No. 22-7504 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

XINGFEI LUO,

Petitioner

v.

TOMAS CZODOR,

Respondent.

On Petition For a Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Three

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PETITION FOR WRIT OF CERTIORARI

Xingfei Luo
5940 Oak Ave 1481,
Temple City, CA 91780
Petitioner in Pro Per

QUESTIONS PRESENTED

Are a restrained party's due process rights under Fourteenth Amendment of the United States Constitution violated by the issuance of a restraining order under Domestic Violence Prevention Act (DVPA) when the party seeking protection has not presented any evidence establishing a specified domestic relationship within the meaning of Fam. Code §6210?

Are restraining orders, directing a restrained party to remove any pictures or references of an individual – regardless of content or context – from any social media website or blog she may have posted, a content-based post speech sanction in violation of the First and Fourteenth Amendments of the United States Constitution?

Is a restraining order, directing a restrained party to cease posting *any* pictures or likeness of an individual or refer to him by name on *any* social media or website or blog that would be *abusive* pursuant to Fam. Code §§ 6203, 6320, a content-based prior restraint on speech in violation of the First and Fourteenth Amendments of the United States Constitution?

LIST OF PARTIES

The parties to the proceedings in the California Court of Appeal and California Supreme Court were Tomas Czodor and petitioner Xingfei Luo. There were no parties to the proceeding other than those named in the caption of the case.

RELATED CASES

Czodor v. Luo, No. 18V002374, Superior Court of California for the County of Orange. Temporary Restraining Order (TRO) entered Sep. 28, 2018.

Czodor v. Luo, No. 18V002374, Superior Court of California for the County of Orange. Domestic Violence Restraining Order (DVRO) entered Oct. 19, 2018.

Czodor v. Luo, No. G056955, Court of Appeal of the State of California, Fourth Appellate District. DVRO affirmed Aug. 29, 2019.

People v. Luo, No. 19CM06724, Superior Court of California for the County of Orange. Conviction entered Jul. 29, 2021.

Czodor v. Luo, No. 18V002374, Superior Court of California for the County of Orange. First Amended DVRO entered Oct. 1, 2021.

People v. Luo, No. 30-2021-01216615, Superior Court of

California for the County of Orange Appellate Division. Conviction affirmed Apr. 27, 2022.

Luo v. California, No. 21-8023, Supreme Court of the United States. Petition for a writ of certiorari denied Oct 3, 2022.

Czodor v. Luo, No. G060756, Court of Appeal of The State of California, Fourth Appellate District. First Amended DVRO affirmed Jan. 10, 2023.

People v. Luo, No. 23CM00067, Superior Court of California for the County of Orange. Acquittal entered Mar. 28, 2023.

Czodor v. Luo, No. G061643, Court of Appeal of The State of California, Fourth Appellate District, pending.

Luo v. California, No. 8:22-CV-01640-MEMF-KES, United States District Court Central District of California, pending.

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OPINION AND ORDER BELOW

The unpublished opinion of the California Court of Appeal affirming the First Amended DVRO was filed on January 10, 2023 in California Court of Appeal Case No. G060756, and is attached hereto as Appendix A.

The First Amended DVRO was filed on October 1, 2021 in Superior Court of California for the County of Orange Case No. 18V002374, and is attached hereto as Appendix B.

The California Supreme Court's order denying review was filed on March 29, 2023 in California Supreme Court Case No. S278686, and is attached hereto as Appendix C.

JURISDICTION

The decision of the California Court of Appeal sought to be reviewed was filed on January 10, 2023. The California Supreme Court denied discretionary review on March 29, 2023. This petition is filed within 90 days of that date pursuant to the Rules of the United States Supreme Court, Rule 13.1. This Court has jurisdiction to review under 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law ...."

B. State Statutory Provisions

California Family Code § 6200 et. seq are commonly and collectively referred to herein as California's Domestic Violence Prevention Act (DVPA).

The purpose of DVPA is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.

§ 6203.

(a) For purposes of this act, "abuse" means any of the following:

(1) To intentionally or recklessly cause or attempt to cause bodily injury.

(2) Sexual assault.

(3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

(b) Abuse is not limited to the actual infliction of physical injury or assault.

§ 6210.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.

§ 6211.

"Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

§ 6320.

(a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a

specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

(b) On a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent. The court may order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(c) As used in this subdivision (a), "disturbing the peace of the other party" refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. This conduct may be committed directly or indirectly, including through the use of a third party, and by any method or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies. This conduct includes, but is not limited to,

coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

(1) Isolating the other party from friends, relatives, or other sources of support.

(2) Depriving the other party of basic necessities.

(3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.

(4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

(5) Engaging in reproductive coercion, which consists of control over the reproductive autonomy of another through force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health

information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

(d) This section does not limit any remedies available under this act or any other provision of law.

STATEMENT OF THE CASE

After marrying Hanh Le, a woman who is ten years older than him, Tomas Czodor (Czodor)[1], had concealed his marriage and tried to meet women online.

In August 2018 Czodor, posing as a single man never married, connected with Petitioner via online dating service. Czodor met Petitioner on two occasions and during their entire interaction Petitioner never told Czodor her name. Clerk's Transcript (CT) 12.

Czodor secretly recorded a conversation with Petitioner in which he stated "Who are to you me? Nobody. You are to me, nobody. What you think? What we were? It was my wife, girlfriend, boyfriend. What have you been To me? Jesus christ. I met you one or two times." Reporter's Transcript (RT) 15.

In order to silence Petitioner and cover his extramarital and

[1] Tomas Czodor had prior criminal convictions rested upon facts establishing dishonesty and/or false statements. See Orange County Superior Court Case No. 09CF3055, 08NM05806. Czodor was also arrested for false personation.

unfaithful encounter [2], Czodor faked his damages and injuries to seek a DVRO in which he requested to remove content from pages on internet what Petitioner or her accomplices created to destroy his online reputation. Appendix A, p. 4. In Item 4 on Form DV-100 (Request for DVRO), Czodor checked the box stating that "We are dating or used to date, or we are or used to be engaged to be married." *Id.*

While Petitioner was not present at the hearing, the trial court entered a temporary restraining order (TRO) on September 28, 2018, without any finding that Petitioner's speech was libelous or false, directing Petitioner to remove content from pages on internet what she or her accomplices created to destroy Czodor's online reputation and to stop posting about him online, regardless of content or context. *Id.*

On October 19, 2018 a hearing was held and the case had never been subjected to "the crucible of meaningful adversarial testing" (*United States v. Cronic*, 466 U.S. 648, 656 (1984)) because Petitioner represented herself without assistance of counsel. The trial

[2] The State has no compelling interest in promoting extramarital affairs or protecting dishonest characters.

court skipped over the question of whether there was in deed a dating relationship between the parties, without any finding that Petitioner's speech was libelous or false, entered a domestic violence restraining order (DVRO) characterizing the parties as former partners (CT 52) and directing Petitioner to cease posting the picture or likeness of Czodor or refer to him by name on any social media website or blog and remove any pictures or references of Czodor – regardless of content or context – from any social media website or blog she may have posted. Appendix A, p. 4. Petitioner's response opposing the issuance of DVRO was filed after the DVRO was entered and never presented nor considered by the trial court during the hearing. CT 2. In her response, Petitioner agreed that she dated Czodor instead of having a dating relationship with Czodor. CT 60.

The DVRO was affirmed in an unpublished decision by the California Court of Appeal not on the merit but due to lack of references and records. *Czodor v. Luo*, No. G056955, at *5-7 (Cal. Ct. App. Aug. 29, 2019).

In 2021, Petitioner challenged the trial court's jurisdiction and sought to terminate the DVRO to serve the ends of justice due to violations of her First and Fourteenth Amendments rights. While

admitting there was no bright line definition on what was abusive (RT 15), without conducting a proper constitutional inquiry, the trial court amended the DVRO to prohibit Petitioner from posting any pictures or likeness of Czodor or refer to him by name on any social media or website or blog that would be abusive pursuant to Fam. Code §6203 and Fam. Code §6320 and to order Petitioner to remove any pictures or references of Czodor – regardless of content or context – from any social media websites or blogs she may have posted. Appendix A, p. 5. Such order is self-contradicted because on one hand the amended order allows Petitioner to post any picture or likeness of Czodor as long as it is not abusive, on the other hand this very order requires Petitioner to remove any picture or references of Czodor even though they are not abusive.

Petitioner appealed and argued relying on *Carroll v. Princess Anne*, 393 U.S. 175 (1968) that, to the extent the TRO [3] would impose upon her a duty to remove content from pages on internet what she or her accomplices created to destroy Czodor's online reputation

[3] The California court of appeal could have reviewed the TRO because the case presents an issue of substantial and continuing public interest and is capable of repetition yet evades review. *Citizens Oversight, Inc. v. Vu* (2019) 35 Cal.App.5th 612, 615, 247 Cal.Rptr.3d 521.

and to stop posting about Czodor online, the TRO violated her rights to due process and free speech under the federal and state Constitutions because the TRO was issued without proper notice, evidence of domestic relationship, and an opportunity to be heard. Petitioner also asserted that all restraining orders violated her rights to due process and free speech under the federal and state Constitutions without evidence of specified relationship and they impose impermissible prior restraint and post speech sanction on any subjects, viewpoints, and images provided that they were related to Czodor.

The Court of Appeal issued an unpublished decision addressing some, but not all, of the arguments raised by Petitioner. The decision found no substantial evidence supporting the trial court's determination that the parties were former partners. Instead, the Court made a conclusory statement that the issue whether Czodor and Luo once had a dating relationship was fully adjudicated by issuance of the DVRO. Appendix A, p. 11.

The California Court of Appeal completely omitted properly presented transcript, Petitioner's issues based on due process rights violated by the issuance of restraining orders while the trial court

did not require Czodor to meet his burden of proving by a preponderance of the evidence that the parties were engaged in a "dating relationship" within the meaning of Fam. Code §6210, and Petitioner's challenge on the provision ordering her to remove any pictures or references of Czodor from any social media websites or blogs she may have posted.

The decision rejected Petitioner's arguments based on overbreadth and vagueness. As basis for its vagueness analysis, the California Court of Appeal improperly relies on *People v. Hall* (2017) 2 Cal.5th 494, 500 [probation conditions], a case not involving free speech, instead of a stricter vagueness standard involving speech. Appendix A, p. 16. The decision states that conduct that is abusive under the DVPA is not protected by the First Amendment. Appendix A, p. 15.

The California Supreme Court denied a petition for review. Appendix C.

REASONS FOR GRANTING THE WRIT

A. The Superior Court Had No Power, No Authority, No Jurisdiction to Issue Any Domestic Violence Restraining Orders Against Petitioner

The DVPA authorizes the issuance of protective orders restraining domestic violence on several categories of persons, including present and former spouses or cohabitants and "[a] person with whom the respondent is having or has had a dating or engagement relationship." (§ 6211, subds. (a), (b) & (c).) The only protected category of persons listed in section 6211 that could possibly trigger the applicability of DVPA in the present case is a person in a present or former "dating relationship." Fam. Code Section 6210 defines "dating relationship" as "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." The fact the parties are sexually intimate does not, alone, create a dating relationship. *People v. Shorts* (2017) 9 Cal.App.5th 350, 360-361 (holding that defendant's shooting of Jessica, with whom he was engaged in sexual relations one or two times, was not domestic violence.) See also *Oriola v. Thalerfour* 84 Cal.App.4th 397, 404 (Cal. Ct. App. 2000) (holding that four dates was insufficient to meet the definition of the DVPA.)

When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or

collateral attack at any time." *People v. Medina*, 171 Cal. App. 4th 805, 815, 89 Cal. Rptr. 3d 830, 839 (2009), as modified (Mar. 10, 2009). The issuance of DVROs, affirmed by the California Court of Appeal, is a blatant violation of Petitioner's due process rights under Fourteenth Amendment of the United States Constitution. See *C.O. v. M.M*, 442 Mass. 648, 659 (Mass. 2004) (holding that the concern of domestic violence must not be permitted to affect or diminish the court's responsibility to remain neutral, to protect the rights of the accused in each case, and to address each case individually on its own merits; a culture of summarily issuing and extending protection orders would ignore the legislative intent); *Lawyer v. Fino*, 459 S.W.3d 528, 530 (Mo. App. S.D. 2015) (the Missouri Adult Abuse Act was not intended to be a solution for minor arguments between adults. There is a great potential for abuse [of the Act], and real harm can result from improper use of the Act. Thus, courts must exercise great vigilance to prevent abuse of [the Act]. Courts must be sure sufficient credible evidence exists to support all elements of the statute before entering a protective order.)

B. The Superior Court's TRO and DVROs Imposed A Broad *Post Speech Sanction* On All Speech about A Long Time

Married Man Who Concealed his Marriage to Meet Women Online

The TRO and DVROs, directing Petitioner to remove content from pages on internet what she or her accomplices created to destroy Czodor's online reputation and to stop posting about him online, or remove any pictures or references of Czodor – regardless of content or context – from any social media website or blog she may have posted, broadly apply to any speech concerning Czodor. Under the terms of the orders, if Petitioner speaks of Czodor, even in a private conversation of a blog or social media[4], she would be violating the terms of the orders.

C. The Superior Court's First Amended DVRO Imposed A Broad and Vague *Prior Restraint* On All Future Speech About Czodor That Would be Abusive

The term "prior restraint" describes orders forbidding communications that are issued before the communications occur. *Alexander v. United States*, 509 U.S. 544, 550 (1993). This Court has explained that court orders that actually forbid speech activities – are classic examples of prior restraints" because they involve a "true restraint on future speech." Id. A free speech theory deeply etched in

our law is that a free society prefers to punish the few who abuse rights of speech after they break the law rather than to throttle them and all others beforehand. *Southeastern Promotions, Ltd. v. Conrad*, 95 S.Ct. 1239, 1246 (1975).

The First Amended DVRO affirmed by the California Court of Appeal is a classic prior restraint because it prohibits future posting of any pictures or likeness of Czodor or reference to Czodor on "any social media or website or blog" that would be abusive pursuant to Family Code section 6203 or 6320. Appendix B, p. 22. Speech cannot be reclassified as conduct to evade the protections of the First Amendment. Appendix A, p. 15.

In *Gooding v. Wilson*, 405 U.S. 518 (1972), this Court vacated the conviction of a defendant who violated a Georgia misdemeanor statute that prohibited the use of "opprobrious words or abusive language, tending to cause a breach of the peace." This Court found the statute unconstitutionally overbroad because the statute made it a misdemeanor "merely to speak words offensive to some who hear them." *Gooding*, 405 U.S. at 527, 92 S.Ct. 1103.

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[4] https://www.pewresearch.org/internet/fact-sheet/social-media/

An offended person has the ability to protect his or her own sensibilities simply by averting one's eyes from the speaker's blog, and by not looking at, or by blocking, the Tweets. *U.S. v. Cassidy*, 814 F.Supp.2d 574, 577-78, 585-86 (D. Md. 2011) (8,000 Tweets received by two members of Buddhist sect which included critical and disparaging comments causing substantial emotional distress are protected speech under First Amendment).

D. This Court Should Grant Review To Decide Significant Questions Concerning When A Court Order Preventing Speech Is Impermissibly Overbroad and Whether "Abusive", Involving Speech, Is Unconstitutionally Vague

Prior restraints on speech constitute "the most serious and least tolerable infringement on First Amendment rights," and are "presumptively unconstitutional." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); see also *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). "Injunctions," the Court has explained, "carry greater risks of censorship and discriminatory application than do general ordinances." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 764 (1994).

Consistent with this Court's abhorrence of prior restraints, it

has ruled that any injunction restricting speech must "burden no more speech than necessary to serve a significant government interest." *Madsen*, supra, 512 U.S. at 765; see also *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 390 (1973). Put another way, an injunction "issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order." *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968).

Given these constitutional principles, courts consistently disallow overbroad injunctions on speech. See, e.g., *CPC Int'l, Inc. v. Skippy Inc.*, 214 F.3d 456, 461-63 (4th Cir. 2000); *Doe v. TCI Cablevision*, 110 S.W.3d 363, 375 (Mo. 2003). For instance, in *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2d Cir. 1963) the Second Circuit struck down a permanent injunction, issued after a defamation trial, prohibiting "any" report or statement about a businessman or his brother. The court determined that the injunction was an unconstitutional prior restraint, but further observed that the injunction was defective because it precluded "any" remarks, and was not, at a minimum,

"directed solely to defamatory reports, comments or statements." Id. at 485.

Without regard to any of the foregoing authority, the California Court of Appeal determined that the DVROs are not overbroad even though they direct Petitioner to remove any pictures or references of Czodor – regardless of content or context – from any social media website or blog she may have posted. Appendix A, p. 15. Indeed, the DVROs are so broad that they make no exception for true speech or any otherwise protected opinions or comments about Czodor. The DVROs even apply to prevent private conversations that mention Czodor on social media or blog if the communication could be characterized as abusive. The court's reasoning rested on the unsupported and erroneous proposition that the doctrine of prior restraints does not apply to communication and certain special utterances that are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Appendix A, p. 14. However, the First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of

relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it. *U.S. v. Stevens*, 559 U.S. 460, 470 (2010). The Constitution is not a document "prescribing limits, and declaring that those limits may be passed at pleasure." *Marbury v. Madison*, 1 Cranch 137, 178, 2 L.Ed. 60 (1803). See also *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2042 (2021) (holding that a student's social media posts containing derogatory remarks about her school's cheerleading team were protected by the First Amendment.)

As a matter of law, the California Court of Appeal ruled incorrectly on this issue of profound constitutional importance. This Court should grant review to resolve the important issue of the constitutional limits and scope of injunctions on speech.

E. This Court Should Grant Review To Resolve A Split Between The Circuits And The States Over The Constitutionality of Prior Restraints, And Whether Prior Restraints Are Permissible

Several federal Circuits have approved injunctions on speech

in advance of future publication. The Fifth Circuit has approved an injunction against statements that were the subject of an underlying defamation lawsuit. *Brown v. Petrolite Corp.*, 965 F.2d 38, 50-51 (5th Cir. 1992). The Ninth Circuit also has approved an injunction against purportedly false speech. *San Antonio Community Hospital v. Southern Calif. Dist. Council of Carpenters*, 125 F.3d 1230, 1237 (9th Cir. 1997). The Third Circuit, ruling in a diversity action, found the reasoning behind state supreme court decisions allowing for such injunctions "quite persuasive," but was bound to conclude that the Supreme Court of Pennsylvania would disagree. *Kramer v. Thompson*, 947 F.2d 666, 677 (3d Cir. 1991).

Some state supreme courts also have concluded that restraints on damaging speech are constitutionally permissible. *Advanced Training Systems, Inc. v. Caswell Equipment Co., Inc.*, 352 N.W.2d 1, 11 (Minn. 1984); *Retail Credit Co. v. Russell*, 218 S.E.2d 54, 62-63 (Ga. 1975); *Guion v. Terra Mktg. of Nevada, Inc.*, 523 P.2d 847, 848 (Nev. 1974); *Carter v. Knapp Motor Co.*, 11 So.2d 383, 385 (Ala. 1943); *Menard v. Houle*, 11 N.E.2d 436, 437 (Mass. 1937).

These decisions approving injunctions contradict opinions from this Court and from other courts around the country. In *Near v.*

Minnesota, 283 U.S. 697 (1931), this Court's seminal opinion on prior restraints, a newspaper appealed a permanent injunction issued after a case "came on for trial." *Id.* at 705-06. The unconstitutional injunction in that case "perpetually" prevented the defendants from publishing again because, in the preceding trial, the lower court had determined that the defendants' newspaper was "chiefly devoted to malicious, scandalous and defamatory articles." *Id.* at 706. This Court held that an injunction on future speech, even if preceded by the publication of defamatory material, was an unconstitutional prior restraint. *Id.* at 706, 721.

Among the many cases affirming the general rule against injunctions, the facts in three decisions are closely analogous to the present situation, but the courts in those cases arrived at a conclusion opposite to that of the California Court of Appeal in this case. The Washington Supreme Court's decision in *In re Marriage of Suggs*, 152 Wn.2d 74, 93 P.3d 161 (2004), which prohibits the use of protection orders to restrain lawful speech, is exactly on point and directly in conflict with the California Court of Appeal's ruling. The Washington Supreme Court held that it was unclear what Suggs could and could not say because the order forbade Suggs' speech

before it occurred; it forbade her from "knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties which are designed for the purpose of annoying, harassing, vexing, or otherwise harming Andrew O. Hamilton (ex-husband) and for no lawful purpose." *Id.* at 84.

In *Shak v. Shak,* 484 Mass. 658 (Mass. 2020), the Supreme Judicial Court of Massachusetts concluded that the nondisparagement orders at issue operated as an impermissible prior restraint on speech and struck down the orders prohibiting both parties from posting on any social media or other Internet medium any disparagement of the other party when such disparagement consists of comments about the party's morality, parenting of or ability to parent any minor children (Such disparagement specifically includes but is not limited to the following expressions: "cunt", "bitch", "whore", "motherfucker", and other pejoratives involving any gender.) Id. at 659.

In *Bey v. Rasawehr,* 161 Ohio St. 3d 79 (Ohio 2020), the Supreme Court of Ohio determined that courts most assuredly had no license to recognize some new category of unprotected speech

based on its supposed value [5], reversed a protection order enjoining future postings about appellees or postings that express, imply, or suggest that appellees were culpable in the deaths of their husbands, and vacated those provisions that prohibited such future postings on any social media service, website, discussion board, or similar outlet or service. Id. at 97.

This Court should grant review to resolve the split in authority that divides the Circuits and state courts of last resort as to the constitutionality of prior restraints.

F. The Decision Below Was Incorrect on a Recurring Issue of Immense Constitutional Importance

The First Amendment is not a game setting for the government to toggle off and on. It applies in times of tranquility and times of strife. *Cohoon v. Konrath*, 563 F. Supp. 3d 881, 893 (E.D. Wis. 2021).

The California Court of Appeal's holding flouts a long and unbroken line of this Court's cases. "It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within

[5] The Ohio appellate court described that Rasawehr's speech was "for an illegitimate reason born out of a vendetta seeking to cause mental distress.

the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment." *Winters v. New York*, 333 U.S. 507, 509. Courts have long prohibited suppressing speech based upon audience reactions to the offensive speech. *Matal v. Tam*, 137 S.Ct. 1744, 1751, 1767 (2017) (Kennedy, J., concurring). The fact that a speaker conveys a message which may be offensive to the listener does not deprive the message from constitutional protection. *Hill v. Colorado*, 120 S.Ct. 2480, 2488-89 (2000). Our citizens must tolerate insulting and even outrageous speech to provide adequate "breathing space" to freedoms protected by the First Amendment. *U.S. v. Cassidy*, 814 F.Supp.2d 574, 582 (D. Md. 2011).

In *Tory v. Cochran*, 544 U.S. 734 (2005) this Court considered a case challenging the constitutionality of an injunction barring a disgruntled litigant from picketing outside his former lawyer's office "holding up signs containing various insults and obscenities" as a means of pressuring the lawyer to pay the litigant money. This Court agreed to hear the case despite the defendant's likely bad intentions or his "vendetta" against the lawyer; it vacated the injunction rather than just dismissing the case as improvidently

granted; and it never suggested that the defendant's bad intentions would strip the speech of First Amendment protection.

Courts must look at the injunction as they look at a statute, and if upon its face it abridges rights guaranteed by the First Amendment, it should be struck down. *United Transportation Union v. Michigan Bar*, 401 U.S. 576, 581 (1971); see also *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 417 (1971) (striking an injunction on dispersing pamphlets with realtor's home phone number and urging recipients to call him to urge certain political stance that was prior restraint violated First Amendment).

This Court should grant the petition, reaffirm longstanding precedent, and reject the notion that abusive speech is not protected by the First Amendment. The recurring nature of the issues calls out for this Court's intervention.

CONCLUSION

For all of the above reasons, petitioner respectfully requests the writ be allowed.

Dated: April 28, 2023

Respectfully submitted,

/s/ Xingfei Luo
Petitioner in Pro Se