1038. A fundamental right is protected by the Constitution unless the State has a compelling interest that outweighs this right. *Shapiro v. Thompson,* 394 U.S. 618, 634, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969); *Griswold v. Connecticut, supra.,* The right to petition to Court and be heard without delay is rooted in the "traditions and collective conscience of our people." *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S. Ct. 330, 332, 78 L. Ed. 674 (1934); *Griswold v. Connecticut*, 381 U.S. at 493, 85 S. Ct. at 1686·

Prefilling order requirement delay or prevents In Pro Per litigant file, presenting the case to the Court, and confronting the opponent publicly. The Presiding Jude issues the prefilling order (if it is granted) without hearing and without parties present. "Fundamental rights" must be balanced only against compelling state interests and legislative enactments, including statewide regulations pursuant thereto, affecting fundamental rights must be narrowly drawn to express only state interests. *Doe v. Wohlgemuth,* 376 F. Supp. 173, upon evidence which certain findings of fact can be made to support whatever balance is struck. *American Friends Service Committee* v. US., 368 1176, F. Supp. 1176, reversed 95 S.Ct. 13, 419 U.S. 7, 42 LEd.2d 7.

the law is applied equally to all individuals same situated. Pro Se litigant is excluded from the equal application of the law that only Pro So Litigant can be sanctioned with prefilling order. It needs to be clarified what is the State's interest not to place the same sanction against litigants with legal representation, who, in the majority, Petition to courts and clog the Court's calendars. On the other hand, only Pro Se litigants are sanctioned with prefilling order when Court finds their cause of action meritless. The burden is upon State to show that such infringement on the right to Petition is necessary. It is hard to believe that State has to protect defendants from meritless lawsuits and wants to lower the number of lawsuits filed by Pro Se litigants when litigants who file the majority of cases have legal representation. *Carter v. Dies*, 321 F.Supp. 1358, affirmed *Bullock v. Carter*, 92 S.Ct. 849, 405. In *Bullock v. Carter*, 405 U.S. 134, (1972), "the Texas statute imposes filing fees of such magnitude that numerous qualified candidates are precluded from filing, it falls with unequal weight on candidates and voters according to their ability to pay the fees, and therefore it must be "closely scrutinized" and can be sustained only if it is reasonably necessary to accomplish a legitimate state objective and not merely because it has some rational basis." As it is California Statute, the State has rational basis is to protect defendants from meritless lawsuits filed by Pro Se litigants and have fewer cases on the Court's calendar, but there is no legitimate objective to justify the Statute, *In Bullock v. Carter*, 405 U.S. 134, (1972)

State has the interest to raise revenue, but a filing fee violates the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made a final qualification in order for a candidate to get his name on the ballot.

Any statute classifies by race, alienage, or national origin, but State unfavorably perceives Pro Se litigants as minority litigants. Pro Se litigants lack financial, political, and legal powers to defend their rights to equal protection under the law and discriminatory treatment by the courts. These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others.[4]. Likewise, *L. Cohen Grocery Co.*, 255 U.S. 81, 41 S.Ct. 298, 65 L.Ed. 516, a statute prohibiting unjust or unreasonable rate [s]' is struck down because it provided no "ascertainable standard of guilt" and left open " the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." Id., at 89, 41 S.Ct. 298. The clear import of this language is that the law at issue was impermissibly vague in all applications. In *Chambers v.*

[4] "People with too much time on their hands and a propensity to sue people will always find occasion to bring a lawsuit. A real change of circumstances may entail efforts at obtaining gainful employment." *Luckett v. Panos,* 161 Cal.App.4th 77, 94 (Cal. Ct. App. 2008)

N.A.S.C.O., Inc., 501 U.S. 32 (1991), Federal courts have the inherent power to manage their proceedings and to control the conduct of those who appear before them. In invoking the inherent power to punish conduct that abuses the judicial process, a court must exercise discretion in fashioning an appropriate sanction, which may range from dismissing a lawsuit to assessing attorney's fees. Although the "American Rule" allows federal courts to exercise their inherent power to assess such fees as a sanction when a party has acted in bad faith, vexatiously, as when the party practices fraud upon the Court, *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447, *Chambers v. N.A.S.C.O., Inc.*, 501 U.S. 32 (1991) 111 S.Ct. 2123, 115 L.Ed.2d 27, 59 USLW 4595, 19 Fed.R.Serv.3d 817. The award of attorney's fees for bad faith serves the same purpose as a fine imposed for civil contempt" because it vindicates the District Court's authority over a recalcitrant litigant. *Hutto, 437 U.S.*, at 691, 98 S.Ct., at 2574. California courts considered whether the First Amendment right to Petition invalidated the California "vexatious litigant" statute under which only Pro Se litigant with a specified history of frivolous litigation could be limited in his ability to file future suits. It upheld the Statute in *Wolfgram* v. *Wells Fargo Bank,* 61 Cal. Rptr. 2d 694, 704 (Cal. App.1997). Contrary to *Nowak & Rotunda*, supra note 4, § 16.54, at 1192, "Everyone has a right to institute non-baseless litigation. A lawsuit is a form of a petition to redress grievances." In "*Noerr-Pennington* doctrine," the Supreme Court first

recognized an individual's right of access to the Court under the Petition Clause. *Hernandez v. Amcord, Inc.* (2013) 215 Cal.App.4th 659, 678 [156 Cal.Rptr.3d 90].

First Amendment freedoms will be staunchly protected by courts from unnecessary restriction. U.S.C. An Amend. 1. *Phillips v. Derby Tp., Pa.*, 305 F.Supp. 763. If the freedom to Petition is unreasonably restricted, then the regulation in question suffers from constitutional infirmity. *Stromberg v. State of Calif.*, 283 U.S. 359, 369, 370, 51 S.Ct. 532, 75 L.Ed. 1117 (1931)." *Phillips v. Township of Darby, Pennsylvania*, 305 F. Supp. 763, 764 (E.D. Pa. 1969). The Vexatious Litigant statute does not uniformly treat all litigants standing in the same relation to the governmental action questioned or challenged. Prefilling order releases the opposed party from proofing of the existence of a 'sham' by clear and convincing evidence that a lawsuit filed against by Pro Se litigant is without merits and no reasonable litigant realistically expects success on the merits; the Court is doing for them by simply requesting and denying prefilling order.

A just and fair trial by an unbiased, unprejudiced, and impartial tribunal is one of the great American constitutional principles. There can be no due process or equal protection unless that principle remains inviolate. *Billingsley v. Clayton*, 359 F.2d 13.

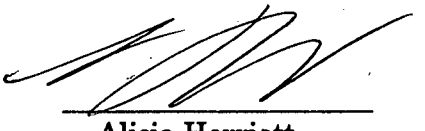
CONCLUSION

If the "American Rule" allows Courts to exercise their inherent power to sanction when any party acts in bad faith, vexatiously, as when the party practices fraud upon the Court, does the State of California under the Statute of Vexatious Litigant double down on Pro Se litigants?

For the reasons set forth in this Petition, Alicja Herriott respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Dated March 21, 2023

Respectfully submitted,



Alicja Herriott
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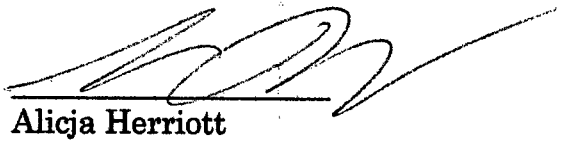
CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204© of the California Rules of Court, I hereby certify that this document from page 1 to 14 contains 3,483 words, including footnotes. Pages from 'i to "vi, " are excluded from counting. In making this certificate, I have relied on the word count of the computer program used to prepare the Petition For Rehearing.

April 6, 2023



Alicja Herriott
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CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds not previously presented pursuing Supreme Court Rule 44.2.

Dated: March 30, 2023

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