No. _____

In the Supreme Court of the United States

IN RE ESTATE OF CHARLES HADSELL,

Deceased,

CHRISTOPHER HADSELL,

Petitioner,

–v–

CATHERINE ISHAM,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

Service on California Attorney General Required by Cal. Rules of Court, rule 8.29(c)

Christopher Hadsell
Petitioner In Propria Persona
9000 Crow Canyon Rd., S-399,
Danville, CA 94506
● (925) 482-6502 ● CJHadsellLaw@gmail.com

I. QUESTIONS PRESENTED

1. Is California's Vexatious Litigant Law ("**CA VL Law**", Cal. Code Civ. Proc.[1] §§391-391.8) unconstitutional facially because it is not narrowly tailored or it does not involve an ***actual***, compelling state interest?

2. Is CA VL Law unconstitutional as applied?

---

[1] Subsequent references to the Cal. Code of Civ. Proc. will be designated "**CCP**".

II. PARTIES TO THE PROCEEDING

Petitioner is Christopher Hadsell ("**Hadsell**"). He was:

Petitioner in the Superior Court of California, Contra Costa County ("**Trial Court**").

Appellant in the Court of Appeal of the State of California, First Appellate District, Division 4, ("**1DCA**").

Petitioner in the Supreme Court of California ("**Cal. Sup. Ct.**").

Respondent is the Cal. Sup. Ct., Catherine Isham (fka Porter, Howard, Hadsell, "**Isham**"), real party in interest. Isham was:

Respondent in the Trial Court.

Respondent in the 1DCA.

Respondent in the Cal. Sup. Ct.

III. TABLE OF CONTENTS

APPENDICES

Court Opinions:

Appendix A

Constitutional Provisions/Statutes:

Appendix B

EXHIBITS

Exhibit 1

Exhibit 2

Exhibit 3

Exhibit 4

Exhibit 5

Exhibit 6

IV. TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

V. JUDGMENTS BELOW

The Cal. Sup. Ct.'s judgment is reproduced as follows:

Hadsell v. Court of Appeal (July 23, 2024, No. S284504) ___Cal.5th___ [2024 Cal. LEXIS 4253].

VI. JURISDICTION

On 7/23/24, the Cal. Sup. Ct. issued its Judgment (7/23/24) (p. 1a).

This Court's jurisdiction is timely invoked under 28 U.S.C. §1257(a).

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS

Relevant constitutional and statutory provisions that are not quoted in the text are at 2a et seq.

VIII. STATEMENT OF THE CASE

A. INTRODUCTION

This Court has identified four fundamental rights that are ***essential*** to the fundamental principles of liberty and justice that lie at the base of ***all*** our civil and political institutions: i) freedom of speech, ii) freedom of the press, iii) peaceable assembly, and iv) redress of grievances. This Court recognizes that "redress of grievances" includes "the right of access to the courts".

Furthermore, this Court has held that these rights cannot be abridged by legislatures.

Notwithstanding, because exercising these rights can result in abuses, the legislatures, can, and should, prohibit such abuses.

Thus, there is a bright line rule between abridging/curtailing these rights (unconstitutional), and prohibiting ***abuses that arise from*** the exercise of these rights (constitutional).

The facts of this case make it the poster child for when a legislature has unconstitutionally (both facially, and as applied) abridged/curtailed the right of access to the courts.

Regarding a facial challenge, CA VL Law: i) abridges/curtails the ***right*** to access courts, ii) is not narrowly tailored, and iii) there is no ***actual***, compelling state interest. Thus, CA VL Law cannot survive the strict scrutiny standard applicable to statutes that infringe fundamental rights.

Regarding an as-applied challenge: i) it is undisputed that Hadsell has never violated any CA VL Law, ii) yet, it is undisputed that a judge, without subject matter jurisdiction (therefore, her actions were ultra vires, and any results are legal nullities), illegally placed him on the California Vexatious List, iii) the Law of the Case is that Hadsell is the "defendant" in these proceedings, and CA VL Law doesn't apply to defendants, and iv) upon pain of dismissal, Hadsell was forced to apply for leave to file pleadings; denials of those applications demonstrate that the application

of CA VL Law was pursuant to pretext. Thus, CA VL Law cannot survive an as-applied constitutional challenge because: i) there was no required court order that made Hadsell subject to CA VL Law, ii) he is a "defendant"; thus, CA VL Law is inapplicable, and iii) CA VL Law was applied pursuant to pretext. Therefore, because CA VL Law was applied when there was no legal basis for its application, it cannot survive an as-applied challenge.

The Federal Rules of Decision Act, and the Erie Doctrine require the application of state law in federal courts for civil actions so that there is uniformity in the application of the law, and no forum shopping.

Here, given the geography of the 13 states, nine circuits have an inherent split because they include states both with, and without, VL Law, causing a split within each circuit. Likewise, there are combinations of the circuits such that there are inherent splits among all the circuits when applying VL Law.

Only this Court can resolve these splits to ensure uniformity of law and the avoidance of forum shopping.

There are about 135 million Americans who have the Sword of Damocles hanging over their heads regarding their access to the courts due to VL Laws. If California can be extrapolated to the other 12 states, then about 8,000 Americans have the Sword pressing on their necks, and likely every court day, somewhere in our nation, the fundamental right to access the courts is being unconstitutionally violated for one or more Americans.

This Court should find that situation intolerable—especially when it occurs, as in this case, without due process of law because throughout these proceedings, not a single hearing has been held on any application to file a pleading, yet Hadsell has been denied a fundamental right, when it is undisputed, that he has not violated any law.

For these reasons, this case is certworthy and Hadsell prays that the Court grants certiorari.

B. THIS COURT HAS IDENTIFIED FOUR FUNDAMENTAL RIGHTS ESSENTIAL TO THE FUNDAMENTAL PRINCIPLES OF LIBERTY AND JUSTICE

Listed in the U.S. Const. amend. I ("**1st Amend.**") are four fundamental rights ("**Four Fundamental Rights**") essential to the fundamental principles of liberty and justice that lie at the base of all civil and political institutions: i) freedom of speech, ii) freedom of the press, iii) peaceable assembly, and iv) redress of grievances. This Court stated (*De Jonge v. Oregon* (1937) 299 U.S. 353, 364, emphasis added):

> Freedom of ***speech*** and of the ***press*** are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. [Citations.] The right of ***peaceable assembly*** is a right cognate to those of free speech and free press and is equally fundamental. As this Court said in *United States* v. *Cruikshank*...: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in

> respect to public affairs and to petition for a ***redress of grievances***."

This Court recognizes that "redress of grievances" includes "the right of access to the courts", *Bill Johnson's Rests. v. NLRB* (1983) 461 U.S. 731, 741[2]; and that the 1st Amend., is applicable to the states, [see *Speiser v. Randall* (1958) 357 U.S. 513, 530 (concurring) where Justice Black collects 15 of this Court's cases where the 14th Amend. makes the 1st Amend., "applicable in all its particulars to the States."]

1. THE FOUR FUNDAMENTAL RIGHTS CANNOT BE ABRIDGED

Immediately following the first *De Jonge* quote *supra*, this Court states (*De Jonge*, 364, emphasis added):

> The ***First Amendment*** of the Federal Constitution ***expressly guarantees*** that right ***against abridgment*** by Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of ***all*** civil and political institutions,—principles which the Fourteenth Amendment embodies in the general terms of its due process clause. [Citations.]

---

[2] As stated in *Christopher v. Harbury* (2002) 536 U.S. 403, 415, fn. 12, besides the 1st Amend., this Court has grounded "the right of access to courts" in the Privileges and Immunities Clause (U.S. Const. art. IV, §2, cl. 1), the 5th Amend., and the 14th Amend.

Thus, no legislature may abridge/curtail the Four Fundamental Rights.

2. NOTWITHSTANDING NO ABRIDGEMENT, LEGISLATURES CAN PROHIBIT ABUSES THAT ARISE FROM THE FOUR FUNDAMENTAL RIGHTS

Despite an absolute prohibition against abridging/curtailing the Four Fundamental Rights, any abuse from exercising the rights can, and should be, prohibited.

Immediately following the second *De Jonge* quote *supra*, this Court states (*De Jonge*, 364-365, emphasis added):

> These rights may be abused... to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification ***only*** by dealing with the abuse. The rights themselves ***must not*** be curtailed.

Thus, there is a bright line rule between abridging/curtailing the Four Fundamental Rights (unconstitutional) and prohibiting ***abuses that arise from*** the exercise of the rights (constitutional).

C. THIS CASE IS THE POSTER CHILD FOR THE UNCONSTITUTIONALITY OF CA VL LAW

Regarding a facial challenge, CA VL Law: i) abridges/curtails the right to access courts, ii) is not

narrowly tailored, and iii) there is no ***actual***, compelling state interest.

Regarding an as-applied challenge, the undisputed facts are: i) the law of the case is that Hadsell is the defendant in these matters—thus, CA VL Law is inapplicable, ii) Hadsell has never violated any CA VL Law, and iii) a rogue trial judge, with no subject matter jurisdiction ("**SMJ**"), illegally placed Hadsell on the California Vexatious Litigant List, "**CA VL List**". Other than the one 1DCA instance holding Hadsell is the defendant in these matters, not a single California court judgment has acknowledged any of these facts. Instead, it has ignored the facts and used boilerplate as pretext to deny Hadsell access to the courts.

1. CA VL LAW'S HISTORY PROVIDES THE NECESSARY CONTEXT FOR CONSTITUTIONALITY ANALYSIS

a. The False History

Black's Law Dictionary (11th ed. 2019) defines common knowledge as, "A fact that is so widely known that a court may accept it as true without proof."

There is no time to fully research everything. So, common knowledge is a wonderful thing—***except*** when it's wrong, as it is here.

An entertaining film, Born Yesterday (Buena Vista Pictures 1993) (link is to IMDb.com and 2.5-minute trailer) starred Melanie Griffith as Billie Dawn, John

Goodman as Harry Brock, and Don Johnson as Paul Verrall.

Harry is a wealthy businessman who takes beautiful Billie on an extended business trip to Washington D.C. where she promptly embarrasses Harry socially because she's uneducated. Harry hires Paul[3] to "smarten her up". And boy does he. Billie proceeds to charmingly skewer the wealthy, well-educated, elite of Washington D.C. when the newly educated Billie enlightens the Washington elites that the common knowledge (that they take for granted) is wrong.

That is exactly the situation here.

Read any California court opinion, treatise, or article, they all say the same wrong thing: CA VL Law was enacted to stop the "clogging" of courts with VLs. Not only is that light years away from the actual, sordid truth, but, as discussed *infra* (p. 21), it is mathematically impossible to be true. Additionally, discussed *infra* (p. 14), no factual support has been found in any history, legislative or otherwise. The only case-law reference is to Lee W. Rawles, *The California Vexatious Litigant Statute: A Viable Judicial Tool to Deny the Clever Obstructionists Access?* (1998) 72 So.Cal. L.Rev. 275. Yet, the article itself states that there is a, "[T]otal absence of studies specifically tracking vexatious behavior…", *id.*, 310, fn 20.

---

[3] His last name, Verrall being a play on the Latin veritas (truth) meaning his character is all truth.

b. The Actual History

CA VL Law was enacted on 7/13/63. This was right in the midst of what the U.S. Department of Transportation calls, "The Greatest Decade 1956-1966" for building the Interstate Highways, U.S. Department of Transportation, https://www.fhwa.dot.gov/infrastructure/50interstate2.cfm (last visited February 19, 2024).

Unfortunately, with massive funding, comes massive corruption (*id.*, emphasis added):

> [T]he press ***regularly*** repeated tales of alleged corruption and bungling that the former President [Eisenhower] considered "almost hair-raising." A ***sympathetic article*** in *The Cincinnati Enquirer* for July 3, 1960, summarized the criticism:
>
> > Now critics are proclaiming it "our great big highway bungle," a "nightmare," a "rat hole" of ***waste and extravagance***, and a scandal of such potential that Teapot Dome [an influence peddling scandal during the early 1920s] will be peanuts by comparison.

Mendocino County was so rife with government corruption that it had a standing, annual, grand jury for government corruption. (See Exhibit 1, "**Newspaper Bibliography**", p. 9 for newspaper articles listing regarding the history.)

The political weaponizing of the grand jury into the "Warrant War" ostensibly began[4] with Deputy Robert Morton ("**Morton**"). However, given Morton's involvement with County Supervisor Oscar Klee ("**Klee**") and Judges Glenn Evans ("**Evans**") and Maurice Tindall ("**Tindall**") within the Volunteers for Good Government organization ("**VGG**"), this history properly begins with Klee.

Prior to becoming County Supervisor, Klee was a judge. He requested law books for his office totaling $720 [about $7,200 today, U.S. Inflation Calulator, https://www.usinflationcalculator.com/ (last visited February 19, 2024)]. His books arrived, but his pay was docked the $720 to pay for them (from his $2,277 annual salary). This began political bickering that escalated into Klee being indicted twice by the grand jury—the most serious being for six counts of misappropriation of funds totaling $50.85. While that's about $500 today, it's nonetheless a fairly trivial amount.

Thus, the issue ***wasn't*** becoming wealthy at the government's trough, ***it was*** the penalty of legal defense fees and potential imprisonment.

Fortunately for Klee, he was acquitted both times, and a legal defense fund was created to cover his legal fees.

---

[4] There is nothing new under the sun. Weaponizing government is as old as Ancient Rome with Cicero v. Cataline, and as current as Former-President Trump, and President Biden, and his son, Hunter Biden.

But, he also fought back. At the 1/17/62 Annual Grand Jury meeting with the Board of Supervisors, Klee introduced a letter accusing DA Frank Petersen ("**Petersen**") of "aiding and abetting the board of supervisors and the county road department in wasting a million dollars of the taxpayers' money."[5]

These and other Klee travails were certainly impetus for his involvement in VGG.

This is where Morton and VGG intersect.

1962 was an election year. Sherriff-Coroner Reno Bartolomie ("**Bartolomie**") was up for re-election.

Morton found a hand-written list with his name, along with four other deputies' names. Morton confronted Bartolomie stating that the deputies on the list were to be fired if Bartolomie won re-election.

Morton's suspicion about being fired was because he had been making noises that Bartolomie was not running a good ship by, inter alia: i) failing to serve an arrest warrant on a suspected wife-beater, ii) failing to report embezzlement in his office by an employee, and iii) failing to arrest teenagers drinking alcohol.

Morton's concerns ended up being well founded for at least the first two concerns since: i) the suspected

---

[5] Nothing much came of the charges—especially after Road Commissioner, Walter Severance, after 34 years of service, had his three-sentence resignation letter (viz., Mr. Severance's severance letter) read to the Board of Supervisors by the clerk in his absence while he was on vacation.

wife-beater was later convicted and his marriage annulled, and ii) Bartolomie's employee indeed admitted to embezzling about $300, or $3,000 today.

In a public display, during an election year, Morton and the four other sheriffs on the list resigned en masse at a public County Supervisor's meeting at which Bartolomie was speaking.

Morton then unsuccessfully approached Petersen to indict Bartolomie.

Unsuccessful with Petersen, and likely spurred on by his friends at VGG, Morton utilized an obscure law where a judge can issue a warrant based upon a complaint from a private citizen.

Morton was unsuccessful with two judges, but with Judges Evans and Tindall (members of VGG) he was successful in obtaining about 50 arrest warrants for Bartolomie, Bartolomie's Captain Gino Stefani, Petersen, and a few others.

Most significantly here is Petersen. Amongst this flurry of warrants, Petersen, as the sitting DA, was humiliated by being arrested, and booked, on ***four*** separate occasions.

Notwithstanding, obtaining the warrants resulted in a debacle.

Based upon Attorney General Stanley Mosk's ("**Mosk**', later, Cal. Sup. Ct., Associate Justice) public statements about the warrants, and an affidavit from Klee, Tindall issued a summons for an order to show

cause why Mosk shouldn't be held in contempt of court.[6]

This was a bridge too far. Mosk not only put aside his state duties to insert himself into Mendocino county affairs to win a successful motion to have Tindall disqualified from his case, but he continued beyond his case to have all charges stemming from ***any*** of the warrants dropped, and then ***he*** convened a special session of the Mendocino grand jury that indicted Evans, Morton, Ms. Shon Salisbury[7], and Tindall[8].

All four were found guilty. The sentences were: i) Ms. Salisbury received 30 days in jail; ii) Evans and Tindall both received 5-years' probation and fined $2,000 and $4,000, respectively ($20,000 and $40,000 today), both lost their judgeships; and iii) Morton received 5-years' prison probation and one year in county jail.

---

[6] Judge Comstock dismissed the contempt charge, however, he admonished Mosk stating, " 'If Mosk's remarks had been made in court he would have been liable for contempt.' ", Staff Writer, *Mosk Criticized*, Ukiah Daily Journal, Sep. 25, 1962, 1.

[7] Strangely enough, the former wife of the convicted wife-beater, the homeowner where the teenage drinking occurred, and girl-Friday for VGG; the last item being the offense for her indictment.

[8] On 7/30/63, the Anderson Valley Advertiser ran a cartoon that seemed to capture the moment of Mosk's involvement in local county affairs. It depicted a California Penal Code book wearing a pirate's eye patch with the line, "Must it be hidden behind a Mosk?"

But this sordid, political mess doesn't end here. As an election year, Petersen became the newly elected, first-time, and single-term, State Senator.

Having endured all the indignities and humiliations during the Warrant War, he came to Sacramento with a vengeance.

He arrived on 1/17/63, and by 4/9/63, he had introduced the CA VL Law. [See Final Senate History (1963), 348, S.B. 1179 Exhibit 2, "**Senate Calendar**", p. 17 (yellow highlight added).]

As Exhibit 2 shows, no legislative or committee hearing was held, nor any fact finding occurred, in the brief 82 days between Petersen's arrival and his bill's introduction. Likewise for the next 95 days until signed into law.

The record shows Petersen's VL-Law bill had nothing to do with "clogging" the court system with frivolous, pro-se litigants' pleadings to the detriment of other litigants' legitimate proceedings.

No. This was aimed squarely at the Evanses, Klees, Mortons, and Tindalls of the world (viz., judges, politicians, and law enforcement), who dared to use the courts and law enforcement in a tit-for-tat, banana-republic-style political retaliation in response to the same tactics used against them by the Bartolomies, Mosks, and Petersens of the world. Both political enemies abused their governmental powers against each other with grand-jury indictments and investigations, arrests, bookings, and trials against their political opponents.

For our purposes, there is not a scintilla of evidence, or even discussion, regarding any "clogging" of courts.

2. CA VL LAW IS UNCONSTITUTIONAL FACIALLY

a. CA VL Law Abridges/Curtails Access to Courts

While the California Legislature can prohibit ***abuses resulting from*** the right to access the courts, here, CA VL Law unconstitutionally abridges/curtails the ***right*** to access the courts. Before that analysis, a brief discussion is required noting that the California Legislature commits constitutional error right out of the gate with its Vexatious Litigant ("VL") definition.

i. Vexatious Litigant Definition is Absurd.

CCP §§391(b)(1)-(5) provide five separate definitions to brand a litigant "vexatious".

CCP §391(b)(1) (p. 5a) states anyone, in pro se, within the prior seven years, who has "five litigations... determined adversely" is a VL. Such a person, who has violated no law, is a VL.

Every case will produce one "successful" and one "unsuccessful" litigant. Indeed, a person who has a 95% successful record with 95 successful cases in a row in 10 years, followed by 5 unsuccessful cases in the following year, is a VL. Absurd. Especially

considering this Court's favorable view of at least four values that "unsuccessful" suits provide.[9]

CCP §391(b)(5) (p. 6a) is even worse. This Court has held that convicted prisoners have a right to access the courts, *Cruz v. Beto* (1972) 405 U.S. 319, 321:

> [P]ersons in prison, like other individuals, have the right to petition the Government for redress of grievances which... includes "access of prisoners to the courts for the purpose of presenting their complaints." [Citations.]

Yet CCP §391(b)(5) defines a VL as a person who has i) never been convicted of crime; but ii) who is now subjected to a restraining order; iii) resulting from an ex-parte, ***unnoticed***, hearing, held in absentia (in violation of due process, 14th Amend., *Goldberg v. Kelly* (1970) 397 U.S. 254, 267); iv) that could be supported only by testimony of the person seeking the order that the person to be restrained sent a (constitutionally vague) "annoying" text message through a third party.

---

[9] [E]ven unsuccessful but reasonably based suits advance some First Amendment interests. Like successful suits, unsuccessful suits allow the "'public airing of disputed facts,'" [Citations.], and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around. [E.g., Justice Brandeis' dissent in *Olmstead* leading to *Katz*.] Moreover, the ability to lawfully prosecute even unsuccessful suits adds legitimacy to the court system as a designated alternative to force. See [Citation] (noting the potential for avoiding violence by the filing of unsuccessful claims). *BE&K Constr. Co. v. NLRB* (2002) 536 U.S. 516, 532.

The other three definitions suffer similar fatal flaws.

Notwithstanding, assuming arguendo the definitions weren't fatally flawed, as detailed *infra*, CA VL Law applies only to plaintiffs. Thus, defendants can engage in ***exactly*** the same conduct as plaintiffs, yet defendants are entirely immune to CA VL Law. Thus, the entire scheme suffers from a fatal equal-protection issue because infringing the fundamental right of access to the courts for one party, when the opposing party can engage in exactly the same conduct with impunity, cannot possibly pass the strict scrutiny standard (detailed *infra*, p. 20), that is required for state infringement of fundamental rights, 14th Amend., *City of Cleburne, Tex. v. Cleburne Living Center* (1985) 473 U.S. 432, 439.

ii. CA VL Law Abridges Access to Courts by Requiring Court Approval *Before* a Pleading Can Be Filed

CCP §391.7(a) (emphasis added, p. 7a) states, "the 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 justice or presiding judge of the court...".

Here, unlike for any other litigant, CA VL Law abridges the ***right*** to access the courts rather than prohibits the ***abuse*** of the right. Therefore, it is unconstitutional because it abridges the right.

Moreover, the Cal. Sup. Ct. has a "Chief Justice" and "Associate Justices", not a "presiding justice" or a "presiding judge".

It appears there's no case law, statute, or regulation equating Chief Justice Guerrero to a presiding justice or presiding judge. These terms are all terms of art, that in all circumstances {e.g., setting salaries (Cal. Gov. Code §§68200-68202); election laws [Cal. Election Code §13109(i)]}, are used distinctively, never as synonyms, or interchangeably.

It also appears to be why the Judicial Council of California (that creates mandatory and optional court forms) Form VL-110 (form for VLs to apply for court leave to file a pleading) has checkboxes for its use ***only*** in appellate, or superior courts.

Therefore, it appears the California Legislature's intent is (and the Judicial Council of California agrees) that CCP §391.7(a) does ***not*** apply to the Cal. Sup. Ct.

Notwithstanding, searching for "application of petitioner for leave to file a petition" resulted in 164 results for the Cal. Sup. Ct. between 2013 and today—***all*** but one were denied. For the one instance found where a writ of mandate was allowed to be filed, the writ was denied 44 days later without comment.

Indeed, the Cal. Sup. Ct. has benighted itself regarding the constitutionality of CA VL Law because not a single case has been granted certiorari regarding the laws' constitutionality.

iii. Upon Pain of Dismissal, CA VL Law Abridges Access to Courts by Requiring "Security" Be Posted for *Speculative* Opposing-Party Expenses (Including Attorneys' Fees) *Before* a Pleading Can Be Heard

CCP §391(c) (p. 6a) defines "security" as, "an undertaking to assure payment... of the party's reasonable expenses, including attorney's fees...". If the VL fails to provide the "security", then the court "shall" dismiss the pleading, CCP §391.4, p. 7a.

This law also violates the "American Rule" that unless a specific statute or contract provides for fee shifting, each party bears its own litigation costs (*Peter v. NantKwest, Inc.* (2019) 589 U.S. 23, 30).

Here, unlike for any other litigant, CA VL Law abridges the right to access the courts by requiring a VL to post security for the ***speculative*** opposing party's litigation costs, ***before*** a hearing can be held, or else the matter "shall be dismissed", CCP §391.4, p. 7a.

Thus, CA VL Law abridges the ***right*** to access the courts rather than prohibits the ***abuse*** of the right. Therefore, it is unconstitutional because it abridges the right.

b. CA VL Law Is Not Narrowly Tailored

"[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.", *Bill Johnson's Rests.*, 741.

As *Bounds v. Smith* (1977) 430 U.S. 817 holds, even an incarcerated convict, whose rights are therefore restricted, still enjoys, "***the fundamental constitutional right*** of access to the courts" (id., 828, emphasis added), let alone a free VL who has never violated any law.

To infringe a fundamental right, the standard of review is "strict scrutiny". Strict scrutiny has two elements: i) the law must be necessary to achieve an ***actual***, compelling state interest, and ii) it must be narrowly tailored, *Johnson v. California* (2005) 543 U.S. 499, 505.

"Narrowly tailored" means that the law must be "the least restrictive means" for accomplishing the State's actual, compelling interest, or as *Regents of Univ. of Cal. v. Bakke* (1978) 438 U.S. 265 perhaps more usefully puts it, the infringement of the fundamental right must be, "'***necessary***... to the accomplishment' of its purpose or the safeguarding of its interest.", *id.*, 305 (emphasis added).

Here, there is no necessity to infringe the 1st Amendment rights of millions of litigants' ability to redress of their grievances via CA VL Law because plenty of tools are available to accomplish safeguarding courts and litigants from "vexatious" abuses. These tools include, inter alia, summary judgment (that includes defense-fee awards CCP §1038), to sanctions (attorney's fees, court costs, penalties, CCP §128.5), to malicious prosecution, and contempt of court.

Therefore, it is impossible to legitimately argue that CA VL Law is narrowly tailored when this plethora of other legal methods for preventing/dealing with frivolous legal actions are readily available for the task—methods that are certainly less restrictive than the ham-fisted barring of litigants from court, or the dismissal of the case if a VL cannot post security for opposing attorney's fees.

This Court has held that not even the inability to pay mere filing fees is permitted to close the court's doors, *Boddie v. Connecticut* (1971) 401 U.S. 371, 382 (prohibited required courts fees to obtain a divorce), see also *Griffin v. Illinois* (1956) 351 U.S. 12, 19 ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.")

c. CA VL Law Is Not An Actual, Compelling, Government Interest

As this Court has held, stare decisis is at its weakest as a precedent when it involves the 1st Amendment, and moreover, is at its nadir when it involves redress of grievances, Janus v. American Federation of State, County, and Mun. Employees, Council 31 (2018) 138 S.Ct. 2448.

Furthermore, although unsupported by a scintilla of evidence (as detailed *infra*), California courts justify its interest in CA VL Law by claiming it avoids "clogging" its courts with VL litigation. However, it's mathematically impossible for VLs to be "clogging" the courts' calendars.

There's no definition for what constitutes "clogging" the courts[10], but at the lowest possible impact, it could be defined as constituting a nuisance level of 10% of cases.

The December 2023 CA VL List contains about 2,296 VLs, after eliminating duplicates.

The Judicial Council of California, 2022 Court Statistics Report (2022) provides that there were about 4,489,050 cases filed in FY 20-21. That means, at 10%, there would be 448,905 cases where VLs would be "clogging" the courts.

To qualify as a VL, s/he must file, and lose, five cases in seven years, or 0.7 cases/yr, CCP §391(b)(1).

The CA VL List is an accumulated list of ***all*** VLs, not an annual number.

Here, 448,905 cases/2,296 VLs means that ***every*** VL, for all time, must file 196 cases each, in a single year, to have even a 10% impact on cases. Clearly this is not happening.

Using the 0.7 cases/yr. to qualify as a VL, times the number of VLs equals 1,607 cases/yr. (or 0.0358% of cases)—if ***every*** VL filed 0.7 cases/yr.

---

[10] Oxford English Dictionary 1190 (2d ed., CD-ROM ver. 4.0) defines clog as, "To fill up with anything that impedes or obstructs action or function, to encumber; esp. to choke *up* so as to hinder free passage, to obstruct."

Looking solely at the 58 superior courts (4,489,505 cases, or 99.5% of all cases), and assuming cases are spread approximately evenly among the approximately 1,969 superior court judges, that means that on average, each judge will confront ***one*** VL every ***two years***. That cannot legitimately be considered "clogging" the courts under any legitimate standard. Indeed, using a more practical 5% number of intrepid VLs willing to risk contempt of court to file a new case [CCP §391.7(a)] rather than ***every*** VL as used *supra*, yields that each judge will confront ***one*** VL every ***40 years***, viz., ***once***, well in excess of an entire career on the bench (a judge must have practiced law at least 10 years to be eligible as a judge: law school/pass bar exam is 25 years old;, 10 years practice is 35; retirement at 65; means the longest typical career is about 30 years).

Thus, CA VL Law is ***not*** an ***actual*** state interest when, on average, a typical trial judge will not confront a single VL in his/her career.

Because CA VL Law is not an ***actual*** state interest, it cannot comply with the strict scrutiny standard and is therefore, unconstitutional.

3. CA VL LAW IS UNCONSTITUTIONAL AS APPLIED

a. Three Undisputed Sets of Facts Make Clear that CA VL Law Is Unconstitutional As Applied

Here, inter alia, three undisputed sets of facts demonstrate that CA VL Law is unconstitutional as applied:

- Hadsell has never violated any CA VL Law.
- Hadsell was placed on the CA VL List by a judge, who, with all due respect, is a rogue judge who lacked SMJ.
- The law of the case is that Hadsell is the "defendant" in these matters, and CA VL Law doesn't apply to defendants.

b. A Rogue Judge, Lacking SMJ, Illegally Placed Hadsell on the CA VL List

An obvious question is: If it is undisputed that Hadsell has never violated CA VL Law, how did he get declared a VL and get placed on the CA VL List?

Simple. A rogue judge.

Hadsell was raised by "Greatest Generation" parents: a Midwest father, and an English mum, who met during WW II while his father was serving in the U.S. Army.

Hadsell's father instilled strong, Midwest, moral values, and his mum ensured that he was raised to be a proper English gentleman.

Therefore, Hadsell doesn't use the word "rogue" lightly, and must back it up.

i. Hadsell Has Not Been Validly Adjudicated a VL, Nor Is He Subject To a Prefiling Order

A) Mockler's Rogue Actions

Hadsell believed that Judge Mockler ("**Mockler**") was not an "impartial decision maker", *Goldberg v. Kelly* (1970) 397 U.S. 254, 271. On 2/18/16, he filed a motion pursuant to CCP §170.1 to disqualify her.

Regardless of the merits, or the outcome, until a CCP §170.1 motion is final, pursuant to CCP §§170.4(a)(1) to (6) (p. 7a) a judge loses SMJ in the case, save for a few ministerial exceptions. None of the exceptions applied when Mockler heard the 10/16/15 VL Motion—Hadsell objected on that ground, "**Exhibit 3**", "**Reporter's Transcript 4/28/16 Excerpt**", 4:8-18, (p. 18a).

People v. Lind (2014) 230 Cal.App.4th 709, 714 provides:

> After [Defendant] filed his motion to disqualify [the Judge] pursuant to Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), she had no power to act in this case until the question of her disqualification was determined.

The reason for awaiting final determination is that if a judge presides over a matter before the motion for disqualification is finalized, and is later disqualified, those proceedings must be reheard. That is also why

an appeal is not available; instead, only a ten-day period to file a writ of mandate is available, CCP §170.3(d). It is undisputed that pursuant to CCP §§170.3(d) and 1013, the earliest possible date for a final determination of the removal motion was 5/10/16—12 days after the 4/28/16 Hearing. Therefore, Mockler lacked SMJ for the 4/28/16 Hearing.

In addition to lacking SMJ, as here, Mockler has been frequently overturned for failure to hold required hearings, and ordering payments in violation of law. On multiple occasions, her actions were so egregious that the attorney general conceded the issue rather than defend Mockler.

As Exhibit 4, "**Judge Mockler Reversal Examples**", p. 19a, indicates, Mockler has been reversed ***at least*** 19 times in the last 10 years (2014-2023). To give that enormous number context, in the last 10 years, the 1DCA has reversed trial-court judges about 312 times, Lexis/Nexis docket search regarding dispositions. The 1DCA is comprised of 12 counties. On average, for the last 10 years, those counties employed about 315 judges, Judicial Council of California, 2015-2024 Court Statistics Reports (2015-2024). Thus, on average, in the 1DCA, a judge is reversed once (312/315) every 10 years. Mockler (not counting instances when she committed reversable error that wasn't appealed, or was untimely appealed) has been reversed over 19 times the rate of a typical judge. Viz., about ***twice a year*** instead of the norm of ***once a decade***. And for the year in question here, 2016, Mockler was reversed eight times, or ***over 80 times*** more frequently than a typical judge.

Here, Mockler kept making errors, so there are three successive prefiling judgments, 4/28/16, 5/3/16, and finally, 6/13/16. Still, Mockler gets matters horribly wrong. First, in accordance with her usual error of failing to hold a required hearing, she failed to hold a required hearing to determine the amount of any "security" [CCP §391.3(a)], and then proceeded to order a security amount based upon disputed claims of $170,000 rather than reasonable expenses, CCP §391(c).

Rogue is a term that should ***never*** apply to a judge. But being overruled 80 times more frequently than a typical judge, and repeatedly committing the same egregious violations of law, unfortunately, "rogue" applies here.[11]

---

[11] This begs the question: How did Mockler survive disqualification? A judge from another county, upon mutual agreement, hears the motion. Here, Hadsell was never consulted because he would have never agreed to Judge Ichikawa ("**Ichikawa**"), who just months after this decision, resigned rather than face recall.

First, Mockler should have been removed by operation of law because she failed to provide a timely response that complied with the Rules of Court. Rather than provide leave to amend, Ichikawa legislated from the bench that the response was fine by him.

Second, the standard of review is that a ***reasonable person*** would entertain a doubt about the ***appearance*** of bias, not actual bias. Here, Ichikawa, a presumed ***legal expert*** found ***actual*** bias due to violations of judicial ethics. Legislating from the bench,

B) Lack of SMJ Effects

Fortunately, lack of SMJ means all of Mockler's VL actions here are legal nullities; viz., "void" rather than "voidable".

Any judgment or order rendered by a court lacking SMJ is void on its face, *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196. Here, because Mockler lacked SMJ, her VL actions are void on their face, and nullities; thus, unenforceable. They are unenforceable because, "[W]hile the phrase 'void judgment' is convenient, it is a contradiction in terms. ***If a judgment is void it is not a judgment.***", *Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 733 (emphasis added). That is the distinction between "void" and "voidable". A voidable judgment must be adjudicated void by a legal review process, whereas a void judgment does not. As *Morgan*, 732, states (color highlight added):

Ichikawa excused this bias because Mockler was a neophyte in her first months as a family-law judge.

As Lieutenant Kaffee, played by Tom Cruise, states in A Few Good Men (Castle Rock Entertainment 1992), 58:45-58:58:

> Why does a lieutenant junior grade, with nine months experience, and a track record for plea bargaining, get assigned a murder case?
>
> (beat)
>
> Would it be so that it never sees the inside of a courtroom?

Recall seems justified for Ichikawa. It's beyond Kafkaesque for Hadsell because this probate case regarding the suicide of Hadsell's 21-year-old son resulted from, in significant part, the family strife Charlie felt from such shameful court actions.

> Whether the want of jurisdiction appears on the face of the judgment or is shown by evidence *aliunde*, in either case the judgment is for all purposes a nullity—past, present and future. [Cf. Citation.]... "It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void... No action upon the part of the plaintiff, no inaction upon the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the government, can invest it with any of the elements of power or of vitality." [Citation.]

Therefore, the entirety of CA VL Law is inapplicable to Hadsell because he has never been validly adjudicated a VL, nor is there any valid prefiling judgment.

c. The Law of the Case, that Hadsell Is the Defendant in These Matters, Makes CA VL Law Inapplicable

Nelson v. Tucker Ellis LLP(2020) 48 Cal.App.5th 827, 837 instructs:

> "Where an appellate court states in its opinion a principle or rule of law necessary to its decision, that principle or rule becomes the law of the case. [Citation.] The law of the case must be adhered to both in the lower court and upon subsequent appeal. (*Ibid.*) This is true even if the court that issued the opinion becomes convinced in a subsequent consideration that the former opinion is erroneous. (*Ibid.*)" [Citation.]

Here, on 10/20/22 (Case No.: A166282), 1DCA entered its Order Issuing Alternate Writ, "**1DCA ORD Issue Alt Writ**". It adjudicated that (emphasis added):

> The prefiling requirement for vexatious litigants ***does not apply*** to ***[Hadsell]'s response*** because [he] was not filing "new litigation" (Code Civ. Proc., § 391.7, subd. (a)), but instead ***was responding to a notice of lien*** filed by a third party in an existing case.

On 11/16/22, the Super. Ct. agreed and entered its order stating (emphasis added), "Hadsell's request to file ***a response to the notice of lien*** is hereby granted."

Thus, the law of the case for these matters is that ***Hadsell is a person against whom litigation has been brought***.

As *John v. Superior Court* (2016) 63 Cal.4th 91, 96 states:

> [CCP §391(e)]... defines a "'Defendant'" as "a person... against whom a litigation is brought or maintained or sought to be brought or maintained."

Thus, for CA VL Law purposes, Hadsell is a "Defendant". Additionally, *John*, 100 states (emphasis added):

> [CCP §]391.7's prefiling requirements ***do not apply to*** a self-represented vexatious litigant's ***appeal of a judgment or interlocutory order*** in an action ***in which he*** or she ***was the defendant***.

Therefore, the simple syllogistic legal analysis is: Hadsell is a "defendant", and prefiling requirements

don't apply to defendants, therefore, prefiling requirements don't apply to Hadsell.

Notwithstanding, 112 days after Hadsell's forced 4/2/24 Application to File New Litigation (or face dismissal)[12], the Judgment (7/23/24)'s ***entire*** response to the 20-page application is 17 words:

> The application of petitioner for leave to file a petition for writ of mandate is hereby denied.

Because Hadsell is the defendant in these matters, the Judgment (7/23/24) is error. Because, as discussed next, the 1DCA uses pretext to avoid/ignore these errors, CA VL Law is unconstitutional as-applied.

---

[12] Again, Kafkaesque. On the eve of this case being decided in Hadsell's favor on summary judgment, the VL issue arose only after: i) Hadsell had filed his 1DCA Appellant's Opening Brief and appendixes, ii) Isham failed to file a Respondent's Opening Brief ("**ROB**"), iii) 1DCA sent Isham a letter stating that if she failed to file her ROB within an extended 15 days, 1DCA would rule based solely upon Hadsell's submissions (which almost always results in granting the appeal since 1DCA can treat a failure to respond as a stipulation), iv) she failed to file her ROB, and v) instead, she mailed a letter (never filed) prevaricating that Hadsell is a VL.

d. Denials of Litigation Applications Demonstrate that Boilerplate Language is Used as Pretext

i. 1DCA's Application Denials Are Boilerplate

In comparing 1DCA's Application Denials (Exhibit 5, "**10/31/18 Humes Denied Appeal Filing**", p. 22a; Exhibit 6, "**11/28/23 Humes Denied Appeal Application**", p. 23a) they are exactly the same in that they: i) use the exact same language, ii) fail to address the actual facts (indeed, allege incorrect facts), iii) provide conclusory legal analysis, and iv) use the wrong standard of review.

There are only two differences: i) the name and date of Hadsell's issue, and ii) the 11/28/23 denial includes the addition of a citation to *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536 that provides a ***different standard of review*** than the standard Administrative Presiding Justice Humes ("**Humes**") applies.

In *Kobayashi*'s statutory interpretation of the following CCP §391.7(b) words (emphasis added):

> The presiding justice or presiding judge ***shall*** permit the filing of that litigation only if it appears that the litigation has merit...

Kobayashi, 541 provides the standard of review to determine whether a filing has merit: the filing must provide, "a simple showing of an arguable issue".

Here, Humes uses the distinctly different standard of, "a reasonably possibility [the] appeal has merit", ***citing to*** *Kobayashi*. Yet the word "possibility" (or any variation) is nowhere in *Kobayashi*; and "reasonable" appears only once, but not in any connection with a filing's merit.

Yet there is a vast difference between a standard of, "a simple showing of an arguable issue" (viz., a single colorable argument) vs. whether, on balance, an entire appeal has merit—especially when there is a deliberate thumb on the scale for finality purposes ***against any*** appeal.

Moreover, it is not only this case that the language is boilerplate, a number of unpublished cases use the exact same boilerplate.

ii. 1DCA's Application Denials Are Pretext

This Court's landmark case for preventing California from using pretext to deny legal rights is *Yick Wo v. Hopkins* (1886) 118 U.S. 356. There, the pretext language was whether a laundry was housed in a brick or stone building vs. a wooden building—ostensibly for fire-related purposes, *id.*, 365. However, the language of the San Francisco ordinance was pretext because the wooden buildings (the vast majority of the buildings involved, and that complied with all fire regulations) were targeted because the wooden buildings housed laundries owned by Chinese nationals. Thus, the ordinance, while on its face appeared neutral, as-applied, it discriminated against Chinese nationals.

Here, because the denials are boilerplate that fail to address the actual: i) facts, ii) legal issues, iii) correct standard of review, and iv) exceptions to CA VL Law, they are mere pretext for anyone who is listed on the CA VL List. With the mere mention of being on the list (even though the court had just officially stated that it was ready to rule on the matter based upon filings it had accepted—without finding any fault/error in the filings) one's case is dismissed.

IX. REASONS FOR GRANTING THE PETITION

A. BECAUSE OF THE FEDERAL RULES DECISION ACT, AND THE ERIE DOCTRINE, THERE ARE INHERENT CIRCUIT SPLITS WITHIN EIGHT CIRCUITS; AND SPLITS AMONG ALL THE CIRCUITS

There are 13 states with VL Laws.[13]

There are one or more of the 13 states, along with one or more states without VL Laws, in nine circuits (1, 4-9, 11, Federal).

---

[13] Alaska, Arizona, California, Florida, Hawaii, Montana, Nevada, New Hampshire, North Dakota, Ohio, Texas, Virginia, Wisconsin. This is about 25% of the states, and about 40% of the U.S. population because it includes populous states like California, Florida, and Texas.

The Federal Rules of Decision Act (28 U.S.C. §1652) and the Erie Doctrine (*Erie R.R. v. Tompkins* (1938) 304 U.S. 64, 71-77) require federal courts to apply state law as the rule of decision in civil cases to assure uniform results in state and federal courts and to discourage forum shopping between the state and federal system.

There is an inherent conflict within nine circuits in enforcing the federal, fundamental, right to access the courts, because each circuit encompasses states with, and without, VL Law.

Thus, only this Court has the power to resolve the splits and ensure uniform results, and avoid forum shopping.

Likewise, because there are four circuits with only states that have no VL Law, there are combinations for inherent conflicts among ***all*** the circuits.

Again, only this Court has the power to resolve the splits and ensure uniformity.

B. THE ISSUES ARE IMPORTANT AND RECURRING

This Court has identified access to the courts as one of the four fundamental rights essential to the fundamental principles of liberty and justice that lie at the base of ***all*** civil and political institutions.

There are about 135 million Americans who have the Sword of Damocles hanging over their heads regarding their access to the courts due to VL Laws. If

California can be extrapolated to the other 12 states, then about 8,000 Americans have the Sword pressing on their necks, and likely every court day, somewhere in our nation, the fundamental right to access the courts is being unconstitutionally violated for one or more Americans.

This Court should find that situation intolerable—especially when it occurs, as in this case, without due process of law because throughout these proceedings, not a single hearing has been held on any application to file a pleading, yet Hadsell has been denied a fundamental right, when it is undisputed, that he has not violated any law.

X. CONCLUSION

This case is certworthy because it involves inherent circuit splits both within nine circuits, and among all circuits, regarding state-law violations of the federal right to redress of grievances, and only this Court can resolve those issues.

The case involves important constitutional issues essential to liberty and justice; and requires interpretation that must be enforced uniformly because it is applied nationwide.

The issues involved are large scale—covering the fundamental rights of citizens in 25% of the states, and about 135 million citizens.

The issues are ongoing and recurring. Yet the facts are undisputed that fundamental constitutional rights are being routinely violated.

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

/s/ Christopher Hadsell

Christopher Hadsell, Petitioner

October 19, 2024

[This page intentionally left blank.]