IN THE SUPREME COURT OF CALIFORNIA

	) Supreme Court No.: ___________
DAVID DeZEREGA, et ux.,	)
	)
Plaintiffs and Respondents	) First Appellate District, Div. Four
	) No. A109326
vs.	)
	) Trial judge: Hon. Winton McKibben
JASON MEGGS,	) Alameda County Superior Court
	) No. 2001033757
Defendant and Petitioner	)
	)

Appeal from the Judgment of the
First Appellate District,
Division Four

APPELLANT'S PETITION FOR REVIEW

May 1st, 2006

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Defendant *Pro Per*

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I.
PETITION FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

JASON MEGGS, as defendant *pro per,* hereby respectfully petitions for review following the decision of the Court of Appeal, First Appellate District, Division Four, in case number A109326, filed March 20, 2006.

II.
ISSUES PRESENTED FOR REVIEW

A. Whether defendants in evictions (however specious and unreasonable), are unconstitutionally required to enter into illegal contracts, commit criminal acts, take on risks fatal to their case, and assume all liability to mitigate breach and/or frustration of contract by landlord, in face of large financial risk including bankruptcy.

B. Whether defendant in such eviction cases as non-breaching party has a duty to mitigate all damages by making a deal with other party, a deal which breaching party admits at trial would not have accepted.

C. Whether precedent set by decision contravenes state law and well-established public policy by allowing for a specific and virulent form of SLAPP suit to broadly aid and abet discrimination of all kinds.

D. Whether erroneous tentative rulings by trial courts left uncorrected, and whether factually unsupported conclusions, are reversible error.

III.

REASONS FOR REVIEW

JASON MEGGS requests that the Court correct what he identifies as a constitutionally invalid, precedent-setting, erroneous decision by the First District Court of Appeals, with perverse implications for widespread abuse. Such abuse shall burden the courts, further harm our most vulnerable populations, serve to quash First Amendment activity and raises the specter of a new form of SLAPP suit, and so ousts political participation, simultaneously suppressing the Right to Travel.

Above and beyond the clear issues of law which require a finding for Meggs; to allow spurious eviction proceedings to drag on for years, with all costs for vacant rooms caused by the eviction foisted upon the victim (here, Meggs), with no risk of liability for frustration of contract to the perpetrator (here, the DeZeregas), opens a Pandora's Box of incentives to illegally evict by sheer weight of economic might, and to use eviction as a means of discrimination, harassment, and for effectively banishing persons from their established community and home in order to silence their participation in said community, its political affairs (particularly voting and elected office), and its mix of diversity or lack thereof.

IV.
PROCEDURAL POSTURE

Petitioner seeks relief after a long and arduous litgations series now spanning over eight years and three civil suits (*DeZerega I, II, III*).

V.
FACTS

A. Statement of the Case

The Human Element

Not many tenants can go to the lengths and make the sacrifices Meggs was required and reluctantly willing to make in the pursuit of justice and the public interest; moreover, nobody should be required to undertake such an endless assault on their human right to reside while bearing the full risk, independent of the merits of the attacks.

Meggs endured substantial abuse from some of the original occupants before the onset of *Dezerega I*; they stole from him, inflicted assault and battery upon him, glued the lock on his door shut so he could not enter his room, broke a large window and his furniture, conducted a voodoo hexing with candles and smeared concoctions, and more. When these occupants moved out, an injustice of another type began, larger and meaner, and it has not ended after more than eight years. This petition is an attempt to right the record and bring a just close to this epic housing battle.

Meggs forewent his mobility and undertook a very stressful and long-term commitment to defending a most fundamental right to continued housing. As a result, the effect of *DeZerega I* is helping protect the health and lives of elderly citizens, the disabled, and people of low and fixed incomes "on a daily basis."[1] While grateful for a successful outcome and for vindication after the three-year ordeal of *DeZerega I*, the aftermath has borne much injustice for Meggs.

[1] Statement of one Rent Board commissioner to Meggs.

Meggs contemplated punitive actions against the DeZeregas for vexatious litigation. Besides the ordeal and risk of *DeZerega I*, and the harm of the black mark of an Unlawful Detainer on his record, which Meggs felt justified punitive action, landlords' bringing an eviction case in "retaliation against the tenant for the tenant's assertion or exercise of rights," as arguably occurred with *DeZerega I*, is punishable by fine and imprisonment of up to 90 days (B.M.C. § 13.76.140, "Retaliation Prohibited," B.M.C. § 13.76.190, "Criminal Penalties"). Yet Meggs opted to turn the other cheek and let the matter rest, with the sole exception of the disputed rent.

Through his appeal for a rent reduction, two additional litigations were levied against Meggs by the DeZeregas in the pursuit of rent for the two rooms which went unoccupied at the onset of and for the duration of the eviction proceedings of *DeZerega I*. The first such case, *DeZerega II*, was resolved unfavorably for the defendant, to the disbelief of lay people who hear of it: "What do you mean they didn't have a *policy* against your renting the rooms? They were trying to oust you!" The second such case (*DeZerega III*) is the subject of this petition.

The cost to the individual and the unlikeliness of the average tenant defending the public interest as Meggs did are just two salient aspects of why the Court needs to send a strong message to those who would use spurious eviction as a tool of discrimination. The cost to the courts and attorneys who could be better spending their limited time has been substantial. To leave this matter settled in a light so unfavorable to the

public and to public policy invites many a repeat, and much harm along the way.

Additional Background

This series of cases defies summary in a document of this length. The decision of the Appeal court serves to summarize much of the relevant history to date (pp. 1-8, attached at 39th page of petition packet).

B. Jurisdictional Facts:

This case originated in Berkeley, California, the people of which have done much to recognize and protect the rights of renters, for the good of the whole and in keeping with the public interest. Their intent and the acts of their City Council to support the rights of renters must guide here.

VI.
ARGUMENT

Substantial Evidence Supports Inability to Rent During Hostile Eviction

Appellate Court's Three-Way Contract Solution Illegal to Perform

The appellate decision saddles Meggs, the tenant under eviction, with the entire responsibility for mitigating the cost of empty rooms during the DeZeregas' epic and unsuccessful eviction action, which was brought *despite the fact that Meggs had not violated any provision of the Just Cause for Eviction ordinance*. The court contends, "there remains no evidence that if Meggs had proposed a means of having roommates that would have adequately protected both parties' litigation postures, that the DeZeregas

would have rejected this offer," evidently suggesting Meggs should have entered into a three-way contract between prospective renters and the DeZeregas *during the eviction* (page 16).

Unfortunately for this theory, it is impossible as a matter of law under Berkeley Municipal Code § 13.76.170 ("Nonwaiverability"):

> **"Any provision in a rental agreement which waives or modifies any provision of this chapter is contrary to public policy and void."**

To ask a prospective tenant to sign away the right to just cause eviction and effectively join Meggs in perpetual uncertainty, always residing five days from being forcibly ousted by the sheriff, is illegal in Berkeley. Furthermore, above and beyond the fact that Sara DeZerega contends she would not have allowed such an agreement (evidence at trial, *infra*), what tenant would want to become a potential victim of the DeZerega's eviction campaign? Who would want to risk the "kiss of death" for renters, to have an Unlawful Detainer on her or his record? The appellate decision does not propose any reduction in the rent ceiling for the unit; what prospective renter would want to pay full cost for an apartment so besieged? What renter would trust a landlord to fulfill obligations of safety and habitability? Isn't it difficult enough to find suitable renters to cohabitate with, without asking them to take on such jeopardy?

<u>Burdening tenants with full responsibility contravenes public policy</u>

Futhermore, as a matter of public policy, asking tenants, and especially our most vulnerable tenants, to be so sophisticated as to negotiate and create a new area of contract law is unreasonable. Most of all, to ask the victim of an eviction to carry full responsibility for initiating and

organizing mitigation in the face of a spurious eviction is absolutely inequitable and unjust. Why do the DeZeregas have no responsibility to arrange mitigation when they knew full well that the rooms were unrented, that they were effectively unrentable, and the liability in question was accumulating? (See settled statement, attached and list of supportive findings and declarations of the legislature, *infra*.)

Appellate decision ignores facts

The Appellate decision states that there was "no evidence that, had Meggs proposed a means of bringing in replacement roommates that would have adequately protected both parties' litigation positions, the DeZeregas would not have accepted." (p. 15). Yet precisely the opposite evidence is found in the Settled Statement (p. 1, attached):

> 1. Sara DeZerega is one of the owners of the property located at 2522 Piedmont Avenue, Berkeley where defendant, Jason Meggs, resides as a tenant.
>
> 2. She would not have let Jason Meggs have housemates during the time that she was attempting to evict him. She had received legal advice that allowing Meggs to have housemates would be inconsistent with her legal position that Meggs was a trespasser.

A number of additional points made at trial are somehow not present in the Settled Statement, but they are implicit enough to be taken as given, and some are present in earlier records. For instance, Meggs at trial testified as to his grave concern over the mounting rent in question. Meggs also testified to this at the outset of *DeZerega II*, during the Rent Board's findings hearing, at which he decried that the total rent amounted to more than half his income. Meggs had appealed to the Rent Board for a rent reduction, hoping he was protected by Rent Board regulation 1270(C), which states in pertinent part, "if any policy or policies imposed by the

landlord reduces the number of tenants allowed to occupy…the rent ceiling for that unit shall be decreased by an amount equal to the percentage by which the number of allowable tenants has been reduced."

Move-in Would Risk Additional Eviction Action

As stated at trial, Meggs feared that to move someone in would bring on another eviction action under the theory that he was bound by the two leases. This would add greatly to his financial burden of attorney's fees, further jeopardize his tenancy, and add the suffering of another defense effort.

Value of Unit Inherently Compromised

In its review of the facts, the court does not cite the testimony of Dave Campbell, a self-selected interested tenant *and attorney*, who testified that Meggs said the unit was not available for rent and who said in light of the eviction, he would not have moved in (Settled Statement, attached).

There are implicit facts above and beyond the record; the court does not address the reduced value and difficulty of renting a unit which is effectively under siege.

Expectation of rent level

Meggs rented one room from the landlord. He never saw the lease even as it changed hands from Yoon to Nnadi-Nwazurumike, nor was he aware of the change of lease until after it occurred. He defended first and foremost, solely his (and by extension, any other similarly situated tenant's) right to remain in one's room in one's shared unit. As testified at trial and shown by the record, Meggs immediately found renters once the decision in

DeZerega I was final but not until then; this was his first possible opportunity to mitigate the breach of contract by the DeZeregas.[2]

Deep Flaw in Appelate Decision

There is a deep injustice in expecting any tenant, but particularly a low-income tenant, to not only defend against specious eviction proceedings, but to saddle the burden of the total number of rooms in the unit they previously shared equally with others. Imagine for instance, a single mother, with tremendous barriers to moving due to income, location, childcare, and other constraints, being forced to pay for a ten-room house at the whim of a landlord's reckless avarice or discrimination in bringing a spurious suit. In the instant case, Meggs has been forced for over eight years now to contemplate the very real possibility of bankruptcy as a result of attempting to protect the public interest and retain occupancy of his single room in a shared unit, even as he sacrificed his options and freedoms under the vice of the *DeZerega* series of suits, with no options to mitigate.

THE TRIAL COURT'S ERROR IS REVERSIBLE

A Tentative Ruling Has Bearing on the Final Ruling

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[2] Note that Appellate court relies on *Ellingson v. Walsh, O'Connor & Barneson*, 15 Cal.2d 673, to assert that Meggs was responsible for full rent. Yet *Ellingson* differs from *Dezerega I* in that the rent in question had been paid in full as a sublessor, whereas here Meggs was a direct tenant of the Dezeregas and did not pay the full rent, but rather a portion. Petitioner does not seek to overturn that a tenant in this situation should obtain control of the unit. However, that the tenant facing eviction should be liable for full rent is definitely challenged and it is important to note that *Ellingson* does not provide that clear authority, particularly given there is no option for mitigating damages as discussed (*supra*). The public good begs that the court provide a reasonable protection for tenants so situated.

Court of Appeals misapplies CRC, Rule 232(a), when it completely excuses the trial court's erroneous assertions; CRC Rule 232(h) negates rule 232 entirely: "This rule does not apply if the trial was completed within one day." The Appellate decision admits the trial was "a one-day court trial" (page 8). In fact the trial was much shorter than a day. Moreover, the spirit of Rule 232(a) respects the cumulative importance and potential for finality of the tentative ruling when it allows that the court may "direct that the tentative decision shall be the statement of decision."

Trial Court's Tentative Ruling Shows Prejudice and Error

The Trial Court's statement of decision was in and of itself reversible error in its assertion that "defendant was not limited in any manner from having roommates to share the rent obligation and is therefore responsible for all of it." As discussed elsewhere in this brief (esp. *supra*), and as supported by the facts, there were many limitations to having "roommates" including the substantially reduced value of a rental opportunity under siege, the liability of a new action against Meggs under the theory that one or more of the leases applied to him, the illegality of making a rental agreement which waives one's right to protection against eviction without Just Cause (BMC § 13.76.130, *infra*), and more.

Indeed, the only evidence to the contrary is the fact that Meggs never asked for an illegal three-way contract with hostile landlords who at every opportunity refused his attempts at establishing a working relationship, who maintained that he was a trespasser, and who testified they would never have agreed to such an arrangement (Settled Statement, p. 1; quoted *supra*).

Here, the error of the trial court's tentative decision is so egregious as to taint and carry over to the uncorrected and clearly erroneous statement of decision. A clear exception to the open question of law must be made, if

defendants' constitutional right to Due Process is to be upheld and if the role of the Appellate courts is to be meaningful at all.

Indeed, what is the purpose of courts of appeal if they are no recourse against mishandling, misunderstanding, and mangling of a defendant's right to and pursuit of justice?

When a trial court is so remiss as to lose the defendant's (and only the defendant's) exhibits; to issue a tentative ruling showing a completely biased misrepresentation of the facts in a manner wholly unfavorable to defendant (and only defendant); and to keep no record of the trial content and indeed, to claim later having no recollection of the trial (making any decision an improper act), as is the case here, it is incumbent upon the appellate review process to provide refuge from those errors.

To tie the courts' hands with the notion that "even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence was in conflict" (Appellate decision, page 16) further misses the mark when there was no credible factual determination made by the trial judge.

<u>Findings of Fact Were Not Adequate to be Upheld by Appellate Court</u>

The Appellate decision relies upon *Bickel v. City of Piedmont* (1997) to justify the notion that there was no power at the court of appeals to overturn the trial court's decision.

The piece of *Bickel* quoted in fact cites to *Crawford v. Southern Pacific,* which deduces of earlier cases, "When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court."

Yet where is there even one inference, let alone the two required, which can be reasonably deduced from the facts in favor of plaintiffs? Even if such existed, how can they negate the overwhelming evidence in defendant's favor? Is there truly no deference to a defendant, only a victor, on appeal? Is there truly no room for appellate minds to assess the factual landscape even in a case of reasoning at trial as unconscionable as this one?

As discussed above, the Trial Court was off the mark repeatedly; even the court of appeals points this out (Decision, pp. 14-16). The evidence overwhelmingly supports Meggs. There is only one piece of evidence favorable to the plaintiffs: the fact that Meggs, who had been repeatedly rebuked for his attempts at communication and ordered not to directly contact the DeZeregas, and who was being called a trespasser and under eviction proceedings by same, failed to initiate and arrange an illegal three-way contract to mitigate his risk under a hostile and spurious eviction. The notion of viewing the evidence "in the light most favorable to the prevailing party" *does not mean a whitewashing, nor a voluntary blindfolding, as the court chooses to interpret it here*.

SLAPP SUITS AND
OPENING THE DOOR TO DISCRIMINATION

A New Realm of SLAPP Suit

California Code of Civil Procedure § 425.16, was enacted in 1992 in response to "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." *Id*. § 425.16(a). Under this statute, if a defendant can demonstrate that the lawsuit arises from an act "in furtherance of the person's rights of petition or free speech under the United States or California Constitution in connection with a public issue," the

lawsuit must be dismissed unless the plaintiff can demonstrate a probability of prevailing on its claims. *Id*. § 425.16(b). The California Legislature defined the conduct that constitutes an "act in furtherance of the person's rights of petition or free speech" and thereby provided a "bright line test" for determining whether a particular claim is subject to the statute. *Briggs v. Eden Council*, 19 Cal. 4th 1106, 1120-21 (1999). Protected conduct includes:

> (a) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

In the instant case, defendant Meggs has ample reason to suspect that a primary motivation of the case at hand is discrimination as it fits a long pattern of same brought by numerous parties. Proving this is, as in any discrimination suit, highly difficult without the willing self-incrimination of the perpetrator. The implications for future abuse of this enormous new club, now given the green light to those with the power of eviction, are dire. Encouraging attempts to oust tenants for the purpose of excluding their class or for political persecution is an obvious result of the appellate decision.

<u>Evidence of Political Discrimination</u>

It is a matter of public record that Meggs has suffered extensive intimidation and harassment intended to chill and crush his public

outspokenness on matters of social justice and the public interest, and that this campaign had reached a crescendo on and about the time of the initiation of the *DeZerega I* eviction. The statewide outcry to this court at the termination of *DeZerega I*, calling for overturn at the highest level, is but one indication of this organized opposition to Meggs. Meggs was involved in public campaigns, a spokesperson in the media, and a lobbyist at agencies and legislative bodies from the local to state level. During this time he experienced numerous death threats and other attacks upon his person, repeated false reports in attempting to cause him to be fired him from his job, and discrimination and harassment from various authorities as retaliation against his First Amendment protected activities.

The fact that the DeZeregas have continuously attacked Meggs for keeping a bicycle, when he is an outspoken bicycle advocate, has clear political implications, particularly given their hypocrisy at illegally and dangerous harboring of motorcars in a way which blocked access to the building, which the fire department finally banned;[3] other auto parking on the property are suspected to be in violation of the Berkeley Zoning Codes.

In an analogous case from the present day, this time with regard to an extraordinary infestation of rats which was allowed to fester and swell without abatement over the better part of a year, in a letter denying any responsibility, blaming tenant, and renouncing the notion that renting a room where rats are chewing through the walls and preventing sleep throughout every night is difficulty, Sara DeZerega made the claim that "surely with your social contacts you will have no trouble finding a renter" (paraphrase of recent letter). One wonders where this intimate knowledge

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[3] DeZeregas have posted notices claiming that bicycles kept in hallways are prohibited by order of the fire marshall, and threatening that they will be taken to the "dump." Yet Meggs has a communication in writing to the contrary from the Fire Department. Some bicycles have been effectively stolen and destroyed by the DeZeregas (see Settled Statement), despite the longstanding practice of keeping them in hallways which existed before Meggs began his tenancy and is therefore by pattern and practice an inherent right of his tenancy.

of and presumption about Meggs' social networks arises, given the years of refusal to communicate and deal directly with Meggs beginning in 1997 *before the commencement of* DeZerega I. One wonders whether it would be easier to rent with rats than under threat of eviction for political ends.

<u>The costs incurred by eviction were not profit motivated</u>

The costs incurred by the DeZeregas in their flagship campaign to oust Meggs are quite substantial. Are we to believe that mere greed lead to this expenditure? Has the potential for reasonable return on investment (from a strictly financial point of view) not been lost by now? As the victim of long-term campaigns of political discrimination against himself, which were in themselves very costly to the taxpayers, Meggs has to raise the possibility that this eviction was waged first and foremost as part of the effort to run him out of town.

<u>SLAPP Suits Must be Trampled at Every Instance</u>

It is incumbent upon the court to structure a decision on appeal which removes this incentive, albeit unpublished, to use dollars and might against abuses of this nature. The case sends a clear message that the courts will not protect the millions of Californians who could be so targeted.

PUBLIC POLICY CALLS FOR THE AVAILABILITY OF AFFORDABLE HOUSING WHICH IS THREATENED BY THIS DECISION

Numerous statutes throughout the codes of California prove legislative intent to support and protect the availability and affordability of housing. The effect of this case is to create conditions where housing will be denied to persons evicted by sheer weight of the advantage given by the decision (albeit unpublished), and furthermore will be denied to prospective tenants during the pending cases as there exists no mechanism for renting during a pending eviction.

Some examples of codes showing legislative intent to support the availability of housing follow, which by extension support the goals of this petition.

First, Government Code § 5580, which proclaims that the availability of housing is of vital statewide importance and calls upon "cooperation of all levels of government" which of course includes the courts:

> 5580. The Legislature finds and declares as follows:
> (a) The availability of **housing** is of vital statewide importance, and the early attainment of decent **housing** and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.
> (b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand **housing** opportunities and accommodate the **housing** needs of Californians of all economic levels.
> (c) The provision of **housing affordable** to low- and moderate-income households requires the cooperation of all levels of government.
> (d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of **housing** to make adequate provision for the **housing** needs of all economic segments of the community.
> (e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional **housing** needs.

Additional support is found in the Health and Safety Code:

> 33334.6. (a) The Legislature finds and declares that the provision of **housing** is itself a fundamental purpose of the Community Redevelopment Law and that a generally inadequate statewide supply of decent, safe, and sanitary **housing affordable** to persons and families of low or moderate income, as defined by Section

50093, threatens the accomplishment of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private investments, and creating physical, economic, social, and environmental conditions to remove and prevent the recurrence of blight. The Legislature further finds and declares that the provision and improvement of **affordable housing**, as provided by Section 33334.2, outside of redevelopment project areas can be of direct benefit to those projects in assisting the accomplishment of project objectives whether or not those redevelopment projects provide for **housing** within the project area. The Legislature finds and determines that the provision of **affordable housing** by redevelopment agencies and the use of taxes allocated to the agency pursuant to subdivision (b) of Section 33670 is of statewide benefit and of particular benefit and assistance to all local governmental agencies in the areas where the **housing** is provided.

50001. The Legislature finds and declares that the subject of **housing** is of vital statewide importance to the health, safety, and welfare of the residents of this state, for the following reasons:
(a) Decent **housing** is an essential motivating force in helping people achieve self-fulfillment in a free and democratic society.
(b) Unsanitary, unsafe, overcrowded, or congested dwelling accommodations or lack of decent **housing** constitute conditions which cause an increase in, and spread of, disease and crime.
(c) A healthy **housing** market is one in which residents of this state have a choice of **housing** opportunities and one in which the **housing** consumer may effectively choose within the free marketplace.

50002. The Congress of the United States has established, as a national goal, the provision of a decent home and a suitable living environment for every American family and the Legislature finds and declares that the attainment of this goal is a priority of the highest order. The national **housing** goal, as it applies to California, is deserving of adoption by the Legislature, with the accompanying commitment to guide, encourage, and direct where possible, the efforts of the private and public sectors of the economy to cooperate and participate in the early attainment of a decent home and a satisfying environment for every Californian.

50003.5. The Legislature finds and declares that the shortage of adequate student **housing** is detrimental to those communities in which college and university campuses are located, causing in particular substantial upward pressure on rents, **housing** shortages, conversion of family **housing** to student use, deterioration of **housing** stock, and generally unfavorable **housing** conditions under which students must pursue their education.

50455.6. The Legislature finds and declares that a severe shortage of affordable housing exists for low- and moderate-income households, including the elderly, disabled persons, and other special needs populations. It is the intent of the Legislature that housing designed especially for low- and moderate-income elderly, disabled persons, and other special needs populations be given due consideration in the administration of the development, preservation, and rehabilitation of housing, and other housing programs, including encouraging the inclusion of supportive services to meet the unique housing needs of these populations.

65852.150. The Legislature finds and declares that second units are a valuable form of **housing** in California. Second units provide **housing** for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.

VII.
CONCLUSION

The import of the Appellate opinion is to dramatically alter the terrain of the security of the state's renters, while leaving a garish lack of accountability for trial courts.

Followed to its logical conclusion, the opinion creates a tremendous incentive and a lack of culpability for those with the resources to use the might of their moneys to oust classes and political elements from a community for the purpose of discrimination and suppression of constitutionally protected behavior, as well as for bald-faced and immoral avarice. This is nothing less than a new form of SLAPP suit, a new form of exclusionary zoning, which contravenes state law and the intent of the legislature at every turn.[4]

Such a severe alteration to the realm of housing, residency, diversity, and political expression, affecting millions upon millions of vulnerable Californians, compels review by this High Court.

Moreover, the decision leaves the issue of appellate authority weakened unnecessarily. The issue of tentative rulings needs to be clarified and bolstered. Trial courts gone wrong must not dominate all levels of the judiciary in this way. Rule from below courts, without culpability even in cases as egregious as this one, is a tyranny wholly inconsistent with the very foundations of our great system of Law.

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[4] Of note, Health and Safety Code section 33413 requires replacement of affordable housing removed during a redevelopment effort (inclusionary rather than exclusionary law, in contrast to the appellate decision). Government Code section 65583 and numerous other codes in Health and Safety further describe the requirements, showing the legislature's commitment to this issue and by extension, to the purpose of this petition.

Requested Resolution

An ideal resolution for the health of California residents would be a published reversal of the ruling against Meggs, freeing him and countless others in the future from the quandary of being at the mercy of more powerful entities to bring such SLAPP suits and imbalanced force of eviction: foisting liability for unrentable rooms onto the victim during even a spurious eviction case, liability for which said victims are unable to mitigate against. The ideal decision should also clarify the role of Tentative Rulings and strengthen the ability of appellate courts to assess and overturn decisions wherein findings of fact are made improperly at the trial level. A ratification of the excellent yet unpublished decisions favorable to Meggs, in the interest of future justice, is also requested.

Respectfully submitted this United States Law Day, May 1st, 2006.

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Jason N. Meggs, Defendant *Pro Per*

WORD COUNT CERTIFICATION

Appellant *pro per* certifies that this brief contains 5,500 words including 293 words contained in footnotes, according to the word count of the processing program.

ENVIRONMENTAL PROTECTION CERTIFICATION

Appellant *pro per* certifies that this document is printed on 100% Post-Consumer Content, non-chlorine bleached, recycled paper.

ATTACHMENTS

1 – Petition for rehearing

2 – Settled Statement

NOTE: attachments presented in their entirety; defendant/petitioner Meggs prays the court will allow that the attachments total slightly more than ten pages (12 pages total), as several of the pages are normally exempt from word count and page limits (cover, contents, authorities).