

23-7281

No. _____

FILED

JAN 04 2024

OFFICE OF THE CLERK
SUPREME COURT OF CALIFORNIA

ORIGINAL

In The
Supreme Court of the United States

In Re MARRIAGE OF RYAL W. RICHARDS AND ALICIA MARIE
RICHARDS

ALICIA MARIE RICHARDS

Petitioner,

V.

RYAL W. RICHARDS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA FOURTH DISTRICT COURT OF APPEAL
DIVISION THREE

AMENDED PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

Alicia Marie Richards

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Petitioner in Forma Pauperis

QUESTIONS PRESENTED FOR REVIEW (Rule 14.1(a))

1. Whether the court had subject matter jurisdiction after the removal to the District Court?
2. Whether “the state court shall proceed no further unless and until the case is remanded” means what it says, or whether the state court can disregard the removal statute 28 U.S.C. § 1446 after a subsequent removal petition?

LIST OF PARTIES

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RELATED CASES

Case No. S280565
(denied review August 9, 2023)
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797 tel. 415-865-7000

Case No. G059762
(Rehearing denied June 1, 2023)
Fourth District Court of Appeal-Div.3
601 W. Santa Ana Blvd.
Santa Ana, CA92701 tel. 714-571-2600
Written by the Honorable Justice Kathleen E O'Leary
Affirmed in Full

Case No. G059762
(Opinion issued May 4, 2020)
Affirming in Full
Fourth District Court of Appeal-Div.3
601 W. Santa Ana Blvd.
Santa Ana, CA92701 tel. 714-571-2600
Written by the Honorable Justice Kathleen E O'Leary 1

Case No. 15d009634
Order dated 10/23/2020
Orange County Superior Court
341 The City Drive, Orange, CA 92868
The Honorable Andre De La Cruz, Judge Dept. W10/L62
Phone: (657) 622-5562; Email: W10@occourts.com

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OPINION BELOW

The decision of the Court of Appeals, Fourth District, Division Three, *Ryal W. Richards v. Alicia Marie Richards*, Court of Appeal Case No. G059762 affirming in full on May 4, 2023 is appended to this Petition. (Appendix A)

JURISDICTIONAL STATEMENT

Petitioner Alicia Marie Richards appealed the court's October 23, 2020 order challenging its subject matter jurisdiction. The California Court of Appeals, District Four, Division Three entered its Opinion affirming the Trial Court orders dated October 23, 2020 on May 4, 2023. (Appendix A).

A timely petition for rehearing was denied June 1, 2023. (Appendix B)

A petition for review was denied on August 9, 2023. (Appendix C)

A sixty day (60) extension of time to file the petition for writ of certiorari granted on November 14, 2023 extending the deadline to file certiorari 60 days to and including January 6, 2024.(Appendix D). A sixty day extension to correct the petition was granted from March 11, 2024 to May 10, 2024. (Appendix S *cf.* Appendix T) The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Accordingly, this Petition is timely. Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review whether the court had subject matter jurisdiction after the filing of the removal petition to the District Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution

“Clause says that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” “No State shall “deny to any person within its jurisdiction the equal protection of the laws, and the right to access to the courts.”

Bill of Rights

“All persons within the jurisdiction of the United States shall have the same right to every State and Territory to the full and equal benefit of all laws and proceedings for the security of persona and property.”

28 U.S.C.A. Sec. 72, was repealed effective September 1, 1948

§ 1446. Procedure for removal of civil actions

“(a) GENERALLY.-A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) REQUIREMENTS; GENERALLY.-

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter. . .

(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.-Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded. . .”

Civil Code of Procedure Section 391

391. Definitions

As used in this title, the 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 any of the following:

(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 or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(5) After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1 (commencing with Section 6300) of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

Family Law Code Section 2030

"(a)(1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights ... "

STATEMENT OF THE CASE AND FACTS

This is a family law case. Alicia Marie Richards is the Petitioner and the defendant in the lower court and was sued for divorce on or about November, 2015 by Ryal W. Richards hereinafter Respondent in the County of Orange, Superior Court, Lamoreau Justice Center located at 341 The City Drive, Orange, CA 92868. The Honorable Judge Andre De la Cruz, presiding.

On or about June 16, 2017, the Petitioner and Respondent entered into a Global Settlement which divided the real property located at 351 Catalina Drive, Newport Beach, California 92663 into Petitioner's separate property and gave Respondent a negotiated sum.

After Petitioner was unable to perform her part of the Global Settlement because of Respondent's breach of the Global Settlement, Petitioner filed on September 13, 2017 in pro se, a motion to vacate the Global Settlement and timely requested a family law code § 2030 hearing to be held for pendent lite attorney fees before her hearing on her motion so that she could be equally represented at the hearing on her motion.

On January 26, 2018, without first holding Petitioner's 2030 hearing, the court denied Petitioner's motion to vacate the Global Settlement of June 16, 2017 violating the family law code statute (2030).

Later in the day, unbeknownst to Petitioner, and after the hearing, on Petitioner's motion to vacate the Global Settlement of June 16, 2017, on January 26, 2018, around 1:30 p.m. Respondent's attorney rewrote the Global Settlement of June 16, 2017 and caused to be filed a judgment attaching a Modified Stipulation, unsigned by Petitioner, without first serving it on Respondent who was

unrepresented at the time and did not agree to the changes of the division of property that were already agreed to in the Global Settlement of June 16, 2017.

On January 29, 2018, Petitioner still unrepresented filed an appeal on the order dated January 26, 2018 denying the motion to vacate the Global Settlement of June 16, 2017 that was entered before the January 26, 2018 Judgment and Modified Stipulation not knowing about the January 26, 2018 Judgment and Modified Stipulation and had she had the aid of counsel she would never have filed an appeal because her motion to vacate the Global Settlement was unopposed and all the evidence was in her favor.

On February 3, 2018, after being served by the Court with the Judgment and Modified Stipulation dated January 26, 2018, unsigned by Petitioner and not agreeing to the changes of division of property, Petitioner requested Respondent to Stipulate to vacate the Judgment and Modified Stipulation of January 26, 2018 and have entered a new Judgment and Stipulation that conforms to the June 16, 2017 Global Settlement. Respondent's attorney refused to respond and instead started a campaign to run up the costs of the litigation for his and his client's financial gain. The January 26, 2018 Judgment and Modified Stipulation violates Petitioner's constitutional due process rights under the 14th Amendment. See *Vitach Intern, Inc. v. Sporn*, (2017) 16 Cal. App. 5th 76, 800, 807 [Stipulated Judgment that includes provisions not agreed is void and may be vacated at anytime."] cf. *Jones v. World Life Research Institute*, 60 Cal. App. 3d 836 (1976) [". . . a trial court is under a duty to render a judgment that is exact conformity with an agreement or stipulation of the parties."] The January 26, 2018 Judgment and Modified unsigned Stipulation is one so affected by fundamental infirmity and was a complete usurpation of power.

On February 7, 2018, Petitioner was forced to file a motion to vacate the January 26, 2018 Judgment and Modified Stipulation. The court stayed Respondent's motion to vacate the January 26, 2018 Judgment and Modified Stipulation pending appeal of the order entered before judgment denying her motion to vacate the Global Settlement of June 16, 2017 which was not an appealable order.

On January 9, 2020, the Court of Appeals without appellate jurisdiction affirmed the order denying the June 16, 2017 Global Settlement as an order after judgment although the order was entered before the January 26, 2018 judgment and modified Stipulation. The Court of Appeals also stated that Petitioner waived the court's mandatory, statutory duty to hold her timely requested 2030 hearing and erroneously claimed that Petitioner did not attach all the required forms to her motion to vacate the June 16, 2017 Global Settlement. The opinion acts as a miscarriage of justice.

On January 9, 2020, Respondent, initiated a proceeding to declare Petitioner a vexatious litigant [after she had filed a contempt motion for nonpayment of child support] based on the one litigation that was filed by Respondent. Respondent argued that based on the court docket [although not specifying anything in particular] and her appeals which were just a continuation of this one litigation, that she should be declared a vexatious litigant and ordered to pay \$4,000 per filing before filing any document in the family law court.

Around June, 2020, Petitioner caused to be restored her motion to vacate the January 26, 2018 Judgment and Modified Stipulation so that an order would issue to vacate it, and enter a new judgment conforming to the June 16, 2017 Global Settlement. The hearing was continued, taken off calendar, restored and then dismissed by the court pursuant to the vexatious litigant statute Civil Code of Procedure § 391.7 around July, 2021 which Petitioner appealed.

Before the hearing on the vexatious litigant motion, on July 13, 2020, Petitioner filed a motion to continue all hearings (Appendix I p. 31 to 33) and Motion (Appendix I) for pendent lite attorney fees pursuant to 2030 to be equally represented before any further hearings to ensure her rights were protected. The court denied the ex parte motion (Appendix J p. 36 to K) and set the hearing on Petitioner's pendent lite attorney fees pursuant to 2030 for after (Appendix K p. 39) Respondent's vexatious litigant motion violating the family law code statute 2030. See *Arizona v. Filminante*, (1991) 499 U.S. 279, 309-10, 111 S. Ct. 1246 113 L. Ed. 2d 302 [Such errors affect "the framework within which the trial proceeds, rather than simply an error in the trial process itself."] Petitioner was denied a statutory right under the family law code statute (2030), when the state court actors proceeded after they failed to hold Petitioner's timely hearing (2030). Petitioner has been intentionally treated differently from others similarly situated when requesting to be equally represented under the family law code statutes 2030, et seq, and to litigate her claim under 2120 through 2129 against opposing parties and that there was no rational basis for the difference in treatment except to intentionally and arbitrarily discriminate against Petitioner and ignoring the express terms of the family law code statutes (2030 and 2120 through 2129) The state family law court violated *Logan v. Zimmerman*, 455 U.S. at 436, 102 S.Ct. at 1158 (1982) and Petitioner's right to due process and equal protection under the family law code statutes in violation the 14th Amendment, and it was clearly erroneous as a matter of law when the federal court remanded. Petitioner's removal petitions had two separate grounds for removal.

The hearing on the motion for Pendente Lite Attorney fees and to declare Petitioner a vexatious litigant was continued by the court because of the change in the court operations, Covid-19, and technical difficulties. The hearing scheduled for October 23, 2020 was an in person hearing.

After the court violated the family law code statute (2030) by not timely holding Petitioner's Pendent Lite Attorney fee request pursuant to family law code section 2030, Petitioner filed a writ of mandate to the Court of Appeals for it to order the court to comply with the family law code statute (2030). The court of appeals denied the writ of mandate.

On October 22, 2020, Petitioner removed the case and vexatious litigant cause to the District Court for the Central District of California on the grounds that the vexatious litigant statute Civil Code of Procedure 391 as being applied to her was unconstitutional and denied her due process rights under the 14th Amendment to the Constitution. The District Court for the Central District of California *sua sponte* remanded the case back to the state court.

On October 23, 2020 at 10:00 a.m., Petitioner removed the family law case under a completely different ground (Appendix L p. 59) to the Central District Court of California because she was being denied her Constitutional right to due process of law and equal rights under the law to 2030 under color of authority after the court refused its mandatory duty (Government Code 815.6) to timely hold her motion for pendent lite attorney fees timely and violated family law code 2030. See *In re Marriage of Knox* (2022) 83 Cal.App.5th 15, 29 [violated obligation by setting hearing until after motion]. The court violated statutory law and public policy by failing to timely rule on her motion so that she would be equally represented at the vexatious litigant hearing. Petitioner filed her notice of removal with the state court clerk and gave written notice (Appendix L p. 79 and Appendix M p. 81) to all the parties of the second removal notice and for the state court to take no further action. The state court clerk filed the notice of removal and the court was aware of the second removal notice. Notwithstanding the notice of removal (and Petitioner's failure to appear because she also had been exposed to Covid) (Appendix N p. 83) and Respondent's failure to dispute he received a notice of removal or that one was filed with the court, and was told by the court deputy not to appear, the Court proceeded (Appendix B p. 14) and on the same day entered the final judgment in favor of Respondent after falsely stating it had no communication from Petitioner. The court declared Petitioner a vexatious litigant after the state court actors failed to follow state law and after they committed a structural error by failing to enforce family law code section 2030 according to the Legislative intent, public policy and the law itself denying Petitioner due process and equal protection of state law (2030) which was a federal matter for which 42 U.S.C. 1983 was created. The whole process was turned into a miscarriage of justice and violated Petitioner's right to due process of law and equal protection under the law (2030) under the 14th Amendment. See *Zinerman v. Bush*, 494 U.S. 113, 124-28 and 32 [110 S.Ct. 975] (1990) [Holding: *inter alia*, "Applying this test, the court usually has held that the Constitution requires some kind of hearing before the state deprives a person of liberty or property." Petitioner also disputes all the court's false findings or that she could be considered a vexatious litigant in this one litigation filed by Respondent

that she has only been defending herself against Respondent's fraudulent filings enforcing the January 26, 2018 Judgment and Modified Stipulation that changed the terms of the Global Settlement of June 16, 2017 without notice at the same time Petitioner was unrepresented and had the court not violated family law code 2030, and she had had counsel to protect her property rights, her evidence would have been considered and there would have been no appeals or void vexatious litigant order. Petitioner posits the court's October 23, 2020 order (Appendix B to D) and all of its subsequent orders (Appendix E) through November 25, 2020 are void as a matter of law. The Court's order (Appendix D) further violates *United States E. I. du Pont de Nemours, & Co.* 366 U.S. 316, 359, 375 (1961) ["The court is not authorized to order relief which is without findings to support 'A full exploration of facts is usually necessary in order to draw such a decree.'"] The order is devoid of any evidence to support its findings. (Appendix D p. 20-21) The court stated that Petitioner filed 100 filings (Appendix O) but did not state one of those alleged filings on the record either orally or written or to show Petitioner was litigating the same issue already determined. Petitioner disputes the court's false unsupported statements. "The determinative factor is the nature and effect of the filings, not the number." See *Morton v. Wagner*, (2007) 156 Cal.App. 4th 963, 971-972. Furthermore, here the court knew Petitioner was ill-equipped to represent herself but yet it refused over and over again to hold Petitioner's timely requested hearing on Pendente Lite Attorney fees at the same time it knew Respondent was refusing to pay court ordered support. The remand order was not issued by the federal court until five days later on October 29, 2020 and not filed in the Orange County Superior Court until November 25, 2020 (Appendix P to R). Petitioner posits the court's orders (Appendix B to E) are void *ab initio*.

On December 21, 2020, Petitioner timely filed an appeal to the Fourth Appellate District Division Three claiming that the court's orders dated October 23, 2020 (Appendix B to E) and all proceedings until the remand letter was docketed by the family law court, on November 25, 2020, were void as a matter of law.

Petitioner filed a separate appeal on August 11, 2021 of the order *sua sponte* dismissing her motion to restore her motion to vacate the January 26, 2018 Judgment and Modified Stipulation that has never been heard or litigated by any court (Appendix O). The Court of Appeals dismissed Petitioner's appeal on May 31, 2023 stated the dismissal acted as an order taking Petitioner's motion to vacate the January 26, 2018 Judgment and Modified Stipulation unsigned by Petitioner off calendar although it dismissed her appeal as moot after Petitioner was able to obtain counsel to represent her in a modification of vested support never paid by and filed by Respondent.

On May 4, 2023, the Court of Appeals, Fourth Appellate District, Division 3, affirmed the court's vexatious litigant order dated October 23, 2020 and subsequent orders (Appendix B to E) stating that the state court had jurisdiction to proceed in

light of the removal petitions filed in the District Court based on its case *Clipperjet, infra* (Appendix A p. 5-6). The Court of Appeals stated in its Opinion (Appendix A) that Petitioner's case was similar to *Clipperjet, infra* where Petitioner made to frivolous attempts to remove the case to the District Court "on the same grounds" that were "identical" and applied the narrow exception to the general rule that the state court loses jurisdiction. Petitioner disputes the Court of Appeal's false facts that are not supported by any evidence. Petitioner also disputes she removed the case twice on the same ground. The federal court made no findings (Appendix P) that Petitioner's second removal was duplicative of the earlier attempt, lacked merit or had been filed in bad faith. It would have been clear error in judgment by the District Court because Petitioner was seeking federal question jurisdiction on two separate issues. The first was to declare the vexatious litigant statute 391 as applied to Petitioner unconstitutional and the second was to enforce state (2030) law. The Central District Court did not remand Petitioner's removal petitions with prejudice (Appendix P).

On June 1, 2023, the Court of Appeals denied rehearing (Appendix G).

On August 9, 2023, the California Supreme Court denied review (Appendix F).

This case presents a pure question of law.

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review whether the court had subject matter jurisdiction to proceed after the removal to the federal court and whether the state court had discretion to ignore the intent of the Legislature and rewrite the law or give the words an effect different from the plain and direct import of the terms used in the removal statute 28 U.S.C. 1446(d) that the court "the state court shall proceed no further unless and until the case is remanded". See Court Order dated October 23, 2020 (Appendix D) and Opinion of the Court of Appeals, Fourth Appellate District, Division Three dated May 4, 2023 (Appendix A).

REASONS FOR GRANTING OF THE WRIT

This Court should grant this writ of certiorari to the Court of Appeals, Fourth Appellate District, Division Three because the appellate court's decision (Appendix A) conflicts with the plain language of the removal statute 28 U.S.C. 1446, and its decision is based on law that was repealed and they had no discretion to rewrite the law or give the words an effect different from the plain and direct import of the terms used in the removal statute. The Court of Appeals had no authority to carve out an exception to the plain language of the removal statute 28 U.S.C. 1446. This calls for an exercise of this Court's supervisory power to settle whether the court had subject matter jurisdiction to proceed after the removal petition was filed in the

federal court and whether the court had discretion to ignore the intent of the Legislature and rewrite the law or give the words an effect different from the plain and direct import of the terms used in the removal statute 28 U.S.C. §1446. This Court should grant certiorari to the Court of Appeals for the purpose of clarifying the removal statute 28 U.S.C. §1446. By this Court granting this writ would settle the above important questions and conflicting opinions who have departed from the clear intent of the Legislature who stated in the removal statute that “the state court shall proceed no further unless and until the case is remanded” means what it says and calls for an exercise of this Court’s supervisory power to bring back conformity to the justice system and the clear intent of the removal statute 28 U.S.C. §1446. The court orders (Appendix B to E) and Court of Appeals, Fourth Appellate District Opinion (Appendix A) issued in this matter and all subsequent proceedings should be declared void because the case had been removed to the federal court, depriving the state court of subject matter jurisdiction to proceed, before the state court orders (Appendix B to E) were entered and before remand was filed on November 25, 2020.

Petitioner respectfully requests that the Court grant writ of certiorari to the Court of Appeals, Fourth Appellate District, Division Three and resolve these important questions of law.

ARGUMENT

- A. The plain language of the removal statute 28 U.S.C. §1446 states the Court “shall” proceed no further unless and until the case is remanded” and the Court had no discretion to carve out an exception

28 U.S.C.A. Sec. 1446 (2015) provides:

“(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

“(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

"If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title [, diversity of citizenship,] more than 1 year after commencement of the action.

"(d) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed **no further unless and until the case is remanded.**" (bold added)(emphasis added)

Here, as stated in the relevant facts, the court ignored the plain language of the removal statute 28 U.S.C. §1446 and proceeded anyway which the court of appeals affirmed concluding it had discretion to ignore the plain language and intent of the removal statute 28 U.S.C. §1446 and carve out an exception because of a subsequent removal petition brought on different grounds. The "public interest requires decisions and action to enforce laws for the protection of the public." See *Owen v. City of Independence, Missouri*, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980) The statute 28 U.S.C. §1446 speaks for itself without limitations, and there is no intimation that Congress meant that subsequent removal filings would allow the state court to proceed in light of the express language in the statute that states "the State court shall proceed no further unless and until the case is remanded." See *United States v. Gonzales*, 520 U.S. 1, 6 (1996) ["Given this clear legislative directive, it is not for the court's to carve out statutory exceptions based on judicial perceptions of bad faith."] In sum, Petitioner posits the plain language of the removal statute 28 U.S.C. §1446 forbids the state court from proceeding after removal and until the case has been remanded, therefore, the actions taken by the state court (Appendix B to E) in this matter are void and should be vacated as a matter of law.

This Court has held: we have stated time and again that courts must presume that the Legislature says in a statute what it means in a statute what it says there. When the words of a statute are unambiguous then, this first canon is also the last, the judicial inquiry is complete." See *United States v. Gonzales*, 520 U.S. 1, 6 [117 S. Ct. 1032] (1996) Section §1446 does not include any exceptions to the removal statute and the statute's intent is clear. The starting point must be the language of the removal statute to determine its intent. See *Andrus v. Allard* 444 US 51, 56, 100 S. Ct. 318 322, 62 L. Ed. 210 (1979)

The removal statute 28 U.S.C. §1446 gives a straight forward statutory command to the state court which is to proceed no further unless and until the case

is remanded. Therefore, the question is whether the words “shall” and “proceed no further unless and until the case is remanded” says what it means. There is no ambiguity in the words, therefore, there is no room for a change in construction. See *United States v. Witberger* 5 Wheat 76, 95-96 (1820). The straightforward language of the removal statute 28 U.S.C. §1446 leaves no room to speculate about congressional intent. There is no intimation that Congress meant 28 U.S.C. §1446 to allow the state court to proceed in the event of a second removal petition even if the removal petition was subsequently determined not to be removable. It is not for the court’s to carve out statutory exceptions based on judicial perceptions of bad faith. In sum, Petitioner posits that the plain language of the removal statute 28 U.S.C. §1446 forbids the state court from proceeding after even a subsequent removal and until the case has been remanded.

Petitioner, respectfully prays that the Court grant writ of certiorari to the Court of Appeals, Fourth Appellate District, Division Three and resolve this important questions of law on whether the removal statute 28 U.S.C. §1446 means what it says when it stated that the court “shall” proceed no further unless and until the case is remanded.” If the plain language of the statute means what it says that the state court “shall” “proceed no further unless and until the case is remanded” then the state court had no subject matter jurisdiction to proceed based on the removal petition and the court of appeals lacked jurisdiction over the appeal and was simply to note the jurisdictional defect, correct it, and dismiss the appeal. The state court’s orders (Appendix B to E) were void *ab initio* by operation of 28 U.S.C. §1446(d); *cf. Bradley v. Fisher*, 80 US 335 (1871) [held: “It is not enough that it have jurisdiction over the subject matter of the complainant generally; it must have jurisdiction over the particular case and if it does not, the judgment is void *ab initio*.”]

B. The Court had no authority to Proceed without Subject Matter Jurisdiction and Wrongly Applied the Law and applied section from the Removal Statute 28 U.S.C. Sec. 72 that was Repealed

In September 1, 1948, the prior law, 28 U.S.C Sec 72 allowed the court’s discretion to proceed if such suit was wrongfully or improperly removed, however that section was repealed.

The prior law, 28 U.S.C.A. Sec. 72, was repealed effective September 1, 1948. It provided:

"Whenever any party entitled to remove any suit mentioned in section 71 of this title, except suits removable on the ground of prejudice or local influence, may desire to remove such suit from a State court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such

suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court."

In 2023, the Supreme Court of Delaware, in *Gifford v. Miller*, 2023, 40 (Del. Oct 06, 2023) cited *Clipperjet Inv. v. Tyson*, 38 Cal. App. 5th 521, 251 Cal. Rptr. 3d 34, d38 (2019) ("*Clipper*") After a removal on the eve of trial to the District Court, the Court proceeded because federal court does not have jurisdiction over child custody matters and claimed the petition was untimely being the second day of trial. The court proceeded with child custody issues. The Court concluded that the federal court will not exercise jurisdiction over child-custody matters, the petition was untimely, and the removal was without merit because the federal court clearly lacked jurisdiction and under these circumstances, the court had jurisdiction to rule on the custody matters.

In 2019, the Court of Appeals, Fourth Appellate District, Division 3 issued its opinion *Clipperjet Inc. v. Tyson*, 38 Cal. App. 5th 521, 251 Cal. Rptr. 3d 34, 38 (2019) ("*Clipper*") *Clipper* which relied cases relying on 28 U.S.C. 72 stated that the court had discretion to ignore the plain language of the removal statute 28 U.S.C. §1446 if the removal was deficient or determined frivolous. However, that section was repealed. In place, Congress added these words to the removal statute that the "State court "shall" proceed no further unless and until the case is remanded." The Court of Appeals had an erroneous view of the law by following an unauthorized exception to the general rule that was repealed and stated that the state court could proceed if it decided that two removals were brought by the same party and allegedly based on the same ground and ignore the express intent of the removal statute which was to proceed no further until the case was remanded. The Court of Appeals interpretation violates the Canon of statutory construction that "words should be construed consistently throughout an entire statute." See *United States v.*

Rich 603 F. 3d 722, 729 (9th Cir. 2010) cf. 28 U.S.C. §1446(d) The limited cases that have recognized this unauthorized carve out of the statute are for example:

In 2015, the Colorado Court of Appeals, issued *McDonald v. Zion First Nat. Bank* (Colo Ct. App. 2015), 348, P. 3d 957, 962 [Held: the state court is not deprived of jurisdiction if the party's notice of removal indicates on its face as a matter of law that the removal was without the slightest color of right or merit.]

In 2009, the Appellate Division of the Supreme Court of New York, First Department issued *Astoria Federal Savings & Loan Association/Fidelity New York Fsb v. Lane*, 64 A.D.3d 454, 883 N.Y.S.2d 473, 2009 NY Slip Op 5685 (N.Y. App. Div. 2009) [recognizing exception under the "unique *Astoria* circumstances of this case, where the federal court found the removal petition to be frivolous on its face and where it was made in bad faith at the eleventh hour"].

In 1992, the Supreme Court of North Dakota in *Farm Credit Bank of St. Paul v. Rub*, 481 N.W. 2d 451, 456 (fn. 1) (N.D. 1992), expanded the removal statute only if the same party removed the case on the same ground, which *Clipper* and other similar cases are based. In *Farm Credit Bank of St. Paul*, the defendant removed the case a second time after the District Court determined the removal was untimely and the state court ignored the 2nd notice of removal based on the district court's finding of untimeliness and proceeded anyway.

In 1986, the Court of Appeals of Oklahoma, Division No. 4 issued *Bell v. Burlington Northern R. Co.*, 738 P.2d 949 (Okla. Civ. App. 1986) [finding the *Metropolitan* rule was "implicit in the old statute's proscription 'proceed no further' " and that "the new statute did not intend to and in fact did not alter the *Metropolitan* rationale and relied on the Florida Supreme Court case *Wilson v. Sandstrom*, 317 So. 2d 732 (Fla 1975).

In 1975, the Supreme Court of Florida issued *Wilson v. Sandstrom*, 317 So.2d 732 (Fla. 1975) based on the prior removal statute 28 U.S.C. 72, the court stated "Where the right to remove a cause from a state court to a federal court does not in fact exist, and after an attempted or colorable removal the cause is remanded by the federal court for want of jurisdiction, the jurisdiction of the state court is to be regarded as never having been lost, the federal court never having acquired jurisdiction; or at most the state court is said to have merely had its jurisdiction suspended during the period of the attempted or colorable removal of the cause. Proceedings had in the state court after the attempted removal and pending the remand are generally held to be valid and effectual, except, perhaps, where such proceedings were in violation of an injunction lawfully issued by the federal court; but there is authority to the contrary."

In 1941, in *Metro Cas. Ins. Co. v. Stevens*, 312 U.S. 563, 566, 61 S. Ct. 715, 85 L. Ed. 1044 (1941) (“*Metropolitan Casualty*”) this Court stated that state courts can proceed and ignore removals if the case was in fact not removable. However, the current version of the removal statute states that after removal “[t]he state court shall proceed no further unless the case is remanded.”

Contrary to the above cited case, there is a unanimous view across the state and federal courts agreeing with the plain language and intent of the removal statute 28 U.S.C. §1446 that the “State court shall proceed no further unless and until the case is remanded” and any state court proceedings are void. See e.g. as follows:

In 2020, in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S.Ct. 696, 206 L.Ed.2d 1 (2020) this Court found the court of first instance lacked jurisdiction and the orders were void. This court recognized that once a notice of removal is filed, “the State court shall proceed no further unless and until the case is remanded.” Citing 28 U.S.C. §1446(d). This court also stated that “The State Court “los[es] all jurisdiction over the case, and being without jurisdiction, its subsequent proceedings and judgment [are] not . . . simply erroneous, but absolutely void.”

In 2019, the District Court of Appeal of the State of Florida, Fourth District, issued *Ricci v. Ventures Tr.* 2013-I-H-R By MCM Capital Partners, LLC, No. 4D18-1111 (Fla. App. Jun 12, 2019). The court found that the state court proceeded without subject matter jurisdiction and its order was void and ordered the state court to vacate its order. The Court went on to state that the “majority position, nationally and within Florida, is that “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. Any subsequent proceedings in state court on the case are void *ab initio*.” P. 4

In 2018, the Appellate Court of Illinois First District, Sixth Division issued *Bank of Am. v. Bozek*, 2018, IL App. (1st) 170386-U, No. 1-17-0386 (Ill App. May 18, 2018) held that the court lacked jurisdiction to enter any orders after the removal and “even if the basis of the district court’s remand is that the case was not removable, no action taken by the state court in the interim can stand.”

In 2016, the Court of Appeals Fifth District in *Cole v. Wells Fargo Bank Nat’l Ass’n* 201 So. 3d 749 (Fla App. 2016) stated the “holding in *Metropolitan Casualty* were based on a version of the removal statute that was repealed in 1948, which expressly permitted state courts to ignore notices of removal that were legally insufficient.” See 28 U.S.C. § 72 (1946) citing *Musa v. Wells Del Tr. Co.* 181 So. 3d 1275, 1277-78 (FL. 1st D.C.A. 2015) citing in *Farm Credit Bank of St. Paul v. Rub*, 481 N.W. 2d 451 (fn. 1) (N.D. 1992) where the court went on to

state that “there is all but unanimity on the proposition that amendments to the removal statute in 1948 effectively changed the results in *Metropolitan Casualty* so that state court adjudication, while a removal petition is pending in federal court, is void, even if the federal court subsequently determines that the case is not removable.” *Musa*, 181 So. 23d at 1279 (footnote admitted) (quoting *Rub*, 481 N.W. 2d at 455-56). Therefore, *Clipperjet Inc. v. Tyson*, 38 Cal. App. 5th 521, 251 Cal. Rptr. 3d 34, 38 (2019), and the cases it relied on are based on law that was repealed.

In 2016, the United States District Court D. New Mexico, issued in *National Mortgage Association v. Milasinovich* (D.N.M. 2016) 161 F. Supp. 3d 981, 1010 (finding no exceptions to the general rule given the plain language of Section 1446.)

In 2016, the District Court of Appeals of Florida, Fifth District, in *Cole v. Wells Fargo Bank National Association*, 201 So. 3d 749 (2016) [held: because the court rendered final judgment after the filing of the notice of removal to federal court and before the federal court remanded the case back to the trial court, the trial court lacked jurisdiction to enter a final judgment.] The Court further found that the current version of the removal statute 28 U.S.C. §1446(d) states that after removal “the state court shall proceed no further unless and until the case is remanded.” *Id.* And “the holdings in *Wilson v. Sandstrom* 317 So. 2d 732, 740-41 (Fla 1975) and *Metro Cas. Insurance Co. v. Stevens*, 312 U.S. 563, 566 61 S. Ct. 715, 85 L. Ed. 1044 (1941) were based on a version of the removal statute that was repealed in 1948, which expressly permitted state courts to ignore the notices of removal that were legally insufficient.” See fn. 1.

In 2015, the District Court of Appeal of Florida, First District issued, *Musa v. Wells Fargo Del Tr. Co.* 181 So. 3d 1275, 1277-78 that stated “There is all but unanimity on the proposition that amendments to the removal statute in 1948 effectively changed the results in *Metropolitan Casualty* so that a state court adjudication, while a removal petition is pending in federal court, is void, even if the federal court subsequently determined that the case is not removable. *Id.* p. 1279.

In 2014, the 4th District Court, issued *Ackerman v. ExxonMobile Corp.* (4th Cir. 2013) 734 F. 3d 237, 249 stating that the [removal] statute deprives the state court in the removed case action and any action taken would be *void ab initio*. It further explained that “under §1446(d), removing defendants must promptly provide written notice of the removal to opposing parties and to the state court. The statute specifies that removal is effected by the filing of the notice of removal with the state court clerk, at which point “the State court shall proceed no further unless and until the case is remanded.” The *Ackerman* court agreed that “because §1446(d) explicitly states that “the state court shall proceed no further” once

removal is effected, 28 U.S.C. §1446(d), . . .that the statute deprives the state court of further jurisdiction over the removed case and that any post removal actions taken by the state court in the removed case action are void *ab initio*.”

In 1994, the 9th Circuit Court of Appeals issued in *Resolution Trust Corp. v. Bayside Developers* (9th Cir. 1994) 43 F. 3d 1230, 1238 stating that “the clear language of the general removal statute provides that the state court loses jurisdiction upon the filing of the petition for removal.

Petitioner posits that the Court of Appeals, Fourth Appellate District, Division 3 and cases following the same approach had no discretion to ignore the intent of the Legislature and rewrite the law and the plain language of the removal statute 28 U.S.C. §1446 and all the state court’s orders and proceedings that took place before the case was remanded are void *in abinitio*. Because there was clearly a change in the law when the removal statute was amended, and this Court has clarified that the courts should apply the law in effect at the time. See *Landgraf v. USI Film Products*, --- U.S. ---, ---- - ----, 114 S.Ct. 1483, 1501-02, 128 L.Ed.2d 229 (1994) Furthermore, a judge may not imply what the Legislature omitted. See Civil Code of Procedure 1858. Here, the Legislature clearly omitted any language that the state court could ignore a removal petition even if a second removal petition was filed.

Petitioner posits that the courts must adhere to the plain language of the removal statute 28 U.S.C. §1446 and the literal application. Further, the reading of the removal statute 28 U.S.C. §1446 will not produce a result demonstrably at odds with the intention of its drafters. It seems clear to Petitioner, that the drafters wanted the state court to not proceed whether the removal was proper or not. The court should have looked to the plain language of 28 U.S.C. §1446(d). The plain language of the removal statute states “the state court shall proceed no further until and unless the case is remanded.” Nothing in the plain language of the removal statute is there an exception when subsequent removal petitions are filed by the same party whether made on the same ground or a different ground. Furthermore, the federal court was to determine whether the removal was proper not the Court of Appeals. Lack of subject matter jurisdiction also does not depend upon the correctness of the decision made. See *Arbaugh v. Y & H Corp.*, 126 S. Ct. 1235, 546 US 500, 163 L. Ed. 2d 1097 (2006) [“Jurisdiction is the power to hear and determine a case and does not depend upon the correctness of the decision made.”] The state court acted beyond its authority and proceeded without jurisdiction and the court’s orders (Appendix B to E) should be declared void. See *Williamson et al. v. Berry*, 49 U.S. 495 (1850) overruled on other grounds in *Suydam v. Williamson*, 65 US 427 (1860) stating that “Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this is

even prior to reversal.” The court of Appeals, Fourth Appellate District, Div. 3 was to merely note the jurisdictional defect and correct it without going into the merits of the Court’s orders (Appendix B to E). See *Steel Co. v. Citizens for a Better Environment*, __U.S.__ 118 S. Ct. 1003, 1012, 140, L. Ed. 2d 2010 (1998).

Petitioner respectfully prays that a Writ of Certiorari issue to the Court of Appeals, Fourth Appellate District, Division three to resolve this important issue of law on whether the Court had subject matter jurisdiction to proceed based on the removal petition under the removal statute 28 U.S.C. §1446 and the court of appeals lacked jurisdiction over the appeal and was simply to note the jurisdictional defect, correct it, and dismiss the appeal.

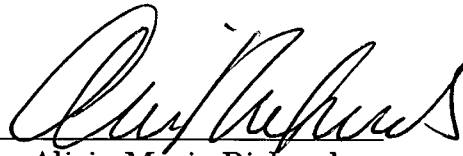
CONCLUSION

Petitioner respectfully urges this Court to grant Certiorari to ensure certainty and consistency in the application of laws by the State and Federal Courts. For the reasons stated in this Petition for Certiorari, Petitioner respectfully prays the United States Supreme Court issue the Writ of Certiorari to the Court of Appeals, Fourth Appellate District, Division Three.

Respectfully submitted,

Dated: January 2, 2024

By:



Alicia Marie Richards
Petitioner Unrepresented