No. 23-6362

In the Supreme Court of the United States

ORIGINAL

GREGORY STESHENKO,
Petitioner,
v.

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT *et al.*
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Gregory Nicholas Steshenko,
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Petitioner, *in Propria Persona*

QUESTIONS PRESENTED

1. Whether the interlocutory decisions of the federal courts - especially, those appealed under 28 U.S.C. § 1292 - ever become the final determinations?

2. Whether the interlocutory motions and their permitted under 28 U.S.C. § 1292 appeals continue their active existence after being adjudicated?

3. Whether the doctrine of backpropagation is valid? According to that doctrine, invented by the Sixth District of the California Court of Appeal, the final adverse to the plaintiff determination propagates back and makes all the interlocutory adverse decisions on the motions and appeals in a given case the final determinations. The court held that multiple final determinations of the same issue in the same case are possible.

4. Whether counting of the federal interlocutory appeal under 28 U.S.C. § 1292 for the threshold established by the California Code of Civil Procedure, § 391, subd. (b)(1), violated petitioner's due process rights and his constitutional right of access to courts? That action resulted in branding petitioner a "vexatious litigant," an automatic, non-meritorious dismissal of petitioner's civil rights lawsuit and denial of his access to the state courts.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of

all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(a) Gregory Steshenko, Petitioner and Plaintiff;

(b) Foothill-De Anza Community College District, Patricia Buchner, Anita Muthyala-Kandula, Lorrie Ranck, Community Hospital of Monterey Peninsula, Un Sil Lee, Natividad Medical Center, Linda Delcambre, Margaret Humbracht, Leonila Shapiro, Spectra Laboratories, Ruby Kaamino and Crystal Green, Respondents and Defendants.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

U.S. Cases

California Cases

U.S. Statutes

California Statutes

IN THE

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OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The denial of review by the highest state court appears at Appendix C to the petition and is unpublished.

JURISDICTION

This appeal originates from the November 1, 2023 denial by the California Supreme Court of review of the unpublished decision of the state appellate court. A copy of that denial appears at Appendix C. No petition for rehearing is accepted by the California Supreme Court. The United States Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Civil Rights Act – Access To Courts

Civil Rights Act of 1866, Presently Enacted As U.S. Code, Title 42, Chapter 21, Subchapter I, Section 1981

"(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal

benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

[...]

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

B. Constitutional Provisions – Access To Courts

The right to sue and defend in the courts is one of the highest and most essential privileges of citizenship and must be allowed by each state to the citizens of all other states to the same extent that it is allowed to its own citizens. See *Chambers v. Balt. & Ohio R.R.*, 207 U.S. 142, 148 (1907); *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 233 (1934); *see also Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) [noting that the U.S. Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause].

U.S. Constitution, Article IV, Section 2, Clause 1 (The Privileges and Immunities Clause)

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

The First Amendment To The U.S. Constitution

"Congress shall make no law respecting ... the right of the people ... to petition the Government for a redress of grievances."

The Fifth Amendment to the U.S. Constitution

"No person shall be [...] deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment to the U.S. Constitution

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. Interlocutory Orders of the U.S. District Courts

United States Code, Title 28, Part IV, Chapter 83, § 1292

"(a) [... T]he courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States [...], or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions [...];"

D. California Statutes on Vexatious Litigants

California Code of Civil Procedure § 391

"[... T]he following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does [...]:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person [...]."

"[... A] 'litigation' within the statute means any civil action or proceeding, commenced, maintained or pending in any state or federal court of record. ([Cal.] Code Civ. Proc., § 391, subd. (a).) [2] The statute does not define the phrase 'final determination against the same defendant.' However, a judgment is final for all purposes when all avenues for direct review have been exhausted. (*First Western Development Corp. v. Superior Court*, [... (1989)] 212 Cal.App.3d [860,] at p. 864.)." *Childs v. PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 992.

California Code of Civil Procedure § 391.1

"(a) In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation [...]."

California Code of Civil Procedure § 391.3

"[... I]f [...] the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail [...], the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix."

California Code of Civil Procedure § 391.7

"(a) [... T]he court may [...] enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of [...] the presiding judge. Disobedience of the order [...] may be punished as a contempt of court.

(b) [... T]he presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants [...].

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. [...]."

STATEMENT OF THE CASE

A. Factual Background

The factual background of this case is scantly relevant to the issues on appeal. Therefore, it is presented here in a highly abbreviated manner. Petitioner, a long-term unemployed electrical engineer of the protected age, enrolled into De Anza College ("De Anza"), a California community college[1], for professional retraining into a medical laboratory technician ("MLT"). The County of Santa Cruz financially sponsored him. Contrary to California Constitution, statutes and regulations, De Anza outsourced a part of its MLT program to the commercial entities not related to the public system of education and lost control over it. Contrary to statutes and regulations, the ministerial college officials established a practice, according to which students had to seek permission from the commercial entities for enrollment into the outsourced college courses. The students were selected for enrollment through the job interviews at the commercial entities. The selection was arbitrary, but, in general, students were evaluated on their age and ability to bring through their labor the maximum profit to the commercial entities. Respondents sent petitioner to three job interviews, at which the employees of the commercial entities stated to petitioner that his age is unacceptable for training. Accordingly, respondents denied petitioner enrollment into the

[1] An arm of the State of California

outsourced courses required for his graduation. Because of it, petitioner lost the county's sponsorship and his ability to graduate, to get a professional license and to re-enter the workforce. He remains unemployed and unemployable.

B. Legal Discussion

1. Federal Approach to "Vexatious" Litigation

The sole basis for branding petitioner a "vexatious litigant" was petitioner's 3 prior federal actions. Hence, federal law is relevant, especially on the occasions where it can clarify ambiguities in state law. A good treatment of the federal "vexatious litigant" law is given in *Ringgold-Lockhart v. County of Los Angeles*, No. 11-57231 (9th Cir. 2014.) Essentially, declaration of a litigant as "vexatious" is deemed a very serious, rarely employed sanction because of its ability to infringe upon the fundamental right of access to the courts guaranteed by the First, Fifth and Fourteenth Amendments. The court contemplating such an action must (1) give litigants a notice and an opportunity to oppose the order before it is entered, (2) compile an adequate record for appellate review. (3) make substantive filing of frivolousness or harassment and (4) to tailor the order narrowly to the specific vise. Litigiousness alone is not enough, the petitioner's claims should be not only numerous, but also patently meritless. The pre-filing orders are the remedies of the last resort.

2. California Approach to "Vexatious" Litigation

a. Threshold

California is rationing an access to court by the pro se litigants in a mechanistic quantitative manner. The California Code of Civil Procedure, § 391, subd. (b)(1) sets up a threshold of five litigations within the seven-year period. If the threshold is reached or exceeded, the pro se plaintiff is deemed vexatious irrespective of the merits of his cases.

b. Definition of Litigation

California Code of Civil Procedure, § 391, subd. (a) defines the "litigation" as "any civil action or proceeding, commenced, maintained or pending in any state or federal court." The definition is overbroad. It required an explanation from the California Supreme Court (see discussion, *infra.*) California Code of Civil Procedure, § 391, subd. (b)(1)(i) ameliorates the overbreadth by the requirement that the tallied towards the threshold litigations must be "finally determined adversely to the person" (emphasis added.)

c. Definition of Finality

The statute does not define the phrase "final determination against the same defendant." California courts provided that definition. "[... A] judgment is final for all purposes when all avenues for direct review have been exhausted." *First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 864; *Childs v. PaineWebber Incorporated* (1994) 29

Cal.App.4th 982, 992. "A particular litigation is finally determined when [all] avenues for direct review (appeal) have been exhausted or the time for appeal has expired. (Citation)." *Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 413, fn. 5.

d. Do the Interlocutory Appeals Under 28 U.S.C. § 1292(a)(1) Ever Become Final Determinations?

The broader issue is whether interlocutory decisions might ever become the final determinations.

Ordinarily, interlocutory decisions of U.S. district courts are not appealable. For a small set of interlocutory decisions that might have lasting consequences, 28 U.S.C. § 1292 carves an exception, whereby a certain kind of motions, such as a motion for injunction, could be extended to a U.S. Court of Appeals. The appellate decision in such a case remains interlocutory, and the matter is subject to further rulings of the trial and appellate courts.

Interlocutory is not final. The California Sixth District Court of Appeal thinks otherwise. According to the court, the interlocutory motions continue their existence past their adjudication and result in final determinations when the decision on the final appeal is rendered. Thus, it is possible to have a plurality of the final determinations on the same issue within a single case, and each of them is tallied towards the Section 391 threshold. For instance, a final decision to deny an injunction also makes the prior decision to deny

preliminary injunction the final determination, resulting in two final determinations on the single issue of injunction. Hence, two instances of litigation are counted towards the threshold.

Where the purpose is maximal disenfranchisement of the poor pro se litigants, it is rational. It is arbitrary and nonsensical otherwise.

e. The Consequences of Branding a Pro Se Plaintiff "Vexatious"

The branded plaintiff is required to post a significant bond. If he is indigent and unable to do so, his case is dismissed. He is forbidden to file any other action unless he first obtains permission from the presiding judge of the trial court. In practice, such permissions are never granted because the chief concern of the presiding judges is judicial economy. Thus, the branded indigent plaintiff is completely disenfranchised. He cannot file an action pro se, he also cannot do it through an attorney because of his poverty. The defendants prevail without any litigation on merits.

f. California Supreme Court's Clarification of the Term "Litigation"

The California Supreme Court addressed the overbroad notion of "any civil action" in *Shalant v. Girardi* (2011) 51 Cal.App.4th 1164, at pp.1173-1175 and fn. 6. The court noted that "[t]he drafters did not intend each motion, which would ordinarily be granted or denied, but not 'dismissed,' to be considered a separate 'litigation'."

Yet, the intended clarification is very vague, and does not take into account all the variety of formulations used in court decisions. A "denial" might be interlocutory or terminal; so could be a "dismissal" of a motion. While Section 391 attempts to encompass all state and federal jurisdictions, there are no standard words amongst the jurisdictions. The intended clarification added more confusion, sufficient to enable the California Sixth District Court of Appeal to formulate the doctrine of backpropagation denying an access to courts based on any interlocutory proceedings.

g. Doctrine of Backpropagation

The doctrine of backpropagation is stated on pp. 9-10 of Appendix A. According to it, petitioner's interlocutory appeal was finally determined when his final appeal was dismissed. In other words, the interlocutory appeal had 2 determinations: (1) the non-final, presented in Attachment D, which denied petitioner's motion for preliminary injunction, but did not dismiss the case, and (2) the implicit final, when petitioner's final appeal failed. According to the court, after denial, petitioner's motion for preliminary injunction and interlocutory appeal pursuant to 28 USC § 1292 somehow continued their existence past adjudication until the resolution of the final appeal. A dismissal of the final appeal propagated back and validated as the final determination each adverse to plaintiff interlocutory decision in the case. Thus, what was interlocutory became final. The adverse final decision and

the four failed interlocutory motions in a single case create the sufficient basis to brand the pro se litigant as "vexatious," with the consequences of dismissal of his case for inability to pay the bond and denial of further access to the state courts. It is the most draconian and capricious, if not absurd, abridgment of the well-established constitutional right.

h. Analogy to a poll tax

A poll tax was practiced by a number of states as a means of excluding the racial minorities and the poor from voting. Similarly, the doctrine of backpropagation conditions an access to court upon wealth. The Twenty-fourth Amendment to the U.S. Constitution abolished all forms of the poll tax. The backpropagation doctrine is similarly unconstitutional.

REASONS FOR GRANTING THE WRIT

The backpropagation doctrine is used for disenfranchisement of the lower socio-economic strata of the population in an access to courts. Only people who are wealthy enough to afford an attorney can access the justice system. The others are *de facto* encouraged to take the contentious matters into their own hands, usually by violent means. A social system that gives its members a choice between violence and complete subjugation to anyone with more money and power is highly oppressive and inherently unstable. Such systems tend not to live long.

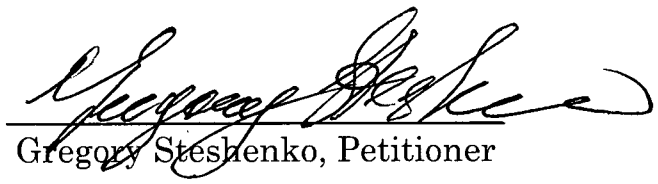
A denial of access to the court system is much more insidious than a poll tax and literacy tests used by a number of states to curtail the right to vote. Voting has no immediate impact on people's lives. The courts do. A denial of access to them and a loss of trust in the court system immediately translate into violence and other forms of social dysfunction. The nearly daily mass shootings in this country, as well as the political violence, with the January 6, 2020 events as a prominent example of it, are unsurprising.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: December 15, 2023

Respectfully submitted,



Gregory Steshenko, Petitioner