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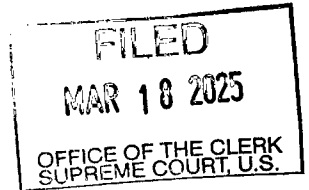
ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JANE DOE,
Petitioner

v.

JACK DWOSH,
Respondent



***ON APPEAL FROM THE CALIFORNIA
2ND DISTRICT COURT OF APPEAL, DIVISION FIVE***

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The U.S. Constitution has as its First Amendment the right to “petition the government for a redress of grievances.” Anti-SLAPP statutes enacted in over 32 states and used in federal courts focus on protecting that right for defendants, while jeopardizing that right for plaintiffs. The question presented is:

Whether anti-SLAPP statutes used in state and federal courts violate First Amendment rights of plaintiffs to petition the courts when even meritorious complaints are being foreclosed by the statute.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED CASES

Supreme Court of the State of California

CASE NO. S287520

California 2nd District Court of Appeal, Division Five

CASE NO. B327813; CASE NO. B329404

Superior Court of California, County of Los Angeles

CASE NO. 20SMCV02030

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jane Doe respectfully petitions for a writ of certiorari after appeal from the California 2nd District Court of Appeal, Division Five.

OPINIONS BELOW

The opinion of the California 2nd District Court of Appeal, Division Five appears at **Appendix A** to the petition and is unpublished.

The opinion of the Superior Court of California, County of Los Angeles appears at **Appendix B** to the petition and is unpublished.

JURISDICTION

The Supreme Court of California decided this case on December 18, 2024. A copy of that decision appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) or 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution provides in pertinent part: “Congress shall make no law * * * abridging * * * the right* * * to petition the Government for a redress of grievances.” U.S. Const. Amend. I.

The Eighth Amendment to the Constitution provides in pertinent part: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend. VIII.

The Fourteenth Amendment to the Constitution provides in pertinent part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIII.

STATEMENT

A. Anti-SLAPP statutory schemes

State courts are foreclosing federal law. Petitioner satisfied the California statutory requirement under Cal. Civ. Proc. Code S 425.16 that to withstand an anti-SLAPP motion, a Complaint must have merit. Petitioner satisfied the merit prong by obtaining a court order finding merit prior to her filing the Complaint. Yet, Petitioner was held to an even higher standard than the statutes, which she had already satisfied. Once filed, a trial judge granted an anti-SLAPP motion against Petitioner’s Complaint citing a State case which precludes family law cases as grounds to sue for malicious prosecution. Nowhere in any State or federal statute are family law cases exempt from malicious prosecution actions, and also no State or federal statute allows anti-SLAPP motions to be granted against a meritorious Complaint. California State court foreclosed Petitioner’s U.S. Constitution First Amendment right to petition the court for redress of grievances by granting an anti-SLAPP motion against her meritorious Complaint.

Currently, approximately 32 states have anti-SLAPP laws.

Passed in January 1993, California’s anti-SLAPP statutes were in response to the legislature’s concern about civil actions aimed at private citizens to deter or punish them for exercising their political or legal rights. *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 33 Cal.Rptr.2d 446 (1994). The hallmark of a SLAPP suit is that it ***lacks merit***, and is brought with the goals of obtaining an economic advantage over a citizen party by increasing the cost of litigation to the point that the citizen party’s case will be weakened or abandoned, and of deterring future litigation. 27 Cal.App.4th at 816, 33 Cal.Rptr.2d at 450.

Washington previously adopted an anti-SLAPP law in 2010, but the state supreme court struck it down in 2015, finding that it violated the state constitutional right to a trial by jury, by authorizing judges to adjudicate factual questions in non-frivolous cases before trial. *Davis v. Cox*, 351 P.3d 862, 864 (Wash. 2015), abrogated on other grounds by *Maytown Sand & Gravel, LLC v. Thurston Cnty.*, 423 P.3d 223 (Wash. 2018).

A Minnesota appellate court similarly found that state’s anti-SLAPP law unconstitutional, finding that the law “deprive[s] the non-moving party of the right to a jury trial by requiring a court to make pretrial factual findings to determine whether the moving party is

immune from liability.” *Mobile Diagnostic Imaging v. Hooten*, 889 N.W.2d 27, 35 (Minn. Ct. App. 2016). The following year, the Minnesota Supreme Court agreed, finding that state’s anti-SLAPP law unconstitutional as applied to claims alleging torts because it requires a district court to make pretrial factual finding in violation of the plaintiff’s right to a trial by jury under the Minnesota constitution. *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 637–38 (Minn. 2017).

Congress has never passed a federal anti-SLAPP law, and courts across the country disagree about whether state anti-SLAPP provisions apply in federal court. The analysis turns on whether a state’s anti-SLAPP law creates substantive rights and does not conflict with federal rules.

Federal appellate courts, particularly in recent years, have found that state anti-SLAPP statutes create a conflict. See, e.g., *Klocke v. Watson*, 936 F.3d 240, 245 (5th Cir. 2019), as revised (Aug. 29, 2019) (finding that Texas anti-SLAPP law’s burden-shifting framework could not apply in federal court because it imposed additional requirements beyond those found in the Federal Rules of Civil Procedure); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1351 (11th Cir. 2018) (finding that motion-to-strike procedure in Georgia anti-SLAPP law conflicted with federal rules and could not apply in federal court); *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659, 662 (10th Cir. 2018), cert. denied, 139 S. Ct. 591 (2018) (finding that New Mexico’s anti-SLAPP law does not apply in federal court); *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1332 (D.C. Cir. 2015) (finding that D.C. anti-SLAPP law does not apply in federal court).

B. Infringement of U.S. Constitution First Amendment rights

Petitioner asserts that state anti-SLAPP statutes infringe on citizens’ constitutional First Amendment rights to petition the court. There is inequality in a statute that protects defendants from being sued as they simultaneously claim they had a right to sue, and that renders the First Amendment available to defendants but not plaintiffs.

Petitioner asserts more broadly that there should be no state statutory scheme, which is also used in federal courts, that infringes on the First Amendment right to petition the courts. More narrowly, Petitioner asserts that *at least* no meritorious Complaint should be precluded from being petitioned in the courts.

At what point is a constitutional Amendment infringed? Similarly, at what point is infringement on First Amendment rights constitutionally intolerable? Petitioner respectfully asserts that state courts and federal courts’ use of anti-SLAPP statutes to contravene plaintiffs’ First Amendment rights is a violation of one of the most basic and sacred rights bestowed in the Constitution on we the people by our Founding Fathers — petitioning our government for redress of grievances. States have been eroding that right and applying it unequally as defendants merely need to claim their own right to petition — in order to preclude plaintiffs’ right to petition. State courts must not be permitted to circumvent the Constitution. While states have legislative rights to enact statutes, when incompatible with the Constitution it calls for this

Court's opinion on such a widely used and unequally applied statutory scheme appearing regularly in state and federal courts. Anti-SLAPP statutes are a discriminatory rewriting of the Constitution to preclude plaintiffs from petitioning the courts. Where a statute forecloses even meritorious complaints from proceeding in courts, the statute cannot stand.

Now even *merit* cannot defeat anti-SLAPP motions. Even further, here, although the anti-SLAPP motion was solely against Petitioner's one cause of action Complaint for malicious prosecution, she had timely filed a First Amended Complaint (FAC) with an additional cause of action that had been served on additional defendants but not yet answered. The FAC was not in front of the trial court for any reason at that point, yet the trial judge when granting defendant's anti-SLAPP motion *also dismissed* Petitioner's FAC with prejudice, giving a windfall immunity to the defendant and newly-named defendants for an additional cause of action of fraud.

In regard to the FAC, Petitioner excerpts from her Appellant's Opening Brief filed in the California 2nd District Court of Appeal, Division Five, citing from (*Dickinson v. Cosby*, 17 Cal. App. 5th 655, 676, 225 Cal. Rptr. 3d 430 (2d Dist. 2017)):

"The Court in *Dickenson* found: 'Our review of the language in and policy behind the cases restricting amendment when an anti-SLAPP motion is pending do not support extending their holdings to cases where the plaintiff amends to add an additional defendant.'

"[...] we take guidance from the courts which have interpreted *Simmons* as not actually preventing the plaintiff from filing an amended complaint; but instead permitting the plaintiff to file its amendment, without depriving the defendant of its right to have its anti-SLAPP motion adjudicated with respect to the initial complaint. (see *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 112 Cal.Rptr.2d 397)'

"[...] anti-SLAPP is designed as a final remedy with no second chances." (AOB pg 32).

This evidence solidly shows the extreme deprivation of Petitioner's First Amendment rights based on anti-SLAPP statutes that are permitted to erase the constitutional right to petition. In the instant case, the judge said that *defendant has the right to repetitively petition the courts and lose* against Petitioner, even with identical allegations and without ever producing any evidence, but that Petitioner should be foreclosed from petitioning the courts even with her meritorious Complaint as ordered by another judge and even of her FAC that had not yet been answered by newly named defendants, nor was it even the subject of the anti-SLAPP motion.

Reasons for granting the petition

I. The question presented warrants this Court's review

State legislatures continue to adopt more and broader anti-SLAPP legislation resulting in a greater number of anti-SLAPP motions being brought in state and federal courts.

The Supreme Court has not yet weighed in on the matter.

This matter of first impression by this Court will allow guidance across the states on realities of incompatibility of anti-SLAPP statutes and the First Amendment. While defendants are the focus of anti-SLAPP statutes, plaintiffs' First Amendment rights are being contravened by the application of the anti-SLAPP statutory scheme that effectively forecloses their right to petition the courts. *Even if* this Court found anti-SLAPP statutes compatible with federal law, the issue of *merit* should be addressed so that states' statutes *at least protect plaintiff's* right to petition equally to defendants', and ensuring all anti-SLAPP statutes align with constitutional concerns without infringing on First Amendment rights of all parties.

II. The decision below is wrong

A. Anti-SLAPP statutes used in state and federal courts are inconsistent with the First Amendment

The instant case hinges on the merit prong required in California statutes, which although Petitioner satisfied that prong with a court Order, an anti-SLAPP motion was granted against her which violated her First Amendment inherent right to petition the court. *And also* Petitioner had won all cases prior to this, as both a defendant and plaintiff, while the defendant-defendant with his defendant-lawyer lost all cases. Petitioner's litigation history demonstrates merit; defendants' history shows frivolous, malicious, and meritless complaints. Yet here, Petitioner's right to petition the courts even with a meritorious complaint is foreclosed by the anti-SLAPP statute.

Petitioner was granted a prefiling order by a California Superior Court Judge who found that her Complaint of the cause of action of malicious prosecution had merit against both the defendant and his lawyer who had filed and lost multiple cases against Petitioner. His lawyer Jack Dwosh, as defendant here, is a member of the California Bar but he has no law degree and he served felony prison time. Though he lost every case for his client, charging him \$400/hour, his client kept employing him to file repeated meritless cases against Petitioner who always won.

"The tort of malicious prosecution lies to compensate an individual who is maliciously hauled into court and forced to defend against a fabricated cause of action." (*Pace v Hillcrest Motor Co.*(1980) 101 CA3d 476, 478.) "The remedy of a malicious prosecution action lies to recompense the party who has suffered out of pocket loss in the form of attorney fees and costs, as well as emotional distress and injury to reputation because of groundless allegations made in pleadings which are public records." (*Sagonowsky v. More* (1998) 64 Cal.App.4th 122, 132 [75 Cal.Rptr.2d 118], internal citations omitted.) "The malicious commencement of a civil

proceeding is actionable because it harms the individual against whom the claim is made, and also because it threatens the efficient administration of justice. The individual is harmed because he is compelled to defend against a fabricated claim which not only subjected him to the panoply of psychological pressures most civil defendants suffer, but also the additional stress of attempting to resist a suit commenced out of spite or ill will, often magnified by slanderous allegations in the pleadings.” (*Merlet v. Rizzo* (1998) 64 Cal.App.4th 53, 59 [75 Cal.Rptr.2d 83], internal citation omitted.). A litigant “acts with malice when he asserts a claim with knowledge of its falsity, because one who seeks to establish such a claim ‘can only be motivated by an improper purpose.’ A lack of probable cause will therefore support an inference of malice.” (*Drummond v. Desmarais* (2009) 176 Cal.App.4th 451-452, [98 Cal.Rptr.3d 183], internal citations omitted.)

When Petitioner filed her Complaint, which additionally the Superior Court judge made a second order granting her exact Complaint and also ordering her to file the Complaint for malicious prosecution against both defendant and his lawyer, Petitioner was hit with an anti-SLAPP motion by the defendant-lawyer (defendant-defendant had settled with Petitioner and was dismissed). The trial court judge, who was a California Superior Court judge as well, granted the anti-SLAPP despite his peer judge’s explicit order that Petitioner’s Complaint has merit, and despite his peer judge’s second explicit order that the exact Complaint was ordered to be filed. Petitioner was then ordered by the trial judge to pay \$5916 in attorney fees solely for obeying the Order for her to file the meritorious Complaint.

Petitioner appealed to the California 2nd District Court of Appeals, Division Five, which denied her appeal, largely for two reasons – an absence of some page numbers to refer to the clerk’s transcript of the record, which Petitioner argues was curable, and due to a California case law of *Bidna v. Rosen* (1993) 19 Cal.App.4th 27, 40, 23 Cal.Rptr.2d 251. Despite automatic statutory de novo review of appealed anti-SLAPP motions, the appellate made a recitation of and consistently referenced to the lower court order. Petitioner argues that *Bidna* is inapplicable because it involves one case, and merely motions and Orders to Show Cause (OSC) in that one case, whereas Petitioner’s Complaint shows the defendant-lawyer filed and lost multiple frivolous and identical cases against Petitioner in various courts. The trial judge’s granting of defendant’s anti-SLAPP motion deprived Petitioner of her right to petition the courts. While federal and State anti-SLAPP statutes were enacted primarily with a purpose to protect the right to petition so that meritless Complaints could be easily and quickly dismissed, those statutes are being used by defendants and allowed by state and federal courts to defeat and foreclose meritorious complaints, inconsistent with and in violation of the First Amendment.

Anti-SLAPP statutes stand in direct defiance and contradiction to the First Amendment. They were envisioned as guardrails against meritless Complaints, but they are being used even against meritorious Complaints – which directly contravenes Petitioner’s First Amendment right to petition the courts. Anti-SLAPP statutes hurt more parties than they help, and statutes must not stand when incompatible with, obstructive, in violation of, and defeating the Constitution.

B. These statutes and case law violate Petitioner's First Amendment rights

Petitioner was stunned and shocked that based on anti-SLAPP statutes she was incompatibly ordered by one judge to file her meritorious Complaint ("Doe is granted permission, and *is ordered*, to file the Proposed Complaint submitted January 14, 2022"- Judge David J. Cowan), while another judge (Edward B. Moreton) said her act of obeying the court order and filing her Complaint was a SLAPP and ordered her to pay nearly \$6000 in statutory anti-SLAPP attorney fees as an indigent party, raising Eighth Amendment concerns. Petitioner was deprived by the anti-SLAPP statutory scheme of her own right to petition the courts with her meritorious Complaint. Her First Amendment rights were infringed by anti-SLAPP statutes.

Appellant should not be ordered by the California Superior Court to pay attorney's fees for filing her meritorious Complaint and simultaneously precluded from litigating it due to anti-SLAPP statutes. The orders are incompatible, which the State Legislature would never intend, and the U.S. Constitution would not allow. Incompatible orders prejudice Appellant's constitutional right to judicial fairness, and her rights under the Fourteenth Amendment's Due Process Clause.

III. The Court should grant certiorari in this case

Nationwide state and federal courts are applying inconsistent and discriminatory anti-SLAPP statutes that foreclose plaintiffs' U.S. Constitution right to petition the courts. Petitioner seeks granting of her Petition for a Writ of Certiorari to address anti-SLAPP statutes that are proliferating nationwide and are seen in state and federal courts, defeating meritorious Complaints. Anti-SLAPP statutes – enacted to protect defendants – override plaintiffs U.S. Constitution First Amendment right to file *meritorious complaints* and litigate their case. Courts of review are not addressing their own state's anti-SLAPP incompatibilities with the Constitution. It is incumbent upon this Court to provide guidance on this widespread practice in state and federal courts where anti-SLAPP statutes have proliferated and contravene the First Amendment right of plaintiffs to petition the courts with meritorious complaints.


CONCLUSION

Petitioner respectfully requests the Petition for Writ of Certiorari be granted to settle disparate and over-reaching anti-SLAPP statutes used in state and federal courts nationwide that defeat, deprive, or violate inherent U.S. Constitution First Amendment rights of plaintiffs to petition the courts with *meritorious* Complaints.

Respectfully submitted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 17, 2025


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