No. 23-6163

IN THE

Supreme Court of the United States

VIDALA AARONOFF,

Petitioner,

v.

CURTIS OLSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE* SURVIVORS NETWORK OF THOSE ABUSED BY PRIESTS (SNAP), CALIFORNIA WOMEN'S LAW CENTER (CWLC), FAMILY VIOLENCE APPELLATE PROJECT (FVAP) AND LOS ANGELES CENTER FOR LAW AND JUSTICE ("LACLJ") IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Now comes the lead Amicus, Survivors Network of those Abused by Priests (SNAP), et al, and moves for leave to file an amicus brief in support of the Certiorari Petition of Vidala Aaronoff, Petitioner. Counsel for Amici has been unable to contact Respondent's appellate counsel of record, Robert Little Buchalter law firm, for consent to file because Respondent's counsel was unavailable during the notification period. Respondent's counsel was on vacation between December 25, 2023 and January 3, 2024. Amici attempted to contact Counsel for Respondent by phone and email during this period and only received voicemail or out-of-office emails in response. Amici again attempted to contact Counsel for Respondent on January 4, 2024, but again was unable to make contact. The deadline for filing the amicus is January 4, 2024.

Therefore, Amicus respectfully requests leave to file the amicus brief.

Respectfully submitted,

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I. Interest of *Amici*

We, the Survivors Network of those Abused by Priests (SNAP), the largest, oldest and most active support group for women and men wounded by religious and institutional authorities join and unite our voice with members of the MeToo Movement, Rape Foundation, LGBT+ community and the National Network to End Domestic Violence, to submit this Amicus in support of Petitioner's fight for equal justice. We have an interest in making justice equal, which means providing all litigants with equal access to the courts, which is not only a California problem, but also a countrywide and even a worldwide problem. The justice gap mostly affects those living in poverty, people of color, women, immigrants, the elderly, people with disabilities, and the LGBT+ community. Petitioner – an indigent, disabled, woman of color – seeks to level the playing field and close this justice gap through her Petition for Writ of Certiorari submitted to this Court, which supports all marginalized people's quest for equal justice and court access.[1]

California Women's Law Center (CWLC) is a statewide non-profit law and policy center whose mission

1. Pursuant to Supreme Court Rule 37.6, counsel for the amicus curiae states that no counsel for a party authored this brief in whole or in part; and that no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae or its counsel made a monetary contribution to this brief's preparation or submission. Pursuant to Rule 37.2, counsel of record for Petitioner was provided timely notice of the filing of this amicus brief. Motion for leave to file is concurrently filed with this amicus brief as notice to Respondent was not timely provided, and Respondent has not waived its objection.

is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through transformative litigation, policy advocacy, and education. CWLC seeks to eliminate gender discrimination in schools, homes, workplaces and other environments so all women can reach their full potential. CWLC has substantial expertise regarding the real-life consequences for survivors of sexual and domestic violence, and the unique factors at play when survivors confront their abusers through the judicial system. We are especially concerned about the inadequacy of due process for indigent women complaining of abuse by wealthy and powerful abusers, as demonstrated in the present case.

Family Violence Appellate Project (FVAP) is a California and Washington state non-profit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse through the courts. Our clients regularly face the inadequacies of due process when complaining of abuse by those whose wealth and power distort the justice system.

Los Angeles Center for Law and Justice ("LACLJ") founded in 1973, secures justice for survivors of domestic

violence and sexual assault and empowers them to create their own future. LACLJ provides extensive free legal services, including representation in family and immigration court and with survivor-based immigration relief, advocacy for survivors in the criminal justice system, and by taking appeals when appropriate. Therefore, LACLJ has an interest in protecting equal access to justice through the courts.

II. Question Addressed

This amicus addresses an alternative argument to the Due Process argument presented in Question 2 of the Petition for Certiorari, based on the statutory provisions regarding ability to pay which apply to civil harassment restraining orders. We believe this is an additional reason the Court should grant certiorari in this case.

III. Summary of Argument

Petitioner Vidala Aaronoff is an indigent litigant who was denied due process of law because the court was not required to consider her lack of financial resources when her abuser became the "prevailing party" in a civil harassment action wherein Aaronoff lacked the resources to sustain her burden to prove the harassing conduct by "clear and convincing evidence." The court's award of attorney's fees shocks the conscience and, if allowed to stand, will have a chilling effect on other indigent women seeking justice against their abusers.

Access to justice is a fundamental right, universally recognized in Anglo-American jurisprudence since long before America was a country. *See Baltayan v. Estate of*

Getemyan, 90 Cal.App.4th 1427, 1436-39 (Cal. Ct. App. 2001)(Johnson, J., concurring). Rights guaranteed by the Constitution can only be protected when victims are able to vindicate them through the legal system. As the Federal Circuit has ruled,

> "It is a fundamental principle of our jurisprudence that access to the courts to secure and establish important rights should be made available to all citizens at all times. This is particularly true where the complaining parties are asserting claims under the Constitution...."

Atkins v. United States, 556 F.2d 1028, 1040 (Fed. Cir. 1977).

Moreover, the 14th Amendment places limits on judicial power, "as a matter of individual liberty." *Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 236 (5th Cir. 2022)(quoting *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

California courts, likewise, have ruled that «the defense of one's property interests in a civil action constitutes a fundamental right...» *Jara v. Municipal Court*, 145 Cal.Rptr. 847, 852 (Cal. 1978). There is no barrier more fundamental to equal access to justice than ability to pay. Therefore, due process under the 14th Amendment requires that unreasonable financial barriers to access to justice be removed.

The Me Too movement has brought to light that no group is in greater need of protection by the courts from rich and powerful sexual predators than poor,

vulnerable young women. The cases of Jeffrey Epstein and Harvey Weinstein, both powerful men who targeted vulnerable indigent young women for sexual abuse, raised considerable awareness of this very problem.

The instant case is another outrageous instance of courts acting to deny due process and access to justice to an indigent young woman. Over a period of nearly 20 years, Petitioner Aaronoff has been harassed, covertly photographed, and intimidated by Respondent Olson and by his agents at the property where she lives. She has been stalked, covertly photographed, and surveilled by people whom she reasonably believes were commissioned by Olson to follow and intimidate her. Her witnesses have been threatened and intimidated. Aaronoff was even threatened with bodily harm by Olson's attorney!

The lack of adequate legal safeguards protecting indigent defendants from predators with whom they have no intimate or familial relationship evident in this case is a violation of the due process under the 14th Amendment. Petitioner Aaronoff, a vulnerable indigent woman, was deprived of her rights to life, liberty and property by the judicial process which a wealthy harasser , Respondent Olson, was able to exploit due to his unlimited resources. Olson was able to deprive her of these rights by exploiting a loophole in the California statutory scheme—the legal requirements which apply to civil harassment restraining orders (CHROs). In the context of CHROs, the protections California normally grants to indigent litigants are unfortunately absent.

CHROs are the only option available under California law for protection of victims of harassment, stalking,

threats, intimidation, sexual harassment and assault by strangers, neighbors or other persons with whom they *do not have* an intimate or familial relationship. In contrast, indigent victims of domestic violence, who *do have* an intimate or familial relationship to the abuser, are rightly afforded enhanced procedural and substantive protections under California law when they apply for domestic violence restraining orders (DVROs). The relevant statute specifically grants two crucial protections for those seeking a DVRO which are not available to victims seeking CHROs.

The statute governing DVROs explicitly provides for attorney's fees to the prevailing party *only* "if the respondent establishes by a preponderance of the evidence that the petition or request is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay." CA Fam. Code, § 6344(b), *and* specifically requires the court to determine "that the party ordered to pay has, or is reasonably likely to have, the ability to pay." CA Fam. Code, § 6344(c).

In contrast, the legal provisions for a CHRO provide that, "[t]he prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any." CCP § 527.6(s). There is no requirement that the court determine whether the restraining order action was brought in bad faith, or that the court take into account the applicant's ability to pay, when determining whether to grant attorney's fees to the prevailing party. *Id.*

The lack of all of these crucial protections denied Petitioner fundamental due process rights and created

a manifest injustice in the instant case. Variations of Petitioner's story are being played out thousands of times across the country when poor vulnerable women are pitted against wealthy, powerful predators who are able to game the legal system. Legal standards should be crafted to protect the victims of such targeting, not the perpetrators. Existing legal standards in California applicable to CHROs do not satisfy minimal due process requirements under the 14th Amendment as applied to indigent applicants for CHROs. .

IV. Factual Background and Procedural History

Respondent Curtis Olson, billionaire owner of Nexus, a real estate development company, employed Petitioner as a property manager for a condo conversion project. (165a, 215a, 216a)[2] Petitioner occupied one of the condominium units (the "property"). (17a, 216a) Olson made inappropriate and unwelcome sexual advances towards Petitioner, and retaliated by terminating her employment when she rejected those advances. (216a) Subsequently, Olson transferred title of Petitioner's residential rental property to his co-investor, Max Wilcox. (218a) Petitioner worked for Wilcox as a property manager and trustee. (215a, 198a-201a)

In 2015, Olson sexually assaulted and physically restrained Petitioner, when she was lured to his condo unit under false pretenses. (222a) She only narrowly escaped being raped during this incident. (162a) Petitioner was deeply traumatized by this incident and sought protection from further sexual violence by obtaining a three-year

2. References herein are to the Petitioner's Appendix

restraining order Stay Away agreement. (161a-162a) After a car accident injury, Petitioner become indigent. (166a, 222a) In 2017, she proceeded under a court granted fee waiver, when she sought enforcement to protect herself from sexual violence and stalking violations of the restraining order. Petitioner filed a second restraining order pursuant to § 527.6. (185a)

In retaliation for Petitioner's attempts to protect herself from him, Olson sought to obtain a cross-restraining order. (185a) Subsequently, the two actions were combined. (248a) In this proceeding, Petitioner presented evidence that Olson had used agents to stalk, harass and intimidate her. (162a, 23a) For example, she presented evidence that Lenny Dykstra, who was a tenant in her condo unit, and used position as her tenant to attempt to convince her to drop her suit against Olson, was a friend of Olson's. During the proceeding, as Petitioner's lawyer attempted to establish a connection between Mr. Dykstra and Olson, Olson admitted that Mr. Dykstra was a "golf buddy" of his. (164a) At this point, Olson's attorney objected, and at Olson's objection, the court abruptly cut off the line of questioning, denying Petitioner the opportunity to prove her case. (164a) Even more outrageously, the court removed the line of questioning from the record altogether, substituting fabricated testimony of Olson supposedly stating that he had no knowledge of or relationship to Mr. Dykstra. (164a, 240a-246a)

In addition, in the proceeding, Petitioner testified about intimidation by Lamdien T. Le, one of Olson's attorneys. (163a) Petitioner stated that in a phone conversation with Mr. Le on March 8, 2017, Mr. Le had threatened her. (188a, 224a) In response to her concern that Olson would harm

her or have someone run over her while she was walking her dog, she stated that Mr. Le answered, "It's more likely that Olson would harm you if you don't dismiss the suit." (163a) Petitioner memorialized this conversation in a contemporaneous email to Mr. Le, to which he did not respond. (225a) The court allowed Mr. Le to appear as a rebuttal witness, even though he sat in the galley closely attending every day of the proceeding, predictably, he denied the conversation. (24a-26a) The court credited his denial. (190a) However, the trial court found "the statement Aaronoff attributed to Le was the "most succinct, clear evidence of a threat" to her safety." (25a)

In the end, both restraining order applications were denied. (16a, 186a) The courts erroneously determined that both parties were prevailing parties, because each party prevented the other party from obtaining a restraining order. (166a)

The trial court next determined each party's "ability to pay" attorney's fees per the court's equitable doctrine. (63a-66a) Petitioner submitted her fee waiver with other evidence proving indigency. (18a, 248a) Olson's counsel submitted a declaration with false statements and fraudulent documents alleging: (1) Petitioner owned the property that Olson had transferred to Max Wilcox; (2) then she transferred it into an LLC; and (3) later into Max Wilcox's Trust. Olson implied there existed a deed with her name on it, but never produced that deed. (79a, 84a-86a, 200a, 249a) Further, Olson more than doubled the estimated value of the property, using value algorithms on realtor.com, and submitted as a falsified exhibit, fraudulently testifying before the court that, "Petitioner is worth seven figures!" (165a, 248a)

The restraining order court inexplicably decided, without any corroborating evidence, that Petitioner had the ability to pay. The court made no effort to verify who owned the property as required per California Evidence Code § 662. (84a-86a) The court completely disregarded Petitioner's explanation that she had only worked for the owner (Max Wilcox) as a manager and later a trustee, not as a property owner. (84a-86a, 198a, 203a-204a)

Since Olson had the means to retain expensive, Big Law firms throughout the proceedings, his attorney's fees were astronomical, and the court awarded him approximately $120,000 in attorney's fees and costs. (37a-39a, 166a) In contrast, Petitioner, who is not an attorney and has no means to afford any attorney, was forced to choose between representing herself, seeking pro bono attorneys or fundraising to hire inexperienced sole practitioners or small law firms. (251a) Because of this, Aaronoff was awarded only about $40,000 in attorney's fees. After the court offset the two awards, the indigent Petitioner owed the billionaire Olson a total of $80,000. (37a-39a, 251a)

In a subsequent restraining order hearing, Petitioner presented clear and convincing evidence that she did not own the property. Because Olson's fraudulent evidence misled the court, the trial court denied her motion. Aaronoff appealed. (251a) The appellate court which considered Petitioner's appeal of the restraining order denial affirmed the attorney's fee award against Petitioner and side-stepped property ownership by eliminating "ability to pay" determinations. *Aaronoff,* No. B295388. (22a, 27a)

This is a harmful judicial error because restraining orders are held in family court, a court of equity with no jury where reasonable fees requires application of "ability to pay." *Garcia v Santana,* 174 Cal.App.4th 464, 475-76 (2009); *see also, Seever v Copley, Inc* 141 Cal. App 4th 1550, 1561-1562 (2006)("when two competing parties possess vastly disparate economic resources, this may require the trial courts to 'scale' the financial incentives to the parties' respective resources.") (172a-174a)

The appellate court which considered Petitioner's appeal held that Olson was in violation of the automatic stay pending appeal per CCP § 916. *Aaronoff,* No. B295388. (29a-31a)

During this period, Olson had been aggressively enforcing collections of his fee award in the restraining order court and doubled his efforts by filing a second collections lawsuit in another civil court to obtain the same restraining order fees. (250a) Not satisfied with one fraudulent allegation regarding Petitioner's finances, Olson began to claim that Petitioner was hiding her ownership of the property by a fraudulent transfer (250a) Pursuant to this completely fabricated claim, Olson sued all the people associated with Max Wilcox's Trust: Petitioner, the other trustees, the beneficiary, a church, and their attorney (Petitioners herein) alleging they conspired to commit a "criminal fraudulent transfer." Olson mischaracterized the Trust's property lien, which was used to pay its own debts, as a fraudulent transfer to hide it from debt collection. (250a, 252a)

Because of Olson's malicious and unremitting efforts to uncover and collect money from Petitioner which he

knows she does not possess, Olson continued to rack up more fees related to his attempts to collect the original $80,000. (18a) This flagrant and deplorable abuse of the legal system should not be tolerated in a civilized society.

V. Argument

a. The Greater Burdens Imposed on Applicants for Civil Harassment Restraining Orders Violate the Due Process Clause of the 14th Amendment.

In these types of cases, barriers to access to justice threaten even more fundamental rights—as the 14th Amendment puts it, the rights to "life, liberty and property"—are at stake. Due process of law is denied when a litigant is penalized with exorbitant legal fees for asserting a legitimate, good-faith claim in court, and when the court disregards the litigants' inability to pay.

In multiple contexts, California law and public policy explicitly recognizes that lack of financial resources is often an insurmountable obstacle to access to justice, and provides remedies. *See Baltayan,* 90 Cal.App.4th at 1427 (Cal. Ct. App. 2001); *Garcia v. Santana*, 174 Cal.App. 464 (Cal. App. 2009); *Isrin v. Superior Court*, 45 Cal.Rptr. 320 (Cal. 1965); *Martin v. Superior Court*, 176 Cal. 289 (1917). This policy makes the greater burden placed on CHRO applicants inexplicable.

There is one area though, in which the California legislature and the courts seem to have deviated from the State of California's long-settled and well-articulated public policy of judicial access for indigent litigants. This

oversight allows the courts to infringe on the rights of indigent applicants for CHROs to life, liberty and property. It has infringed on the rights of Petitioner in the following ways:

The right to life is infringed, because Mr. Olson's harassing behavior is so severe and traumatizing that Petitioner Aaronoff feels extremely unsafe in her own home. Over a period of nearly eight years, Aaronoff has been stalked, harassed and threatened by Mr. Olson, as well as covertly photographed, followed, and threatened by persons she knows or reasonably believes have ties to Mr. Olson. When Aaronoff turned to the court for protection and relief, the court denied her protection. Moreover. The court imposed on Aaronoff an oppressive and unbearable financial burden.

The right to liberty is infringed, in that the harassment she has suffered has restricted her freedom and sense of security in her own home. She has had her house guests harassed, interrogated and covertly photographed, even in her bathroom while undressed. Her witnesses have been threatened—one even with a gun—and she believes that members of the condo board which is controlled by Mr. Olson, attempted to poison her. (163a) She has been threatened with bodily harm by Olson's attorney. The courts failed to remedy this infringement, and indeed added to it.

The right to property has been infringed because the court has saddled Aaronoff with astronomical attorney's fees for seeking to extend the restraining order to protect herself from the never-ending, egregious harassment she was suffering. (37a-39a) Aaronoff's right to property in

her rental home has been infringed because the trial court in violation of the automatic stay improperly determined Aaronoff was the alter ego of the property, that she only rented, then voided and nullified the owner's property rights of her rental home, thus permitting Olson to move to foreclose on that rental property to oust her from her home. (18a, 23a, 84a-86a) Although the Appellate court reversed those trial court orders as void because the trial court did not have any jurisdiction they failed to remand the matter to the trial court to correct the void orders. (16a 28a-32a) Thus, the innocent property owner, who lost their property and Aaronoff, its renter, is facing homelessness, just for attempting to seek an expanded restraining order to her granted three year 2015 protective order. (16a-18a, 23a)

Petitioner is being deprived of all these rights "under color of law"—i.e., by the judicial system of the State of California, which is enabling Olson's unconscionable behavior. The pretext for this unconstitutional deprivation is an inexplicable loophole in the statutory protection for litigants seeking civil harassment restraining orders -- a loophole which must be closed in the interests of justice.

As the last few years and the Me-Too movement has graphically demonstrated, no group suffers more from the lack of access to justice than poor young women who are targeted by wealthy and powerful sexual predators. In the past few years, a rash of horrifying examples of such men targeting of vulnerable young women have been exposed. In most of these cases, the predators do not have a romantic or domestic relationship with their victims. Thus, if these victims live in California, they are unable to avail themselves of the greater protection afforded to

domestic violence victims under California law. Instead, they bear the risk of having substantial legal fees imposed on them pursuant to the civil harassment restraining order statute.

The abuse of these poor and vulnerable female victims is further exacerbated when the legal system colludes with the wealthy and powerful predator. In Jeffrey Epstein's case, in 2008, prior to his most recent prosecution, he struck a secret plea deal with a Florida prosecutor, under which he "pleaded guilty to state charges in Florida of soliciting and procuring a minor for prostitution. That allowed him to avert a possible life sentence, instead serving 13 months in a work-release program."[3] This "sweetheart deal" allowed him to escape most of the consequences of his crimes for another ten years. This clearly demonstrates that powerful men are emboldened in their wrongdoing when they are not held accountable by the legal system. Jeffrey Epstein is a sickening example of such a brutal and vicious predator. It is conservatively estimated that Jeffrey Epstein targeted between 80 and 100 teenaged girls for sexual abuse and exploitation.[4] The actual numbers may be much higher. According to news reports, Ghislaine Maxwell, Epstein's accomplice, boasted that she "[drove] into the trailer parks in West Palm Beach," and "look[ed] for [girls whom she knew were] Jeffrey's type" and brought them home for him to sexually

3. https://globalnews.ca/news/5484171/jeffrey-epstein-plea-deal-impact/#:~:text=Under%20a%202008%20non-prosecution%20agreement%2C%20Epstein%20pleaded%20guilty,to%20victims%20and%20register%20as%20a%20sex%20 (last accessed 01/04/2024)

4. https://www.thecut.com/2019/07/how-many-jeffrey-epstein-victims-are-there.html.

abuse.[5] These girls were targeted for their youth, poverty and vulnerability.[6] https://www.usatoday.com/story/news/nation/2019/07/09/how-jeffrey-epstein-allegedly-chose-his-sex-trafficking-victims/1683420001/

Epstein's most effective weapon was silence, which he bought with his wealth and the legal expertise it could buy. The media reported that over two dozen lawsuits had been filed by alleged victims as of 2019, and none of the cases ever went to trial.[7] Moreover, Epstein's lawyers attempted to discredit the victims, "many of whom are from economically disadvantaged backgrounds, by claiming that the girls lied about their ages and made-up allegations to extract money." *Id.* Thus, Epstein exploited the legal system for his own nefarious purposes, effectively victimizing his victims all over again. None of these girls could have benefited from a domestic violence restraining order, had they lived in California, because they were not in an intimate relationship with Mr. Epstein.

In another egregious case, Harvey Weinstein allegedly engaged in nonconsensual sexual behavior with 87 women, ranging from requests for massages, to intimidating sexual advances, to rape.[8] None of these women could have

5. https://nypost.com/2020/05/22/ghislaine-maxwell-searched-trailer-parks-for-epsteins-girls/ (last accessed 01/04/2024)

6. https://www.usatoday.com/story/news/nation/2019/07/09/how-jeffrey-epstein-allegedly-chose-his-sex-trafficking-victims/1683420001/ (Last accessed 01/04/2024)

7. https://www.thecut.com/2019/07/how-many-jeffrey-epstein-victims-are-there.html.

8. https://www.usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001/. (last accessed 12/27/2024)

availed themselves of the domestic violence restraining order in California, either, because they also were not in an intimate relationship with Mr. Weinstein.

The attempt to obtain a CHRO in California is fraught with potentially insurmountable barriers, particularly for indigent Plaintiffs. These barriers are significantly more burdensome than those required for a DVRO.

This greater burden represents a strange oversight by the California legislature—one that is demonstrably contrary to clearly-articulated California public policy. Since the very inception of its statehood, California has adopted legal principles, in effect in English common law as early as the reign of Henry VII, which prevent any litigant being denied access to justice because of poverty. *See Baltayan* , 90 Cal.App.4th at 1436-39. (Johnson, J., concurring).

This policy has been articulated by California courts in multiple different contexts. It has been affirmed in the context of the requirement to post a bond before being allowed to file a personal injury action. *Baltayan*, 90 Cal. App. at 1429-31. It has also been affirmed in the context of requiring an indigent plaintiff to prepay jury fees in order to prosecute a civil action. *Isrin,* 45 Cal.Rptr. at 320. It was articulated by a California court as early as 1917 in the context of prepayment of legal fees. *Martin*, 176 Cal. at 289. Ironically, this policy is tacitly recognized even in the statute governing CHROs, which states in relevant part:

> There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the Petitioner, or stalked the Petitioner,

> or acted or spoken in any other manner that has placed the Petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. A fee shall not be paid for a subpoena filed in connection with a petition alleging these acts. A fee shall not be paid for filing a response to a petition alleging these acts.

CCP § 527.6 (7)(x).

In fact, a California Appeals Court has explicitly acknowledged that the imposition of attorney's fees for indigent litigants is an improper barrier to justice. In *Garcia*, the court ruled that:

> Using fee awards as an instrument to deny access to the courts is neither the policy of the State of California, nor the purpose of the statute in question. Indeed, California Rules of Court, rule 10.960, subdivision (b), adopted effective July 1, 2008 states: "Providing access to justice for self-represented litigants is a priority for California courts."

174 Cal.App. at 467.

There is no legitimate policy reason for treating CHROs so differently from DVROs. In many cases involving non-intimates, such as this one, the harasser is almost as close to home and the threats are at least as severe and life-altering as a domestic violence situation. A

victim of harassment who lives in the same small building, shares the same common indoor and outdoor spaces, and has suffered intrusions into her private space by the harasser, is in fundamentally the same predicament as a domestic violence victim. The danger to the victim is significantly exacerbated when the harassment is sexual in nature, as in this case. And yet, merely because the harasser and the victim were never involved in an intimate relationship, Petitioner was subjected to the much greater burden of proving a civil harassment case.

The greater burden imposed on a CHRO applicant regarding access to courts is two-fold compared to a DVRO applicant. First, DVRO the statute explicitly provides for attorney's fees to the prevailing party *only* "if the respondent establishes by a preponderance of the evidence that the petition or request is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay." CA Fam. Code, § 6344(b). Thus, in the ordinary case in which the restraining order is sought in good faith, the court cannot grant attorney's fees to the prevailing party.

The rights of domestic violence victims are further safeguarded by a provision that explicitly requires the court to determine "that the party ordered to pay has, or is reasonably likely to have, the ability to pay." CA Fam. Code, § 6344(c).

However, these protections are non-existent for victims who are stalked, threatened, and even sexually harassed and assaulted by people with whom they *do not* have a consensual intimate or domestic relationship. Thus, while a woman harassed by her husband is able to invoke enhanced protections under the law when seeking

a restraining order, a woman who is raped by her neighbor lacks access to such protections.

The legal provisions for a CHRO provide that, "[t]he prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any." CCP § 527.6 (s). There is no requirement that the court determine whether the restraining order action was brought in bad faith or that the court take into account the applicant's ability to pay, when determining whether to grant attorney's fees to the prevailing party.

These greater burdens for obtaining a CHRO effectively stifle the ability of indigent applicants to assert their rights to protection from harassment, stalking and sexual assault by strangers, acquaintances and neighbors. Before applying for a CHRO, any rational victim of harassment would have to consider very carefully whether the risk posed by the harasser outweighs the substantial risk of being charged crushing attorney's fees, if the victim is unable to present sufficient evidence to overcome the high "clear and convincing evidence" hurdle. Moreover, the risk of losing the case due to legal error, and thus being liable for attorney's fees, is substantially increased when an indigent victim is unable to pay for an attorney and is forced to proceed *pro se*. Thus, an indigent victim seeking a CHRO is subjected to a twin risk of financial liability, which would deter any victim from attempting to obtain the protection of the law. Both the clearly-articulated public policy of California and the 14th Amendment prohibit such a denial of due process.

VI. Conclusion

This case represents a shocking miscarriage of justice, facilitated by California statute. Due process under the 14th Amendment requires that indigent applicants for a restraining order be given a fair chance to prove their need for protection. Their access to justice should not be chilled by the fear of having astronomical attorney's fees imposed upon them if they are unable to demonstrate that they meet the standard of proof.

The 14th Amendment and California policy require that these unjust requirements be eliminated, and that CHRO applicants be given the same protections as DVRO applicants. Thus, certiorari should be granted to review these issues.

Respectfully submitted,

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