22-6530

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2022

WARREN HAVENS, Petitioner

v.

ARNOLD LEONG, Respondent

and

SUSAN UECKER,
Alleged Court Receiver for Leong of Alleged-Debtor Respondents
SKYBRIDGE SPECTRUM FOUNDATION, AND 7 LLCs

Before the California Superior, Appeal, and Supreme Courts

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT AND COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

WARREN HAVENS
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ARNOLD LEONG
Real Party Respondent,
by, as alleged:

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Bertrand, Fox, Elliot...
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San Francisco, CA 94109
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rosman@bfesf.com

SUSAN UECKER
California Court Receiver-Officer of 8 Alleged-Debtor Respondents, FCC licensees,

Skybridge Spectrum Foundation, Verde Systems LLC, Telesaurus Holdings GB LLC, Environmentel LLC, Environmentel-2 LLC, Intelligent ... Wireless LLC, V2G LLC, and ATLIS Wireless LLC), by, as alleged:

DAVID A. DEGROOT
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1. QUESTIONS PRESENTED

Preface. This case demonstrates critical legal and cultural disputes in the nation. The apparent "administrative state" is debilitating but the hidden "judicial state" is deadly. Both are in this case. On these, and on specifics of this case, the States' highest courts and the federal circuits are split - they don't get to the bottom or state coherent principles. This court has acknowledged the problems but not yet answered them. (This Preface continues after the questions.)

The questions presented are:

1. Does the Constitution provide for government provided entitlement to rights or citizens' reservation of rights under the Fifth, Fourteenth, and First Amendments, and the clauses referenced herein (see "Preface continued" below).

2. Can a state court in a civil case bar appeals by a defendant, under a statutory right to appeal, of trial-court decisions on the grounds of "civil disentitlement" not defined in a statute, where the appeal court believes the defendant disobeyed trial court decisions by seeking, in federal forums, protections under the federal Constitution and statues not determined as frivolous in those forums, including bankruptcy courts, US District Courts in appeals of final bankruptcy decisions, and before the FCC and IRS?

3. Does civil disentitlement described in question 2 by State court cancelling an appeal have preclusive effect upon the defendant's pursuit in a federal forum of federal Constitution and statuary protections deemed to be disobedience of the state court decisions?

The following question is subsumed in the numbered questions above and is thus not numbered: Should the principles in Hovey *v. Elliott*, 167

U.S. 409 (1897) (defendant's due process rights violated by the court assertion of disobedience converting the court into an instrument of wrong and oppression) be restated to answer the preceding questions?

Preface, continued. Underlying the questions, this case turns on the California "activist" "judicial state" (see next *footnote*) based on "i-Law" (see *Id*) that cannibalized the nation's foundations in the Magna Carta and its corollary Forrest Carta, or "c-Law," (see *Id*) in ex parte deals with the FCC for the "administrative state." These Charters were the foundations of the Nation establishing due process of law for the common good and the environment ("forest") sustaining life, standing against king-law on one extreme, and on the other end me-law or "i-Law" that mimics Apple's "i-" this and-that.[a]

Under "i-Law, *activist judges* by "*inherent*" powers - of "civil disentitlement," civil contempt, and receiverships - do as they please with vested property and liberty. No reasons need be stated, no accounting given, no due process of law under the Fifth and Fourteenth Amendments, *no "law" to start or end with*, evidence destroyed, no Fifth Amendment takings compensation (I am pro se here as a result), no corporate charters and law allowed, no First Amendment rights under *Noerr Pennington* (381. U.S. 657 (1965)) permitted, no IRS law followed, Federal Arbitration Act proceedings barred in the midst, no right to make a living, no actions allowed in other States of assets and business solely therein, suspension of Constitutional protections under the bankruptcy, contract, commerce, compact, habeas corpus and other clauses, and the court clerks enmeshed

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[a] The "judicial state," "i-LAW," and "c-Law" are coined for meanings given here that are not in common use.

then silenced to reject filings and tamper with case records. If you challenge this judicial state and its "i-Law" you must be cancelled - "disentitled." [b]

The assumption of "disentitlement" and the administrative and judicial states is that the government "entitles" citizens bestowing rights under the Constitution and its derived laws, and these may be withdrawn or disentitled -- not that the people created the government and what it is entitled to do. That flips on its head the founding premise grounded in the Magna and Forrest Charters.

This California case is on "civil disentitlement" - cancelling dozens of appeals (See Exhibits B-1 and B-2) based on nationwide FCC licenses led by the nonprofit charitable foundation I founded to serve "c-Law" and the public good as in the Forrest Carta basis of the Magna Carta, to protect the nation's environment and critical public infrastructures. The California-led judicial state carried out reverse preemption at the FCC, for the federal administrative state, by secret ex parte deals covered by disablement of the FOIA and Privacy Act. "Disentitlement" is the "i-Law" final solution. This case is extreme on these unresolved fundamental problems.

2. PARTIES TO THE PROCEEDING AND PRO SE REQUEST

The parties and their contact information are listed in the caption page above. Herein, "I" means Warren Havens the petitioner here and in the case below. As pro se, I request the following apply - the "less stringent

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[b] The assertions of this sentence are shown in (i) my pleadings before the California Courts included in the Exhibits that comprise the Appendix (see List of Exhibits in the Table of Contents), and (ii) the references in those pleadings to filings in and court orders of the subject California Superior Court (the "trial court" which in this case held no trial).

standards than formal pleadings drafted by lawyers" liberally construed in pro se party's favor. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner,* 404 U.S. 519, 520 (1972). Accord *Erickson v. Pardus*, 127 S. Ct. 2197 (2007).

3. CORPORATE DISCLOSURE STATEMENT

This Petition is by Warren Havens, an individual person. Thus, no Rule 29(6) disclosures apply.

4. DIRECTLY RELATED PROCEEDINGS

Under Rule 14.1(b)(iii) as defined therein there are or may be "directly related" court proceedings that "arise[] from the same trial court case as the case in this Court."[c]

(A) Cases in his court (i) *Havens v Leong,* under application No. 21A627 granted to extend time to file a petition for writ of certiorari to the Delaware Supreme Court (petition timely filed, but corrections due by a stated date in the clerk's letter, being timely filed), and (ii) *Leong v Havens*, under application No. 22A232 granted to extend time to file a petition for writ of certiorari to the Ninth Circuit Court of Appeal (petition timely filed but corrections due to be timely filed later this month).

(B) Cases in other courts are listed in most recent semi-annual joint status report by Delaware counsel to Arnold Leong (the real party in this case- see the caption above) and Delaware counsel I direct for Skybridge Spectrum Foundation - see the caption) to the US District Court,

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[c] No case directly challenges the California Court of Appeal and Supreme Court "disentitlement" decisions under this Petition, other than this Petition.

Delaware (in case 1:16-cv-00633-CFC Doc 39 Filed 04/01/22) a copy of which is Attachment 1 below, referenced and incorporated herein.

(C) Cases in the D.C. Circuit Court of Appeals, arising after (B): (i) No. 22-1092, *In re Warren Havens, Individually and for Next-Friend Persons, v. the FCC, and (ii)* No. 22-1137, *Warren Havens, Individually and in Other Capacities, v. the FCC.* ("FCC" means the Federal Communications Commission.)

5. STATE LAW CONSTITUTIONALITY

Under rule 29.4(c), this Petition raises challenges to California statutes implied in the subject "disentitlement" matters. 28 USC § 2403(b) may apply. I serve on the California Attorney General a copy of this Petition and its Appendix.

6. TABLE OF CONTENTS

LIST OF APPENDIX (EXHIBITS)

OPINIONS TO BE REVIEWED: Exhibits A, B-1 and B-2, and D.

OTHER MATERIAL PETITIONER BELIEVES ESSENTIAL: The other Exhibits.

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[d] "COA" means the California Court of Appeal First District (in San Francisco).

7. TABLE OF AUTHORITIES

U.S. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

U.S. CONSTITUTION

U.S. STATUTES AND REGULATIONS

FEDERAL CASES

8. OPINIONS AND DECISIONS BELOW

These are listed in the List of Exhibits at the end of the Table of Contents and included in Exhibits A, B-1 with B-2, and F.

9. BASIS OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) because submitted for review, as stated in 28 U.S.C. § 1257(a), are:

> ... final judgments or decrees rendered by the highest court of a State in which a decision could be had... where the validity of a... statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution... or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution... or statutes of, or any commission held or authority exercised under, the United States.

10. U.S. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS IN THE CASE

These are in the Table of Authorities above.

11. STATEMENT OF THE CASE*

1. The List of Exhibits at the end of the Table of Contents lists: (i) the three decisions submitted for review of the Californian Court of Appeal and California Supreme Court, (ii) the related petitions I filed to these Courts, and for each decision and petition, the dates filed and Appendix page number where it commences. The Exhibits are short (52 pages total, not counting the exhibit separator pages) and state the main events of this Case.

2. The Preface with the Questions Presented above generally describe aspects of this Case.

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* This section has some legal arguments. It is more effective to first indicate those here, rather than in the Reasons to Grant below.

3. My two other cases before this court that are pending (under grants of applications for and extension of time) described in Section 4 (Directly Related Proceedings) describe aspects of this case.

4. The decisions for review involve assertions and decisions of the California Court of Appeal based solely on "civil disentitlement" alleging that I was a "fugitive" from (failed to follow) orders of the trial court, the California Superior Court for Alameda County in case no. 2002070640.

5. My oppositions of Superior Court orders were based on asserting manifestly clear federal law rights, and where those preempted the alleged California law and jurisdiction involved, and were to attempt to stop, or mitigate, manifest unconscionable injustice, not only to me, but to a nonprofit involved (Skybridge Spectrum Foundation- see below) and to three persons incapacitated to act on these matters, where I acted as their "next friend" (at no cost and no conflict).

6. Civil disentitlement, as applied here, cuts off due process threshold access to justice in the courts involved and is an extreme sanction,[5]

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[5] From *United States v. Bescond*, 24 F.4th 759, 767-68 (2d Cir. 2021)

> Disentitlement is a sanction "most severe." *Degen v. United States,* 517 U.S. 820, 828, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996). In *Degen*, the Supreme Court considered a district court's inherent power to disentitle a claimant in a civil forfeiture suit. See id. at 821, 116 S.Ct. 1777. At stake was the "right to a hearing to contest the forfeiture of ... property, a right secured by the Due Process Clause." Id. at 822, 116 S.Ct. 1777. The Court cautioned against "the harsh sanction of absolute disentitlement." Id. at 827, 116 S.Ct. 1777. *A fortiori* the sanction is harsh when the due process right at stake is to defend liberty; so the issue is important.

But the California courts are self-entitled to use and use civil disentitlement in cavalier manner as reflected herein, as least to persons like me that challenged the court themselves. That, for good cause, tends to cause the "constructive" or actual "fugitive" actions from those courts that they seek so

and as I plan to show in my writ petition, one that must be far more clearly defined and narrowed, and should not apply at all in my case.

7. My case is a clear and extreme case of the extreme sanction of civil disentitlement. It is thus is a good vehicle for this Court to make the much-needed resolution of the Circuit Court splits, and clarifications, narrowing, etc. Civil disentitlement has never been clear in court precedents, including those of this Court.

8. This allows "activist" states and their courts, here California[6] to quash First, Fifth, and Fourteenth Amendment rights, and rights and requirements of various federal acts, including as shown in my case, outlined here, the Federal Arbitration Act and the Federal Communications Act. It allows this activism to make a mockery of the judicial branch and access to justice, and to act as tyrants.

9. The California Supreme Court Order (Exhibit A) denied review of two California Court of Appeal decisions: (i) Exhibit B-1 based on Exhibit B-2, together consolidating and dismissing over two dozen appeals, and (ii) Exhibit D, denial of rehearing of Exhibit B-1.

10. The appeals dismissed under Exhibit B-1 were principally of three decision orders of the trial court, the California Superior Court for Alameda County, in case no. 2002070640 (that contains a series of distinct actions) each entered on or about the same dates in mid-year 2021:

11. (1) One Superior Court order granted a liquidating

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prevent. It is rational to "flee" from any such court action. I don't as the records show, but it is rational for a party put in that position do so.

[6] I note cultural matters here not political ones. I have lived in Northern California for four decades. Here "power to the people" often means the few people with the power and immunity, the super-rich and some judges regardless of Constitutional law and purposes.

receivership over assets I obtained, owned and managed for over a decade, certain Federal Communication Commission ("FCC") licensee companies and their FCC licensees that under the Federal Communications Act, 47 USC 151 et seq., were exclusively for inter-state commerce licensed and regulated by exclusively FCC, not for intra-state use and commerce for the State of California (or any other State) which have no jurisdiction over the subject FCC licensees and licenses.

12. (2) A second Superior Court order granted a motion by the named plaintiff (Arnold Leong, a resident of Nevada), for a judgement based on an alleged valid arbitration result regarding the FCC licenses for interstate commerce, and granting some claims against me for my employment work for the licensee companies and licenses that were solely, under FCC rules and orders, for interstate "intelligent" and advanced transportation on land and water, which is not arbitrable under the Federal Arbitration Act ("FAA"). See *Viking River.... v. Moriana,* No. 20-1573, June 15, 2022, by this Court, and the earlier precedents it cites and explains regarding the exceptions in FAA 9 USC 1 for transportation workers.[7]

13. (3) The third Superior Court order granted a motion by the putative receiver in the *Leong v Havens et al.* case, to terminate and approve final accounting and fees (for millions of dollars) of a first "receivership pendente lite" over the same FCC licensee companies and licensees describe above, which had at all times the same lack of jurisdiction as described above, and which was for the alleged purpose of the "lite" arbitration described

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[7] Also, the FAA, in 9 USC 9, does not allow a State Court to hear and decide such a motion, where the arbitration agreement does not specify said state court to do so,[7] in which case the motion must be timely filed in US District Court. That applies here, and no such timely motion was filed.

above, which was not arbitrable under the FAA as described above.

14. These three California Superior Court Orders, the subject of my appeals to the Court of Appeal (listed in Exhibits B-1 and B-2) and my Petition for Review to the California Supreme Court (Exhibit E, denied in Exhibit A) are, as they state, interdependent.

15. The motions and motion grants of these interdependent Orders were in violation of the bankruptcy automatic stay, 11 USC 362, in the chapter 11 case *In re Skybridge Spectrum Foundation (et al.),* No. 21-bk-5-ELG in the US Bankruptcy Court, District of Columbia (aspects of which are now pending on appeal in the US District Court, District of Columbia, No. 21-cv-01551-TSC). All of the Skybridge property (including vested capital and profits member interests in membership in affiliated LLCs), were sought and granted by the plaintiff in the Superior Court case, by these motions and Orders. The automatic stay violations render the motions and grants void (and sanctionable). Neither the California Superior Court nor the California Court of Appeals, nor the California Supreme Court would address this matter of violation of the threshold bankruptcy code protection, the automatic stay and the results shown in case law, that these matters are void.

16. In addition, the above-noted "receivership pendent lite" where the noted arbitration was the official "lite" or litigation was asked for and granted not to protect the assets involved (the official purpose) but, first to review and overturn decisions of the arbitrators, to deny adding of new parties and claims, and second, to conduct and decide claims in the arbitration, both of which violate the Federal Arbitration Act and California receivership law.

17. In addition, under this Court's holdings, for 150 years,[8] California

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[8] See *Booth v. Clark*, 58 U.S. (17 How.) 322 (1855) and following cases.

State Court and a California Court receivership have no jurisdiction over assets and legal actions outside of the State of California, and not ancillary receiverships in any other State was sought or obtained.

18. These three Orders and the underlying receiverships (the first pendent lite one, and the second liquidation one) involve, as the principal target - Skybridge Spectrum Foundation. Skybridge had the most assets and claims, when these actions began, of all of the legal entities put into these receiverships. Also, Skybridge took actions that were the sole reason that the assets of their other legal entities in the receiverships exist at all- certain actions before the FCC under specific rules).

19. Skybridge is an tax-exempt foundation, granted tax exception by the IRS under IRC 501(c)(3) in a grant letter that provided, as all such grants do, that none of the assets can be used for private inurement or profit, but must he kept in the effective charitable trust for the IRS approved public-benefit purposes, which for Skybridge was to support and advance safe and efficient transportation nationwide on land and water, and to monitor and protect the environment, and to pursue related charitable public benefit work. These three Orders and these two receiverships, directly violated this IRS grant, law, and restriction. They also violated statutes of the State of Delaware (where Skybridge was formed, is domiciled, and governed) and California that parallel the IRS law and prohibitions just described.

20. The aspects of my case outlined above (and others not in the above outline) make create a highly extreme case of application of the subject civil disentitlement doctrine to bar due process law, threshold access to justice, where the doctrine to begin with is extreme (see footnote 1 above).

12. REASONS TO GRANT THE WRIT

- THE COURT SPLITS AND CONFUSION ON CIVIL DISENTITLEMENT DOCTRINES, GOING ON FOR DECADES, NEED RESOLUTION.

- CIVIL DISENTITLEMENT DOCTINES ARE A COMPONENT AND A SOUND MEASURE OF THE OVERALL "JUDICIAL STATE" SUMMARILY DESCRIBED IN THE QUESTIONS PRESENTED "PREFACE" ABOVE IN WHICH THE SPLITS AND CONFUSTION ARE EXPANDED.

1. See the Preface in the Questions Presented, and the Statement of the Case above. This case is an extreme case of suppression and taking of liberties and property grounded in due process of law by vague state law and state court civil disentitlement doctrines (there is no one or coherent doctrine) and is thus a good vehicle for to address these splits and confusion. Said *state* doctrines in many cases, like mine, follow *federal* disentitlement doctrines, discussed below.

2. Civil disentitlement doctrines in California case law are summarized in Attachment 2 below, an article by an exert attorney and law firm. As seen, it is based on the inherent authority of the courts, with no clear limits or definition. The expert author, drawing from a list of prior publications on the topic (listed at the article's end) states one after another vague non-defined criteria whereby California Courts, may if they like on a given day and case, disentitle an appellant and dismiss the appeal, and suggests (with no indication of the legal reasons why) that asserting several may help an attorney that attempts disentitlement.

In this article, Attachment 2 below, one criteria, reported as second most successful to get disentitlement *is where the appellant challenges the appealed order as void -- but that is the proper and primary challenge to make* in an appeal (and I made it also in the Superior Court to begin with) where the challenged lower-court order violates federal Constitutional protections, or is subject to federal including FCC preemption, or violates the federal

bankruptcy automatic stay under 11 USC 362. All of those are defenses I raised on appeal, against disentitlement. See Exhibits C, D and F.

This, alone, shows that civil "disentitlement" should be "disentitled."

3. Courts have ample means to ward off and sanction abusive appeals, by attorneys or pro se parties, under relevant statutes and rules, without use of judge's "inherent power" in the undefined "disentitlement doctrines" that invites arbitrary, capacious, discriminatory, unfair and unequal treatment. For example, in federal courts, FRCP 11 and FRAP 38 are applied against attorneys and pro se parities, and State courts have similar rules.

Judges should not make law by judge-made "doctrines." Law making should be left to the legislative branch, and if that is inadequate, then the legislators can be petitioned to fix it, and new ones can be elected. Judge may indicate such inadequacy in case decision dictum but should go beyond that. "Civil Disentitlement" is a prime example of this impermissible excess.

4. The "rule of law" is based on statutes and rules, duly passed, not "inherent" undefined power of judges. See the Constitutional Congress proceedings referencing the Magna Charter[9] (which in turn largely rests on the Forest Carta)[10] (See "Preface" in Section 1 Questions Presented. "Due

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[9] When the First Continental Congress met in 1774 to draft a Declaration of Rights and Grievances against King George III, they asserted that the rights of the English colonists to life, liberty and property were guaranteed by "the principles of the English constitution," a.k.a. Magna Carta. On the title page of the 1774 *Journal of The Proceedings of The Continental Congress* is an image of 12 arms grasping a column on whose base is written "Magna Carta."

[10] I discuss the Forrest Carta and Magna Carta (these generally being ignored in the U.S.) in an online article on Medium at https://medium.com/@wrrnvns/false-us-government-and-law-was-not-and-is-not-built-on-the-magna-carta-and-charter-of-forest-800b150958c6

process of law" requires law, statues, and rules, to start with-- not a return to "inherent" powers of king-like judges, which the gravamen of the civil disentitlement doctrine. On Fifth and Fourteenth Amendments due process and the Magna Carta, as presented herein, see also this footnote.[11]

5. The Constitution's Tenth Amendment (see Table of Authorities above) does not allow the government to "entitle" the People of any right reserved for the People, including all of the rights under the parts of the Constitution listed in the Table of Authorities above. Thus, the government cannot "disentitle" any of the People of these rights. The "disentitlement doctrine" turns this on its head. These Constitution based rights are all at issue and all deprived by the subject civil disentitlement decisions, Exhibits B-1 with B-2, and Exhibit A. The following provide further details.

(1) On First Amendment rights protections and deprivations, based on Noree Pennington and other First Amendment applications, see App. p. 79 referencing FOIA. FOIA is based on the First Amendment. Also, see in this Petition the references to the *Noerr Pennington* case and doctrine (a party cannot be found in violation of state law when petitioning a federal agency when not found to be sham petitioning). The subject California disentitlement decisions involved, as some charges of my misbehavior of the State Superior Court's alleged nationwide bankruptcy-superseding authority,

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[11] "The equivalent of the phrase 'due process of law,' according to Lord Coke, is found in the words 'law of the land,' in the Great Charter, in connection with the writ of habeas corpus, the trial by jury, and other guarantees of the rights of the subject against the oppression of the crown."); *Walker v. Sauvinet,* 92 U.S. 90, 93 (1875) ("Due process of law is process due according to the law of the land."); see also *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *Hovey v. Elliott,* 167 U.S. 409, 415–17 (1897); *Horne v. Dep't of Agric.,* 135 S. Ct. 2419, 2426 (2015) ("The colonists brought the principles of Magna Carta with them to the New World....").

that I petitioned the FCC in matters related to the Superior Court's alleged nationwide authority via a receivership, and that in addition I submitted FOIA requests to the FCC on matters related to the receivership.

(2) On Fifth Amendment rights protections and deprivations, see App. pp. 18, 29, 66, 67, 70.

(3) On Tenth Amendment rights protections and deprivations, see parts in this Petition on the Tenth Amendment. Without citing the Tenth Amendment in my pleadings (Exhibits C, E, and F) on the disentitlement decisions (Exhibits B-1 that references B-2, D, and A) I submitted arguments on the principle I submit in this petition citing the Tenth Amendment (quoted in the Table of Authorities above).

(4) On Fourteenth Amendment rights and deprivations, see -- same as (2) above. The Fourteenth Amendment follows and applies to States the Fifth Amendment on due process of law and its ramifications.

(5) On the Bankruptcy Clause (Art. 1, Sec, 8) rights and deprivations see the paragraphs above on the disentitlement orders focus on bankruptcy actions I took for protection of Skybridge Spectrum Foundation, a nonprofit charitable organization.

(6) On the Contracts Clause (Art. 1, Sec. 10) rights and deprivations. This is based on the legal entities in the State Superior Court alleged-valid receivership, obtained and maintained by Arnold Leong (with Susan Uecker as his receiver-agent) being under Contract with the State of Delaware for their existence-- their charters issued by Delaware under its sovereign rights. States that issue such charters are deemed to be entering Contracts, under the Contracts Clause, with the founders, owners and managers of the legal

entity chartered. This has been clear since 1891, see footnote.[12] / (These California Courts disentitlement decisions defend and promote the following alleged contract claim of Leong- see this footnote.[13] Assumptions in the mind are not contracts, and no amount of pretextual attorney drafting, around the

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[12] The corporate charter is a contract between the state and the corporation. *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819). Under the Contracts Clause of Article I of the Constitution, no state can pass any law "impairing the obligation of contracts." In this *Dartmouth* 1816 case, the question arose whether a state could revoke or amend the Dartmouth College corporate charter. The New Hampshire legislature sought to turn this private college, operating under an old royal charter from England, into a public institution by changing its board. The case wound up in the Supreme Court where Chief Justice John Marshall ruled that the legislature's attempt was unconstitutional, because to amend a charter is to impair a contract. (Justice Joseph Story, concurring, instructed that "If the legislature mean to claim such an authority [to alter or amend the charter], it must be reserved in the grant. The charter of Dartmouth College contains no such reservation...." Thereafter, some states wrote into charters language giving legislatures the authority to modify corporations' charters in the future, but the charters remain private-State contracts.

[13] As for the "oral partnership" "contract" claim that Arnold Leong, in the California State Court case and its controlled arbitration that are at issue here, asserted as his self-stated "gravamen" claim (the others being stated as subsidiary and dependent), in his deposition, Leong testified (and never recounted) the following (this is not under any confidentiality order or obligation): From: Deposition of Arnold Leong, Vol. I & Vol.II; 12/11/2007, in the *Leong v. Havens* arbitration, p. 122: The "Q" (questions) are by my legal counsel at the time, Patrick Richard of the Nossaman Firm. The "A" (answers) are by Leong under oath (underlining added here).

> Q. Do I understand that in 1998, the end of 1998, that the first time you and Mr. Havens discussed the possibility of bidding on [FCC] VPC licenses he offered you an equal partnership, equal ownership position in a partnership?
>
> A. We were supposed to be equal partners going into the auction.
>
> Q. Is that something he [Havens] offered or something you requested?
>
> A. I'm thinking he didn't offer it. I didn't request it. It was presumed....

client's sworn testimony can cure such a nonexistent contract. The Court of Appeal in its disentitlement decision Exhibit B-2, at App. p. 7, references this alleged "oral agreement" contract.

(7) On the Commerce Clause (Art. 1, Sec. 8, Clause 3) rights and deprivations, see the following that deal with FCC preemption, which is based on the Commerce Clause (the FCC licenses at issue are for interstate radio (wireless) telecommunications, not intra-state telecommunications, which is under express and field preemption by the Federal Communications Act, and in this case, is also based on thousands of final FCC grants, beyond any time and right to challenge, issued at times from a decade or two in the past. On FCC preemption and related (FCC exclusive jurisdiction, FCC final actions beyond challenge, etc.) see App. pp. 19, 20, 32, 64, 66, 67, 69, 72, 73, 76, 77, 78, 79, 80, 84, 85, 86.

6. The California Court of Appeal found my two-dozen plus appeals on diverse orders of the Superior Court were disentitled, dismissing them after first consolidating them -- where the Superior Court case real party, Arnold Leong, and his agent, a receiver Susan Uecker, and the Superior Court itself, all violated the bankruptcy automatic stay under the Skybridge Spectrum Foundation's involuntary chapter 11 bankruptcy case in 2021 (see Attachment 1 hereto, a joint status report to the Delaware US District Court) and also violated the automatic stay in the Skybridge voluntary bankruptcy case in 2016 (pending on appeal in the Delaware District Court in which the status report, Attachment 1, was filed).

Thus, the California Court of Appeals ruled, and the California Supreme Court accepted by denying review, that the real-party plaintiff, Leong and his agent, Uecker and the Superior Court could violate the heart of federal bankruptcy law, under the Constitution's bankruptcy clause (see

Table of Authorities above) with impunity, and when I cited this Constitutional law in challenging the Superior Court actions, in that Court and in the appeals, I am "disentitled" - the "final solution" in this sort of "judicial state." This causes reverse "supremacy" where the State is supreme over federal law, including the federal Constitution. That should not stand.

In this regard, the Court of Appeal disentitlement decision, Exhibit B-2 (see Exhibits List in the Table of Contents) (at App. p. 3), is based as it states on its earlier disentitlement decision, Exhibit B-2 (at App. p. 5). The California Supreme Court denied in Exhibit A (at App. p. 1), my petition for review, Exhibit F (at App. p. 59) of the B-1 plus B-2 decisions. Exhibit B-1, based on Exhibit B-2 found disentitlement by "*at least*" (see B-2, restated in B-1)[14] my actions to seek protection under chapter 11 of the federal bankruptcy law for the nonprofit charity I founded, capitalized by charitable donations, and served as manager and director (on a volunteer no-compensation basis at all times). See the preceding paragraph conclusions.

7. I reference and incorporate herein the following already filed in this court in commencing this case. See my MOTION FOR EXTENSION OF

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[14] "At least" means that this is all the Court could state with any assurance. All else it indicated were below this standard. The disentitlement decisions, B-1 with B-2 (allowed to stand by Exhibit A) could not muster a to deny or address the many facts and arguments I raised, in opposing the motion to consolidate and dismiss under disentitlement by the so-called "neutral" receiver, Susan Uecker, obtained and kept by the sole real party plaintiff, Arnold Leong. Under California case law, a court cannot fail to address a parties' claims. See Attachment 3 below (referenced and incorporated herein). Failing this further shows that California civil disentitlement is beyond all law, even California's governing case law. It is, as I allege herein (see the Preface in Section 1), a function of the "judicial state" imposing "I-Law" against the foundations of this nation's Constitutional law based on the Magna Carta and Forrest Carta, "c-Law" as I call it (see *Id.*).

TIME TO FILE PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5) granted by Justice Kagan, under par. 1(a):

> "Exhibit C hereto is my Petition for Review provided, in addition to attaching B-1 and B-2 above, because it shows substance of why I submit this Motion for An Extension of Time and seek to file a Petition for a Writ of Certiorari to this Court as outlined below.

This just noted Exhibit C, the Petition for Review I filed with the California Supreme Court, submits additional reasons to those in this Petition's text (and the exhibits included below). *This is also Appendix ("Exhibit") E to this Petition, among the Appendixes.*

8. Starting decades ago, and continuing to this day, three are several lines of splits in the federal circuit courts on the fundamentals of civil disentitlement law. Said federal court civil disentitlement law applies in many state court disentitlement cases including my case.[15]

9. (A) One line of split is summarized in a year 2021 article in the New York Law Journal,[16] quoted here (underlining added):

[p 1] In this article, we discuss the Second Circuit's recent decision in *United States v. Bescond,* 7 F.4th 127 [24 F.4th 759] (2d Cir.

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[15] State courts applying disentitlement law against a defendant, or defendant-appellant, as in my case -- who is alleged to be a "fugitive" for defending with federal Constitutional rights and protections, or federal statutory rights and protections, in federal court actions or federal agency actions, or in other state courts -- must apply federal disentitlement law as is applied by federal district courts and circuit courts of appeal in cased under federal subject matter jurisdiction.

[16] The New York Law Journal, Nov. 3, 2022, "Who Is a Fugitive? The Second Circuit Interprets the Fugitive Disentitlement Doctrine" by Elkan Abramowitz, a former chief of the criminal division in the U.S. Attorney's Office for the S.D. N.Y. and Jonathan S. Sack, a former chief of the criminal division in the U.S. Attorney's Office for the E.D. N.Y. Copy at

https://www.maglaw.com/media/publications/articles/2021-11-03-who-is-a-fugitive-the-second-circuit-interprets-the-fugitive-disentitlement-doctrine

> 2021)[17] which held that the defendant, Muriel Bescond, a French citizen charged with commodities fraud, was not a "fugitive." [....]
>
> On appeal, a divided panel of the Second Circuit held that disentitlement was an appealable "collateral order" .... [....]
>
> [p 3] In *Bescond*, the Second Circuit's holding departs from decisions in the Sixth and Eleventh Circuits, which held that appeals from application of the fugitive-disentitlement doctrine were not appealable as collateral orders. If the split on appellate jurisdiction remains, the Supreme Court may ultimately have to decide the issue.

Where a decision applying disentitlement law allows an appeal, then there is no disentitlement-disallowance of the appeal, unlike in my case. Reviewing these Second, Sixth and Eleventh Circuit cases cited above at this time, there is no change in the stated split in the article above. This is shown as follows.

(1) The Second Circuit *Bescond* decision has not been changed but is cited as still good law. See next footnote.[18]

(2) The Sixth Circuit case indicated in the quoted article above (and cited in *Bescond*) is *United States v. Martirossian* (*In re Martirossian*), 917 F.3d 883 (6th Cir. 2019). The holdings in this case, finding no collateral order

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[17] *Bescond* is founded on civil disentitlement law including holdings by this Supreme Court. See footnote 1 above.

[18] See: (1) *Tucker v. Faith Bible Chapel Int'l*, No. 20-1230 (10th Cir. June 7, 2022), at 67 ("*see also United States v. Bescond* , 7 F.4th 127, 131 (2d Cir. 2021) (applying the collateral-order doctrine in permitting an interlocutory appeal by a private party on the issue of fugitive status).") This at least indicates that the Tenth Circuit agrees with the Second Circuit on the *Bescond* holdings, which would add weight to the circuit split noted in the above quoted article. (2) *United States v. Cornelson,* 15 Cr. 516 (JGK) (S.D.N.Y. Mar. 31, 2022) also cites and follows *Beccond.*

appeal right in a fugitive disentitlement decision, also has not changed and is cited as still good law. See next footnote.[19]

(3) The Eleventh Circuit case indicated in the quoted article above (and cited in *Bescond*) is *United States v. Shalhoub*, 855 F.3d 1255 (11th Cir. 2017). The holdings in this case, finding no collateral order appeal right in a fugitive disentitlement decision, also has not changed and is cited as still good law. See next footnote.[20]

I have found no decision from this Supreme Court to resolve the above summarized splits and confusion. It would have shown up in the research that led to the cases footnoted in footnotes 10, 11, and 12 (which are very recent, as shown) or in other research.

In addition, each of these cases, and many others in federal and state courts, show confusion and other "splits" on civil disentitling law and its application for almost obvious reasons: said law based on vague "inherent authority" of the courts, with its extreme power and effects (see footnote 1 above) pitted against the most protected rights commencing with due process of law, breeds confusion and a variety of results, some of which are punishments which is not a valid purpose of civil disentitlement to begin with, as in my case. "Power tends to corrupt; absolute power corrupts absolutely" (first attributed to Lord Aton, 1887).

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[19] See *United States v. Elsea,* 2:20-CR-00074-1-JRG-CRW (E.D. Tenn. June 16, 2022) at 1 (" "Without the final order rule, cases might bounce back and forth between the trial and appellate courts, as disgruntled litigants seek to reverse each and every ruling, no matter how minor." *United States v. Martirossian* , 917 F.3d 883, 886 (6th Cir. 2019).")

[20] *See United States v. Moran*, No. 21-11083 (11th Cir. May 2, 2022) at 3 ("The district court denied Saab Moran's motion to vacate his fugitive status and to specially appear due to the fugitive disentitlement doctrine..." *United States v. Shalhoub* , 855 F.3d 1255, 1259 (11th Cir. 2017)....")

(B) Other lines of splits, and other confusion in the Circuit Courts in civil disentitlement law (other than under '(A)' above) are explained in the following "Sword and Shield" article. While this article is about 15 years old, it shows these problems were deep and persistent at that time, and the above shows they continue. I have found no decision from this Supreme Court to resolve these other splits and confusion, either.

From: Martha B. Stolley, "Sword or Shield: Due Process and the Fugitive Disentitlement Doctrine," 87 J. Crim. L. & Criminology 751 (1996-1997) (copy online by "googling") (underlining added):

[753] By contrast, dismissal of a criminal fugitive's civil claim or the exercise of the disentitlement power in a civil setting is inherently more complex and conceptually elusive. Hence, the federal courts of appeal have split on the issue, with a bare majority holding that the doctrine is applicable in civil forfeiture actions. 21/ | 21/ See infra notes 43-92 and accompanying text. [....]

[755-56] C. DISENTITLEMENT IN THE CIVIL CONTEXT.

The Supreme Court has not extended *Molinaro* to civil matters relating to a criminal fugitive. However, the Court's decision in *Molinaro* did not indicate whether application of the disentitlement doctrine should be restricted to criminal cases. In fact, many federal appellate courts have claimed that the doctrine should apply with greater force in civil cases where an individual's liberty is not jeopardized. 47/ Some Circuit Courts of Appeals have extended the doctrine to bar a fugitive in a separate but related criminal case from seeking affirmative relief from the court in a civil proceeding.48/ Still others have invoked the rule in civil in rem proceedings.49/

47/ See, e.g., *Conforte v. Commissioner*, 692 F.2d 587, 589 (9th Cir. 1982).

48/ Id. at 589-90 (barring taxpayer from contesting...); *Broadway v. City of Montgomery*, 530 F.2d 657, 659 (5th Cir. 1976) (refusing to hear fugitive's appeal seeking d...); *Doyle v. United States Dep't. of Justice*, 494 F. Supp. 842, 845 (D.D.C. 1980) (per

curiam), afftd, 668 F.2d 1365 (D.C. Cir. 1981) ("...the courts may invoke their inherent equitable powers to refuse... fugitives... under the Freedom of Information Act.").

49/ See, e.g., *United States v. Eng*, 951 F.2d 461 (2d Cir. 1991); 7707 S.W. 74th Lane, 868 F.2d at 1214; *United States v. Pole No. 3172*, 852 F.2d 636 (1st Cir. 1988); *United States v. $129,374 in United States Currency*, 769 F.2d 583 (9th Cir. 1985); *United States v. $83,320 in United States Currency*, 682 F.2d 573 (6th Cir. 1982).

10. Adding to and in accord with the above, disentitlement in improper in my case (and like cases) as follows: In *United States v. Veliotis,* 586 F. Supp. 1512, 1514 (S.D.N.Y. 1984) the court added a factor that should be considered before using the Fugitive Disentitlement Doctrine, where a fugitive defendant seeks to vindicate a right vouchsafed by the United States. Id at 1515. See, e.g., *United States v. Tunnell*, 650 F.2d 1124, 1126 (9th Cir. 1981) (holding that a dismissal of an appeal where a conviction may have been based on an *unconstitutional presumption* was unjustified); *United States v. Tapia-Lopez,* 521 F.2d 582, 583 (9th Cir. 1975) (holding that the defendant's failure to object to a jury instruction before conviction did not preclude the point for appeal).

ATTACHMENTS. The Attachments, referenced and incorporated into text above, follow below, before the Conclusion.

[Go to next page]

"ATTAHMENT 1"

Referenced above in section: 4 Directly Related Proceedings.

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April 1, 2022

VIA HAND DELIVERY
The Honorable Colm F. Connolly
Chief Judge, United States District Court
District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street, Unit 31, Room 4124
Wilmington, DE 19801-3555

Re: Skybridge Spectrum Foundation
Appeal Case No. 16-00633-CFC

Dear Chief Judge Connolly:

This firm represents appellant Skybridge Spectrum Foundation ("Skybridge").

I write in response to your Order dated April 28, 2021 (D.I. 37) (copy attached as Exhibit A) which granted the parties' joint request to place this appeal in suspense subject to further activity in the involuntary Chapter 11 case styled *In re: Skybridge Spectrum Foundation aka Sky Tel Joint Venture (with assets outside of California), [Alleged] Debtor*, pending before the United States Bankruptcy Court for the District of Columbia, Case No. 21-00005-ELG, as well as the Pending Actions listed below.

This is the 26th joint status report.[1]

PENDING ACTIONS

A. The California Receivership

In November 2015, the California Superior Court ordered a receivership over Skybridge and seven for-profit Delaware limited liability companies (the "LLCs") while an arbitration remained pending. On February 4, 2021, the California Superior Court granted, over Havens'

[1] This report is intended to provide a general summary only. All parties reserve all rights as to any statements made herein.

objection, Leong's motions to confirm an arbitration award and for the imposition of a second receivership over the same companies. Havens appealed to the California Court of Appeal. The appeals were dismissed. The dismissals are subject to a petition for review pending before the California Supreme Court.

B. The Ninth Circuit Appeals

In 2019 and 2020, Havens filed four appeals in the Ninth Circuit that involve Skybridge and the LLCs. These appeals relate to decisions issued by the United States District Court for the Northern District of California: Cases No. 2019cv16043, 2020cv17455 and 2020cv17456 (currently consolidated), and 2020cv17481. Recently, the Ninth Circuit has set a new briefing schedule in the consolidated cases, which remains pending. The Ninth Circuit recently dismissed the appeal in the last case. The deadline by which a motion for rehearing may be filed remains pending.

C. The Skybridge and SkyTel Joint Venture Involuntary Bankruptcy

On January 5, 2021, Warren Havens, as an individual creditor, filed an involuntary Chapter 11 bankruptcy petition against the SkyTel Joint Venture, including Skybridge, in the United States Bankruptcy Court for the District of Columbia, Case No. 21-00005-ELG, styled *In re Skybridge Spectrum Foundation aka Sky Tel Joint Venture (with assets outside of California), [Alleged] Debtor*. On June 3, 2021, the D.C. Bankruptcy Court granted a motion to dismiss that had been filed by Susan Uecker, acting as California Superior Court-appointed receiver for Skybridge. Havens appealed the dismissal to the United States District Court for the District of Columbia, Case No. 1:21-cv-01551-TSC, which appeal remains pending. Havens' motion to transfer venue of the appeal of dismissal to this Court was recently denied.

D. The Delaware Chancery Court Action

On January 13, 2021, Havens, individually, filed in the Delaware Chancery Court a *Petition for Dissolution Under DGLC § 273 of Skybridge Spectrum Foundation, a Delaware Corporation, and The SkyTel Joint Venture Subsuming the Corporation*, in the case styled *Warren Havens v. Arnold Leong, (Skybridge Spectrum Foundation, nominal defendant)*. Case No. 2021-0033-PAF. On December 3, 2021, the Chancery Court granted-in-part motions to dismiss filed by Leong and Receiver Uecker (purporting to be acting for the nominal defendant) but stayed the case as to a final disposition pending conclusion of the California Superior Court receivership case. In the interim, the Chancery Court directed the parties to provide semiannual status reports. On December 23, 2021, the Chancery Court denied Havens' request for reargument. Havens timely appealed the Chancery Court's December orders to the Delaware Supreme Court, which on February 7, 2022 dismissed the appeals as interlocutory. The time for Havens to file a petition for a writ of *certiorari* before the United States Supreme Court of the orders of the Delaware Supreme Court remains pending.

E. The Federal Communications Commission Action

On January 28, 2021, Havens, for himself and a company he owns, Polaris PNT 1 PBC LLC, a Delaware public benefits company, commenced before the FCC a petition primarily requesting a determination that Leong and Receiver Uecker were not qualified to have obtained controlling and other interests in the FCC licenses that were subject to the Skybridge bankruptcy and the California receivership. Leong opposes the petition. This matter is pending before the FCC in docket EB 11-71.

F. The Nevada State Court Action

Many years ago, a case was filed in Nevada state court case involving Warren Havens and Environmentel LLC, as plaintiffs, and Thomas Kurian, *et al.*, as defendants. (Case No. A688040, Clark County, Eighth Judicial District Court). The case involved several FCC licenses in the name of Havens, one FCC license in the name of Environmentel LLC, part of which had been assigned to Skybridge, and a related FCC license of defendant Kurian. In early 2021, the court issued orders involving the disposition of funds awarded in favor of plaintiffs. In July 2021, Havens appealed those orders to the Nevada Supreme Court on grounds, *inter alia*, that they were void for violating the bankruptcy automatic stay. (Case No. 83196). The Nevada Supreme Court denied the appeal. That decision is currently subject to a petition for *en banc* reconsideration and a related request for a stay filed by Havens. Those filings were opposed. The time for Havens to respond to the opposition remains pending.

G. The United States Tax Court Case

Item G is a newly added Pending Action. On September 5, 2017, Havens, as Tax Matters Partner, filed in the United States Tax Court a petition styled *Intelligent Transportation & Monitoring Wireless LLC, Warren C. Havens, Tax Matters Partner, Petitioners, v. Commissioner of Internal Revenue, Respondent*, Docket No. 19514-17. The LLC in this case, Transportation & Monitoring Wireless LLC, and the "other related LLCs," in which Skybridge holds a direct or indirect interest, were subject to the original California Receivership action and are subject to other Pending Actions described above. Pursuant to a motion filed by the Service on March 8, 2022, Havens understands that the Service is examining a potential jurisdictional issue: whether, during the years at issue, there was a joint undertaking by petitioner LLC, Transportation & Monitoring Wireless LLC, and other related LLCs, which created a separate entity for federal tax purposes under Treas. Reg. § 301.7701-1(a)(2).

OTHER ACTIVITY

H. Status Report to Delaware Bankruptcy Court

On March 8, 2022, pursuant to a request from the Delaware Bankruptcy Court occasioned, presumably, by Judge Sontchi's upcoming departure from the bench and the reassignment of Skybridge's underlying bankruptcy case to Judge Dorsey, (Bankr. D.I. 151), undersigned counsel provided a status report to Judge Dorsey. (Bankr. D.I. 152). The report was not a joint status

report. A copy of the Order of Reassignment is attached hereto as Exhibit B and a copy of the March 8, 2022 status report to Judge Dorsey is attached hereto as Exhibit C.

CONCLUSION

The parties have conferred and Dr. Leong does not object to Skybridge's proposal to further maintain the suspense status quo while any of the Pending Actions remains pending, subject to either party's right to request that Your Honor recall this matter from suspense at any time.

In closing, the parties remain available at the Court's convenience.

Respectfully submitted,

/s/ E.E. Allinson III

Elihu E. Allinson, III
(Del Bar ID 3476)

EEA/hmc

cc: Richard W. Osman, Esq., counsel for Appellee (via e-mail)
Peter J. Keane, Esq., counsel for Appellee (via e-mail)

"ATTACHMENT 2"

Referenced in section" 12. REASONS TO GRANT THE WRIT, para. 2.

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https://www.manatt.com/Manatt/media/Documents/Articles/No-appeal-for-you.pdf

(Underlining added)

BENJAMIN G. SHATZ

Manatt, Phelps & Phillips LLP

May 5, 2020

No appeal for you!

Just as every dog has his day, every litigant — best in show, purebred, cur, or junkyard biter — can always exercise that right, right? Well, actually not. In exceptional cases, a litigant can so egregiously misbehave that the right to appeal can be lost. We're talking here, of course, about the civil disentitlement doctrine.

Shutterstock

EXCEPTIONALLY APPEALING

The right to appeal is a cornerstone of our litigation process. The assumption in every case is that the losing party gets at least one appeal as a matter of right. And that universal right to appeal attaches regardless of who that party might be or what they might have done (before and during the litigation). Thus, whether a party is saintly, merely good, morally neutral, bad, or downright evil, there's always a right to appeal. Just as every dog has his day, every litigant -- best in show,

[Continued]

purebred, cur, or junkyard biter -- can always exercise that right, right? Well, actually not. In exceptional cases, a litigant can so egregiously misbehave that the right to appeal can be lost. We're talking here, of course, about the civil disentitlement doctrine.

Never heard of it? Well, it's pretty rare. Given how boorishly parties often behave during litigation, just what sort of misconduct would motivate a court to impose the "appellate death penalty" of disentitlement? And if sought, how likely are courts to apply the doctrine to dismiss an appeal? "Enquiring minds want to know." (And riffing on the National Enquirer is appropriate, given the outrageousness required.)

Yes, misbehavin'. Let's start with the good stuff -- meaning the bad behavior. We reviewed civil appeals for motions to dismiss under the disentitlement doctrine. (Note that criminal and dependency cases have their own disentitlement doctrines.) Of about 100 opinions, spanning the past 80 years, only a handful are published. *MacPherson v. MacPherson*, 13 Cal. 2d 271, 277 (1939) ("A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state."); *Stone v. Bach*, 80 Cal. App. 3d 442, 444 (1978) ("an appellate court may stay or dismiss an appeal by a party who stands in contempt of the legal orders and processes of the superior court."); *Alioto Fish Co. v. Alioto*, 27 Cal. App. 4th 1669, 1683 (1994) ("Although the power to stay or dismiss an appeal is typically exercised when the litigant is formally adjudicated in contempt of court, the same principle applies to willful disobedience or obstructive tactics without such an adjudication."); *Say & Say v. Castellano*, 22 Cal. App. 4th 88, 94 (1994) ("an appellate court may stay or dismiss an appeal by a party who has refused to obey the superior court's legal orders"); *TMS, Inc. v. Aihara*, 71 Cal. App. 4th 377, 378 (1999); *Ironridge Glob. IV, Ltd. v. ScripsAmerica, Inc.*, 238 Cal. App. 4th 259, 262 (2015) (dismissal of appeal "is the appropriate remedy for defendant's flagrant disregard for the order which is the subject of this appeal"). We noticed a significant uptick in disentitlement cases over the past decade.

Nine basic categories of misconduct emerged from the cases. These read like the listing of Deadly Sins (or may be chanted in the cadence of the plagues at a seder): Obstruction, Disobedience, Willfulness, Vindictiveness, Contempt, Sanctions, Failure to Appear, Abuse of Process, Challenging the Appealed Order's Validity.

To flesh these out a bit more, Obstruction is when an appellant improperly hinders the legitimate efforts of a movant to enforce a court's order or judgment. This often takes the form of ignoring discovery requests, evading service, and playing delaying games during litigation. Next, Disobedience is flouting a court's order by ignoring it or acting contrary to it. One typical move that combines Obstruction and Disobedience is the classic Failure to Appear at a court-ordered hearing or meeting of the parties.

Willfulness comes into play when it is plain that the misconduct is not a matter of mistake, but rather an intent to be obstructive or disobedient, without mitigation or rectification. This often appears through repeated, flagrant, even defiantly admitted misdeeds. This takes us to

Vindictiveness, which is conduct improperly responsive to lawful action -- for example, seeking sanctions, or filing a complaint or cross-complaint, against a party who is acting legally.

We descend further. Contempt and Sanctions are obviously forms of punishment already imposed to hold a party accountable for misconduct in the action or a related action. Abuse of Process is when a party misuses legal process to advance unlawful interests, such as by filing frivolous or numerous motions, or setting up shell companies to hide assets. And to conclude, there's the ever popular form of meta-contumaciousness: Challenging the Order that was disobeyed by arguing it is void.

No one should be surprised to learn that disentitlement comes up most commonly in family law appeals. Family law cases typically involve a lot of appearances, a lot of preliminary orders, and a lot of very unhappy litigants -- of the sort who may take pride in acting offensively as a defense mechanism to highly unpleasant circumstances.

Ultimately, the common theme is that a party who thumbs his nose at the system -- orderly litigation and the rules of the road -- may forfeit the right to invoke the crown jewel of that very system (the right to appeal).

No Kindergarten Cop'ing. The misconduct just enumerated probably sounds familiar. Why then aren't more appeals brought by the "bad guys" not dismissed? Like Family Feud answers, here are the four most common reasons courts provide for denying a motion to dismiss for disentitlement. One: Appellate courts prefer to resolve disputes on the merits. This avoids getting into the messy business of figuring out whether there really was misconduct and, if so, how bad it was. (This is the basis for a third of all denials.) Two: Hey, turns out there was no bad conduct. Sometimes the alleged bad guy isn't really the bad guy. (This too is the basis for a third of all denials.) Three: The record isn't clear enough to conclusively find misconduct. Four: OK, there was some misconduct (even disobedience, etc.), but it really wasn't bad enough to take away the right to appeal.

Chances Are. Having now laid out the reasons for applying and not applying disentitlement, how does it play out? Our review shows that motions to dismiss an appeal under the disentitlement doctrine are granted only 24% of the time and denied 74% of the time. (OK, math whizzes, the missing 2% are cases where the motions are not addressed at all, and thus effectively denied. So if you like, we could bump up the denial figure to 76%.) This 76% denial rate is similar to the 80% odds of a decision being affirmed on appeal. Put differently, respondents generally have an 80% chance of winning on appeal, but roughly the same odds against getting an appeal dismissed on a disentitlement motion.

The most common basis for a disentitlement motion is Disobedience, which occurred in nearly 40% of cases and had a 46% success rate. At the other extreme, only 5% of motions rested on Vindictiveness, but all of them were granted. The second most-likely-to-win basis for dismissal is Challenging the Order as Void (78%). The least-likely-to-win dismissal motions are premised on prior Sanctions awards (only 17%).

As is so often the case in successfully seeking to punish, a combination of misdeeds ups the odds. Thus, although 67% of motions based on Willfulness do the trick, and 50% based on Abuse of Process succeed, combining both grounds raises the success rate to 71%. Similarly, combining Willfulness with Challenging the Order's Validity has a 75% success rate. This rises to 89% when combining Willfulness (67% alone) with a Failure to Appear (69% alone). Numbers games aside, the point remains that synergy (seeking disentitlement on multiple grounds) often serves as a force multiplier.

Thus, we see that appeals are like Al Yeganeh's infamous Manhattan restaurant, Soup Kitchen International: Sure, anyone can order, but if you misbehave and violate the rules, it may be No Soup (or Appeal) for you!

Bibliography: Tillett, "The Disentitlement Doctrine: A potent secret weapon to destroy your opponent's contemptuous appeal," Advocate (Dec. 2017); Fleischman & Ettinger, "Recent Caselaw Affecting the Disentitlement Doctrine and Civil Appeals," 39 L.A. Lawyer 10 (Apr. 2016); Reddie, "The Disentitlement Doctrine: A Trap for Unwary Judgment Debtors in Civil Appeals," 28 Cal. Litig. 16 (2015); Tashman, Brocket & Wilcox, "Flight or Fight: Originally, invoked in criminal cases, the fugitive disentitlement doctrine is equally applicable in civil cases," 29 L.A. Lawyer 44 (Oct. 2006). n

Exceptional research assistance provided by Manatt associate Sancho Accorsi, who enjoys mind-numbing data analysis and loves spreadsheets.

[Go to next page.]

"ATTACHMENT 3"

Referenced in footnote 14.

The below starts with federal cases, including from the US Supreme Court, the quotes California cases in accord. Underlining added to quotes bel\

1. *Cleveland Bd. v. Loudermill,* 470 U.S. 532, (1985) at p. 542:

> An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." [ ] *Boddie v. Connecticut,* 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971) (emphasis in original); see *Bell v. Burson,* 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971).

2. This due-process requirement includes three elements:(1) an *impartial* tribunal; (2) notice of the charges within a *reasonable time before* the hearing; and (3) a*bsent emergency* circumstances, *a pre-determination hearing. Miller v. City of Mission,* 705 F.2d 368, 372 (10th Cir. 1983). While not necessary in every case, "procedural due process often requires *confrontation and cross-examination of those whose word deprives a person of his [or her] livelihood." Willner v. Comm. on Character,* 373 U.S. 96, 103 (1963).

3. *Haight v. Tryon, 1*12 Cal. 4, 5 (Cal. 1896):

> It is the duty of the court to find on all issues without any request to do so, and a failure to do so is ground for granting a new trial. [citing cases].

4. *Cassidy v. Cassidy,* 63 Cal. 352, 352-53 (Cal. 1883):

> One of the findings of the court below was " all the material allegations of facts set forth in plaintiff's complaint are sustained and proven by the evidence." Such a finding does not uphold a judgment. We have no means of determining what the court

below may deem " material" facts or averments. (*Ladd v. Tully,* 51 Cal. 277.) ... Judgment and order reversed and cause remanded for a new trial.

5. *Titmas v. Superior Court*, 87 Cal.App.4th 738, 741-42 (Cal. Ct. App. 2001):

> We do not subscribe to the obscurantist notion that justice, like wild mushrooms, thrives on manure in the dark.... judges must carefully consider the evidence before deciding a case. The lifeblood of our judicial institutions depends upon judges rendering decisions that are the product of a reasoned and objective view of the law and the facts." (*Rose v. Superior Court* (2000) 81 Cal.App.4th 564, 572.) [....]
> A party's right to a "say" is cut off where the court gives no "reasoned decision" since there is nothing to understand and say anything about, except is it a due process violation and invalid.

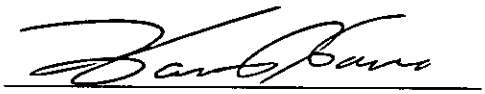
6. *Rose v. Superior Courty*, 81 Cal.App.4th 564, 569 (Cal. Ct. App. 2000)

> ("In a written decision, the court "must account for its conclusions [and] there is a greater likelihood that it will carefully analyze the merits." (*Leone v. Medical Bd. of Cal.* (2000) 22 Cal.4th 660, 674 (dis. opn. of Mosk, J.).) It also affords the petitioner the opportunity to assess whether to seek further review. (*In re Sturm* (1974) 11 Cal.3d 258, 268-270....")

13. CONCLUSION

The petition should be granted.

Respectfully submitted,



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THE PROOF OF SERVICE is separately filed.
(This is a pro se hard copy filing.)

CERTIFICATE OF COMPLIANCE UNDER RULE 33.2

THE PAGE LIMIT RULES. Rule 33.2 (8 1/2- by 11-Inch Paper Format) states in relevant part (underlining added):

> (a) ... shall appear double spaced, except for indented quotations, which shall be single spaced,.... (b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari,.... The exclusions specified in subparagraph 1(d) of this Rule apply.

Sub 1(d) states in relevant part (underlining added):

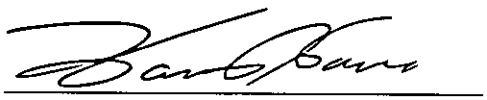
> The word limits do not include the pages containing the questions presented, the list of parties and corporate affiliates of the filing party, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix. The word limits include footnotes.

The Sub 1(d) "word-limit" exclusions thus apply to the 40-page limit under 33.2(b), the Petition exclusive of those called here the "Countable Pages."

There is no Rule that specifies the typeface type and point size for a Petition that permissibly uses 8 1/2- by 11-Inch Paper Format. I use, as prescribed in booklet format, Century Schoolbook typeface, and as allowed for booklet format, 12-point size for the text, and 11-point size for footnotes (that is logically permitted in 8 1/2- by 11-Inch Paper Format as well).

True "double spaced" using 12 point type means 24 points from the bottom of one line to the bottom of the adjacent line. If not manually set in the Microsoft Word program, the program adds additional line to line points. I manually set the line spacing to not less than true double spacing, 24 points, and in cases added points.

CERTIFICATE OF COMPLIANCE. This petition contains [29] pages in Countable Pages (defined above) and thus complies with the "Page Limit Rules" cited above.



Warren Havens