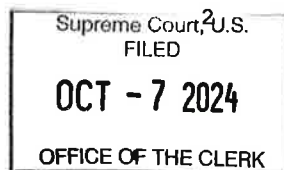


24A342



APPLICATION FOR STAY

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Applicant Robert Emert, proceeding pro se, respectfully requests a stay of the vexatious litigant hearing scheduled for October 8, 2024, in the Superior Court of California, County of San Diego (Case No. 19FL010852N), pending the disposition of the petition for a writ of certiorari filed concurrently with this Court.

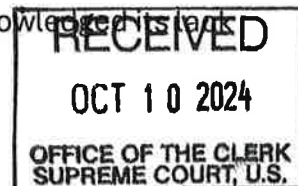
JURISDICTION

This Court has jurisdiction to grant this stay under 28 U.S.C. § 1651(a) and Supreme Court Rule 23. The underlying petition for writ of certiorari invokes this Court's jurisdiction under 28 U.S.C. § 1257(a) to review the final judgment of the Supreme Court of California denying the petition for writ of mandate on October 2, 2024.

BACKGROUND

This case arises from a default judgment entered against Applicant on January 24, 2022, shortly after he suffered a near-fatal heart attack. This judgment stripped Applicant of all parental rights and significant financial assets, including his retirement account, without an evidentiary hearing. For approximately four years, Applicant has been attempting to challenge this judgment through various legal avenues, facing what appears to be systemic bias against self-represented litigants at every turn.

On April 16, 2024, Applicant filed a notice of appeal with the California Court of Appeal. While this appeal was pending, on May 3, 2024, opposing counsel filed a motion in the Superior Court to designate Applicant as a vexatious litigant, despite the trial court's lack of jurisdiction due to the pending appeal. The Superior Court initially acknowledged its lack



of jurisdiction on May 28, 2024, yet still scheduled a hearing on the vexatious litigant motion for October 8, 2024.

Subsequent actions by the Court of Appeal, including setting an erroneous remittitur date, and the California Supreme Court's refusal to correct these errors, have led to the current situation where Applicant faces an imminent vexatious litigant hearing that could permanently bar him from seeking justice in the courts.

REASONS FOR GRANTING THE STAY

1. Likelihood of Success on the Merits:

The petition for writ of certiorari presents substantial federal questions regarding violations of due process and equal protection under the Fourteenth Amendment. The coordinated actions of California courts across multiple levels raise serious constitutional concerns that warrant this Court's review. As noted in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 887 (2009), "extreme facts are more likely to cross constitutional limits."

2. Irreparable Harm:

If the vexatious litigant hearing proceeds, Applicant faces imminent and irreparable harm to his constitutional rights. In *Elrod v. Burns*, 427 U.S. 347, 373 (1976), this Court held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Similarly, the potential loss of access to courts and continued deprivation of parental rights without due process constitute irreparable harm.

3. Balance of Equities:

The balance of equities strongly favors granting a stay. A brief delay to maintain the status quo would not significantly harm other parties, whereas proceeding with the vexatious litigant hearing could permanently impair Applicant's fundamental rights. As this Court noted in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008), courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief."

4. Public Interest:

Granting a stay would serve the public interest by ensuring that access to courts is not unduly restricted without full consideration of due process concerns. In *Bounds v. Smith*, 430 U.S. 817, 821 (1977), this Court held that the fundamental constitutional right of access to the courts requires that such access be "adequate, effective, and meaningful."

5. Exhaustion of Other Remedies:

Applicant has diligently pursued relief in lower courts, including a stay request to the California Supreme Court, which was denied without explanation on October 2, 2024. This aligns with the requirement in Supreme Court Rule 23.3 that the applicant first seek relief from the appropriate lower courts.

CONCLUSION

The extraordinary circumstances of this case, including clear violations of due process, improper scheduling of the vexatious litigant hearing, and the potential for irreparable harm, strongly warrant this Court's intervention. For these reasons, Applicant respectfully requests that this Court stay the vexatious litigant hearing scheduled for October 8, 2024, pending the disposition of the petition for writ of certiorari.

Respectfully submitted,


Rob Emert

760-612-9328

Robemert@msn.com

EXHIBIT A

Writ of Certiorari

DECLARATION OF SERVICE

I, Rob Emert, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

On 10/07/24, I served a copy of the Petition for Writ of Certiorari, Application for Stay and Motion for Leave to Proceed In Forma Pauperis in the case of Robert Emert v. California Supreme Court on the following parties:

- 1. To the Supreme Court of the United States: Method: First-class mail, postage prepaid Address: Supreme Court of the United States 1 First Street, NE Washington, DC 20543**
- 2. To Justice Elena Kagan (for the stay application): Method: First-class mail, postage prepaid Address: Supreme Court of the United States Attn: Justice Elena Kagan 1 First Street, NE Washington, DC 20543**
- 3. To the California Trial Court, San Diego Superior Court of San Diego: Method: Electronic filing appeals.central@sdcourt.ca.gov**
- 4. To the California Court of Appeal: Method: Electronic filing via TrueFiling system**
- 5. To the California Supreme Court: Method: Electronic filing via TrueFiling system**
- 6. To the California Attorney General's Office: Method: Electronic submission via the AG's website Confirmation Number: [Insert AG website confirmation number]**
- 7. To counsel for interested party, Dave Schulman and his client Andrea Schuck: Method: Electronic submission Dave Schulman at dschulman@msmfamilylaw.com**

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

Executed on 10/07/24 at Escondido, California.

Rob Emert



**Appendix A: Decision of the California Supreme Court denying the
Petition for Writ of Mandate (October 2, 2024)**

Appellate Courts Case Information

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Opinions

Supreme Court

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Case Summary	Docket	Briefs
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Disposition

Parties and Attorneys

Lower Court

Docket (Register of Actions)

EMERT v. CA 4/1 (SCHUCK)
Division SF
Case Number S287030

Date	Description	Notes
09/23/2024	Petition for writ of mandate/prohibition with request for stay filed (against CA)	Petitioner: Robert Emert Pro Per
09/23/2024	Forma pauperis application filed	
09/23/2024	Forma Pauperis application granted	
10/02/2024	Petition for writ of mandate/prohibition & application for stay denied	The petition for writ of mandate and application for stay are denied.

[Click here](#) to request automatic e-mail notifications about this case.

**Additional material
from this filing is
available in the
Clerk's Office.**