

No. 24- *1043*

IN THE
Supreme Court of the United States

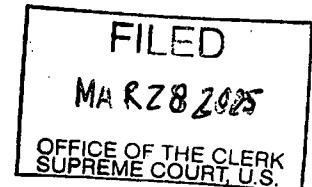
EDWARD PLUMMER, JR.,

Petitioner,

v.

KAISER FOUNDATION HOSPITALS, *et al.*,

Respondents.



**ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

PETITION FOR A WRIT OF CERTIORARI

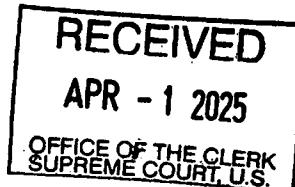
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QUESTION PRESENTED

Does our judicial system deny *pro se* litigants substantive due process when the courts are remise in ensuring that such litigants are timely and properly notified of court actions and they are not provided leave to amend their complaint?

CORPORATE DISCLOSURE STATEMENT

Edward Plummer, Jr. is a self-represented litigant who, for all purposes related to this matter, is not affiliated, or attached to any corporation or parent company.

STATEMENT OF RELATED PROCEEDINGS

Superior Court of California, County of Alameda

Edward Plummer, Jr and Christian Plummer v. Kaiser Foundation Hospitals *et al.*
No. RG14738005 (April 14, 2015.) (Motion hearing re.
Petition to Compel Arbitration.)

Superior Court of California, County of Alameda

Edward Plummer, Jr and Christian Plummer v. Kaiser Foundation Hospitals *et al.*
No. RG14738005 (July 15, 2016.) (Motion hearing re.
Summary Judgment.)

California Courts of Appeal

Edward Plummer, Jr. v. Kaiser Foundation Hospitals *et al.*
No. A150537 (July 10, 2018.) (Remanded to trial court.)

Superior Court of California, County of Alameda

Edward Plummer, Jr v. Kaiser Foundation Hospitals *et al.*
No. RG14738005 (September 22, 2020.) (Motion hearing
re. Judgment on the Pleadings; granted)

Superior Court of California, County of Alameda

Edward Plummer, Jr v. Kaiser Foundation Hospitals *et al.*
No. RG14738005 (September 22, 2020.) (Motion hearing re.
Reconsideration granted; judgment affirmed)

v

California Courts of Appeal

Edward Plummer, Jr. v. Kaiser Foundation Hospitals
No. A162565 (September 25, 2024.) (Appeal; denied.)

California Courts of Appeal

Edward Plummer, Jr. v. Kaiser Foundation Hospitals
No. A162565 (October 24, 2024.) (Rehearing; denied.)

Supreme Court of California

Edward Plummer, Jr. v. Kaiser Foundation Hospitals
No. S287754 (December 31, 2024) (Review; denied.)

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OPINIONS BELOW

The Supreme Court of California denied review of the petition, without issuing an opinion.

JURISDICTION

The Supreme Court of California issued its denial of Plummer's Petition For Review *en banc* on December 31, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, §§ 1-2, First and Fourteenth Amendments.

INTRODUCTION

This petition seeks review and relief from a denial from the Supreme Court of California. Said court is a court of discretionary review. The court did not provide an explanation for its' discretionary decision. Thus, the petitioner, believing that his petition contains issues that affect the constitutional liberty rights of practically every family within the confines of the United States of America, brings his petition to the high court. At this point, only the United States Supreme Court can resolve the alleged conflict in California statutory laws relative to the liberty rights of families residing in the State Of California. Petitioner believes, as is argued below, that the Court has addressed this issue in prior related cases which have come before the Court.

STATEMENT OF THE CASE

This litigation was initiated on August 25, 2014. The complaint was filed in the Superior Court of California in the County of Alameda. The complaint alleged, *inter alia*, that the death of four-year old Gavin Plummer, which occurred on May 30, 2013, was wrongful and the direct result of the negligent medical care provided by the defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Incorporated. The complaint was filed by the father, Christian Morgan Plummer, and the grandfather, Edward Plummer, Jr. When the complaint was filed both plaintiffs resided in the State of California.

On October 27, 2008 Gavin was born in a Kaiser Foundation facility and during his life span was only treated by physicians and facilities associated with Kaiser Health Plan Incorporated. He was eligible for such healthcare due to his parents' enrollment in a Kaiser Health Plan. On or about August 10, 2010 Gavin was diagnosed as having a 12.5 cm solid mass tumor near his right kidney. The diagnosis was Wilms tumor. After this diagnosis, the parents being understandably distraught, grandfather assisted the parents by meeting with medical and ancillary staff. He and Christian had a joint meeting with Regina Smith, a Kaiser employee, and signed documents permitting grandfather to participate in the oversight of Gavin's healthcare. Gavin expired, as an inpatient, at a Kaiser facility on May 30, 2013.

On May 17, 2014 plaintiffs provided the defendants with the requisite Notice of Intent to sue. They filed their one, and the only complaint filed in this matter, on August 25, 2014. The defendants filed an answer on or about

September 25, 2015. On April 14, 2015 during a motion hearing on Defendants' Petition to Compel Arbitration the issue of the plaintiffs' participation in this litigation. At that time defendants recognized both Christian and Edward Plummer, Jr. as plaintiffs in this action. Their status as plaintiffs and their status as being self-represented litigants were discussed during the proceeding. There were no objections from either party. The defendants would later file a Motion for Summary Judgment. The trial court ruled in their favor. This ruling was appealed to the Court of Appeal of the State of California. The Court of Appeal vacated the trial court's ruling and remanded the case to the trial court for further proceedings. The Remittitur was filed on September 17, 2018.

At this point, the case took a controversial turn. When the case was ripe for appeal Christian had relocated to the State of New York for employment purposes. Though the court had this information, some documents were sent to his previous California address. This error confused the plaintiffs. Christian was not aware of the status of the case. In an attempt to file a timely appeal, Edward Plummer, Jr. proceeded without Christian.

After the case was remanded back to the trial court, the defendants then shifted their focus on Edward Plummer, Jr.'s. standing in this matter. Edward Plummer, Jr. explained, to the trial court, the circumstances which led to the plaintiffs' confusion and the inadvertence that resulted in the single plaintiff appeal. The court initial agreed with the plaintiff and joined Christian to the action. The defendants filed an objection and the court, in response to that objection, reversed the order which joined Christian Plummer to the action. Ultimately,

the defendants filed a Notice of Motion and Motion for Judgment On The Pleadings. Said motion was granted on February 16, 2021. Plaintiff did file a timely Motion to Vacate Judgment and Enter Different Judgment. On April 29, 2021 plaintiff's motion was denied. Those rulings were the basis for Plummer's appeal to the Court of Appeal of the State of California.

Plaintiff filed his Notice of Appeal to the Court of Appeal of the State of California on April 30, 2021. On September 25, 2024, the Court of Appeal affirmed the lower court's adverse ruling. On October 15, 2024 Plummer filed a Petition for Rehearing with the Court of Appeal of the State of California. October 24, 2024 the court issued a notice which indicated the Petition for Rehearing was denied. On November 05, 2024 Plummer filed a Petition For Review in the Supreme Court of California. Though Plummer filed Application For Relief From Default, which was granted, his Petition For Review was denied on December 31, 2024.

REASONS FOR GRANTING THE PETITION

This petition asks a question which requires resolution which can only be provided this Court. The State of California has one or more statutes which if not by implication, certainly by application, is in direct conflict with those principles enumerated in the First and Fourteenth Amendments of the United States Constitution.

I. ARTICLE III STANDING

The petition before the Court clearly demonstrates the requisite Article III standing required for this Court to review and rule on said petition. This is important in that the gravamen of the petition centers on the issue of standing, and whether or not inadvertence on the part of our judicial system should work to hinder or support a case for third-party liability standing.

To satisfy Article III standing, the following elements must be established: (1) Injury in fact, (2) Causation, (3) Redressability. *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 573–78. The petitioner has clearly demonstrated his injury; the forever loss of a grandchild which resulted in the loss of society and companionship. That loss was the result of the direct and proximate negligence on the part of the defendants. A favorable decision on the part of this Court would provide a meaningful remedy to the petitioner and others associated with this matter or others who are similar situated. Further the facts of this case are such that it does not involve any family law issues which are in dispute which might ordinarily be a concern for this Court. Every issue within and surrounding this case stems from California law as interpreted by the lower courts and the fundamental liberties rights of the plaintiff(s.)

II. FUNDAMENTAL LIBERTY RIGHTS

Every citizen of the United States enjoys freedom of personal choice. This liberty interest is protected by the Fourteenth Amendment. *Santosky v. Kramer* 455 U.S.745, 753 (1982) Liberty is about the absence of

undue government interference in personal choices and actions. Any statute or state action which infringes upon the liberty rights, however minimal, should be reviewed. Those rights enumerated in our Bill of Rights are equal and deserve the same degree of vigilance. Freedom of speech, association, press and the Bill of Rights as a whole serve to ensure that those residing in the United States will have the opportunity enjoy the quality of life envisioned by those who created our constitution, It goes without saying that considerations such as emancipation and judicial determinations, i.e., incarceration, can limit said liberties. However, in the absence of such constraints, substantive due process forbids our governments from infringing on fundamental liberty interest. *Reno v. Flores* 507 U.S. 292, 301-302 (1993)

III. GOVERNMENT INFRINGEMENT

Infringement may be the result of a direct government action in which infringement was the objective. In such cases the courts would, *inter alia*, determine the motive and who possessed said motive. If there was more than one actor involved the court should attempt to determine if there was a conspiracy. Seeing that the postal service was used, the courts should have determined if there was an intentional misuse of the postal service so that Christian Plummer would not receive timely notices. The standards for determining when one "causes" a mailing to occur for purposes of the mail fraud statute are equally well established: Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he "causes" the mails to be used. *United States v. Kelly*, 507 F. Supp. 495, 505.[Dist. Court, ED Pennsylvania](1981.) The fact that

a scheme may violate state laws does not exclude it from the proscriptions of the federal mail fraud statute, for Congress “may forbid any . . . [mailings] . . . in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not.” *Parr v. United States*, 363 US 370, 389 (1960).

Infringement may be the result of inadvertence. As in the case at hand, the trial court sent notices to Christian Plummer, but they were sent to the wrong address. One would surmise that this was inadvertence on the part of the trial court. The question arises, should anyone have their liberty rights infringed upon due to a ministerial mistake on the part of the judicial system? To what degree does such inadvertence affect one’s liberty interest with regard to due process under the Fourteenth Amendment? Is this a harmless error, by which the plaintiffs were not prejudiced? This is an issue which the lower courts failed to address. It is an issue which should be address by this court.

The Constitution is not silent on the issue of infringement.¹ If we take a cursory survey of Supreme Court case law examining such diverse areas as the right to marry, the right of political association, property rights, the free exercise of religion, freedom from the establishment of religion, as well as those liberty rights directed at the family, procedural due process demonstrates that the Court has frequently employed a basic undue burden analysis to evaluate laws alleged

1. U.S. CONST. amend. I (Free Speech, Free Exercise, and Establishment Clauses); amend. V (Takings Clause); art. I, § 10 (Contract Clause)

to abridge a wide range of constitutionally protected interests.²

It is not unusual for a law to be challenged not because it employs a problematic classification, strongly suggesting that the law serves an impermissible purpose, or because its effect on the exercise of fundamental rights is too severe, but solely because of evidence that the legislature that enacted the law did so to further a constitutionally unacceptable objective. The rights which exist within a family must be viewed as unitary, and the government should not be able to sever or infringe upon those rights unless its actions serve a "constitutionally" acceptable objective. This Court's decisions have plainly shown beyond the need for multiple citations that a parent's desire for and right to "the companionship, care, custody, and management of his or her children" is an important interest that "undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U. S. 645, 651 (1972.) Here the State has sought not simply to infringe upon that interest, but to end it. If the State prevails, it will have worked a unique kind of deprivation. Cf. *May v. Anderson*, 345 U. S. 528, 533 (1953.) *Armstrong v. Manzo*, 380 U. S. 545 (1965.) A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one. *Lassiter v. Department of Social Servs. of Durham County.*, 452 US 18, 27-28 (1981.)

2. "How Rights Are Infringed: The Role of Undue Burden Analysis in Constitutional Doctrine." *Hastings LJ* 45 (1993): 867.

IV. THIRD-PARTY STANDING

Under the theory of *jus tertii* Petitioner should be allowed to proceed with the case which he and Christian Plummer initiated and maintained until Christian Plummer was removed from the case due to the inadvertence of the Superior Court of the County of Alameda. Pet. App.13.

Under this theory litigants related to a third party are permitted to raise that party's rights.³ The basic requirement is that one who stands for another must have suffered an "injury in fact that is both fairly traceable to the challenged statute and likely to be redressed by a favorable judgment."⁴ As previously mentioned herein on page 4, referencing Article III Standing, Petitioner has met the requirements for third-party standing as the requirements are similar to those for Article III standing. The Court has recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an "injury in fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute, the litigant must have a close relation to the third party, and there must exist some hindrance to the third party's ability to protect his or her own interests. *Powers v. Ohio*, 499 U.S. 400, 411 (1991.) The Court has looked primarily to two factual elements to determine whether the rule should apply in a particular case. "The first is the relationship of the litigant to the person whose right he seeks to assert. If the enjoyment

3. Columbia Law Review, Vol. 84, 277, p.278

4. *Ibid.*

of the right is inextricably bound up with the activity the litigant wishes to pursue, the court at least can be sure that its construction of the right is not unnecessary in the sense that the right's enjoyment will be unaffected by the outcome of the suit. Furthermore, the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter." *Singleton v. Wulff*, 428 US 106, 115 (1976.) The plaintiffs in the matter before the Court conform exactly to what is outlined above. Further, despite the inarticulation on the part of the Petitioner in the lower courts on this matter, it is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below. *Ibid* at p.120.

The facts of this case are such that where there were no barriers preventing the plaintiffs from maintaining their action, the state created barriers. These barriers barred Christian Plummer from proceeding in the action which, contrary to the Third-Party Doctrine, interfered with Edward Plummer, Jr. from proceeding in the action. Pet.App. 6, Opn. Non-published, p.3-4. As mentioned earlier herein on page 5, "inadvertence on the part of the trial court" resulted in an infringement upon the liberty rights of the Petitioner and Christian Plummer, and that said infringement was an abridgement to their substantive due process to which they are afforded under the U.S. Constitution. The Fourteenth Amendment's guarantee of "due process of law" to include a substantive component, which forbids the government to infringe certain "fundamental" liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Reno, supra* p. 302.

V. FAMILY

Though our legislatures strive to create laws which align with current statutes and recent case law, it is difficult to create and rightly interpret laws which will suffice the beliefs and concepts of what and who should be considered family. Some people consider their pets to be family members, while others consider distant relatives not necessarily within the sphere of their concept of family. Though the framers of our constitution knew nothing about that area of science known as DNA (deoxyribonucleic acid,) nevertheless they seemed to have known intuitively that the family is the essence of our society and warrants protection from enemies foreign and domestic. The framers seemed to have known that we needed a constitution which protects the sanctity of the family because the institution of the family is deeply rooted in this nation's history and tradition. These beliefs resulted in a constitution which not only contains a First Amendment, but a Second, Third, Fourth, Fifth and Fourteenth. All directed towards the protections of individuals and that collective group of individuals recognized as family. Family is the one and only thing, outside of our personal lives, that we truly own without state intervention. Thus, as previously argued, there should be no government infringement upon our liberty rights; especially those rights which pertain to the family. The "Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40 (1974.) The Colorado State Supreme Court recently stated, referencing the U.S. Supreme Court in the case of *Moore v. the City*

of East Cleveland, that “the Supreme Court has long recognized that the Due Process Clause of the Fourteenth Amendment guarantees all persons the right to freedom of association.”⁵ *Moore v. City of E. Cleveland*, 431 U.S. 494, 501 (1977.) On this spectrum of personal attachments, the parent-child relationship is afforded the greatest constitutional protection. *Troxel v. Granville*, 530 U.S. 57, 66 (2000.) Petitioner believes that there is extensive precedent guaranteeing parents the fundamental right “to make decisions concerning the care, custody, and control of their children *Lehr v. Robertson*, 463 U.S. 248, 256, (1983.) This “extensive precedent” should apply to this matter as the personal attachment paradigm described above fits perfectly with the family in this case; parent-child (Gavin and Christian Plummer) and parent-child (Christian and Edward Plummer.) Understanding that this case has facts which are unique from similar cases; yet the overriding argument is that the plaintiff in the case before this Court were severely deprived of the substantive due process argued herein.

What are the unique features or facts of the present case? First, the case involves a grandparent acting in concert with the parent, at the behest of the parent, who is acting on behalf of his child. So, we have a family providing for the child. That begs the question, where a parent, acting on behalf of his child, solicits his parent’s assistance and they act in concert on behalf of the minor, should this concerted effort be afforded each and every aspect of due process available under the Fourteenth Amendment. If we turn to *Moore* for guidance, we would find that the Court recognized that “especially in times of adversity, such as the death of a family member or

5. *Salah v. People*, 550 P. 3d 698 (2024.)

economic need, the broader family has tended to come together for mutual sustenance." *Moore v. City of East Cleveland*, 431 U.S. 494,505 (1977.) Hence, there is nothing unusual about the conduct of the plaintiffs. According to *Moore*, society would expect such conduct; that is family members coming together in a time of loss or need. One would suppose that the state would not interfere in this kind of collective effort. Further, one would think, applying the reasoning in *Moore*, that the state would incorporate protections for the extended family in situations such as this one. *Ibid.* Second, this case involves the death of a minor. California survival statute states that a cause of action for or against a person is not lost by reason of the person's death but said cause of action survives subject applicable time limits.⁶ Because of those two factors, this case is unique.

This case is not about death or personal injury. This case is about the decisions Americans can make regarding their families due to the liberty rights they possess under the First Amendment and the requisite due process that they must be afforded prior to interference with those rights. "Freedom of personal choice in matters of family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LaFleur*, 414 U. S. 632, 639-640 (1974.) There does exist a "private realm of family life which the state cannot enter." *Prince v. Massachusetts*, 321 U.S.158, 166 (1944.)

6. California Code of Civil Procedure, § 377.20(a)

REASONS FOR GRANTING THE PETITION

Those residing in the United States should expect that all governments within the United States, state, and municipalities, would be uniform in their application and interpretation of our laws; especially our constitution. Petitioner argues that those statutes by which the plaintiffs were adjudged, the interpretation of those statutes and the process by which they were adjudged, conflict with the intent of the U.S. Constitution and the case law cited herein; specifically, the Fourteenth Amendment of our Constitution as it relates to due process of law. See, e.g., *Pierce v. Society of Sisters*, 268 U.S.510, 534-535 (1925.)

The reasoning for the statutes presented, by the opposition, apply to a time when the so-called nuclear family was thought to be the only type of family representative of the American family. Said statutes were protective of the nuclear family, so as to protect their interest from third-party interlopers. However today, families are diverse. There is no need to describe the variety of living arrangements which comprise the American family. Thus, there should be no need for the courts to apply a rigid interpretation as to application of these statutes unless complete due process has been afforded.

Last, this matter was dismissed without the Petitioner being granted leave to amend his Complaint. It is the practice of both our state and federal courts that cases, especially those which involve *pro se* plaintiffs, should not be dismissed without providing the plaintiffs an opportunity to amend their complaint. The State of

California has a recently enacted C.C.P 377.11.⁷ This statute may have some beneficial application to the Petitioner's action. However, the opportunity to present this argument, as well as others, was barred because Petitioner was not granted leave to amend his complaint. *Sonoma County Association of Retired Employees v. Sonoma County*, 708 F3d 1109, 1117 (9th. Cir. 2013.)

7. California Code of Civil Procedure, § 377.11

CONCLUSION

Petitioner believes that upon careful consideration of the arguments herein, this petition should be granted.

Respectfully submitted,

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March 28, 2025

APPENDIX