PETITION FOR WRIT OF CERTIORARI

The information age is upon us. Private multinational corporations like IBM, the inventor of everything "Smart", as well as a host of other companies, stand eager to capitalize on the information technology (IT) craze. The Petitioner asks this Court to contemplate whether our society's recent preoccupation with information-gathering violates constitutional rights. For the benefit of all citizens, government agents, contractors, investors, suppliers, and the like, this issue must be addressed forthwith by the nation's highest court. We are all desperate for the Court's guidance. This case presents an actual controversy which affords the Court a much-needed opportunity to impart its wisdom. This Court should assume the mantle.

The constitutional challenges include not only access to private information, but also the nonconsensual placement of radio frequency (RF) radiation-emitting devices on private property, the physical occupation of the airspace of private residences and businesses, and the physical and/or psychological injury and other harm that it causes. In the past, we transmitted radio signals for the purpose of entertainment or emergency services communication. Our homes were equipped with receivers, but transmitters were properly sited in remote, non-residential areas. We all benefited from this safe communal use of technology and we consented to its presence in our homes and private property.

Today, the commons have been taken without consent and solely for private gain. Indeed, even our private possessions have been usurped in the same endgame. Transmitters, such as Smart Meters, have been placed in and on our homes without our knowledge or permission. Magnetic data now streams through our homes, our personal possessions, our bodies, and even our children's bodies. Scientific studies show alarming biological effects. Researchers have

determined that nothing less than the human genome, itself, is at stake. We withdraw consent. We now assert our rights. We require the Court's assistance for enforcement.

JURISDICTION

The Court of Appeals entered its Order Denying the Motion to Proceed In Forma Pauperis on March 25, 2015 and its Order of Dismissal on May 4, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The original federal jurisdiction arises as follows:

1.This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States.

2.This Court has diversity of citizenship jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds $75,000 exclusive of interests and costs, because the Plaintiff/Petitioner has been forced to flee to West Virginia and Florida to mitigate damages caused by Defendants (28 U.S.C. § 1332(a)(1)), and because Defendant Itron is a Washington corporation headquartered in Washington state. (28 U.S.C. § 1332(c)(1))

3. This Court has original jurisdiction over the civil rights claims in this action pursuant to 28 U.S.C. § 1343(a).

4. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367(a).

5. The declaratory and injunctive relief requested is authorized by 28 U.S.C. § 2201 and 2202 and 15 U.S.C. § 1267(a) pertaining to hazardous substances.

STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendments I, IV, V, IX, X and IVX, Freedom of speech, Right to free exercise of religion, Right to petition the government for redress of grievances, Right of the people to be secure in persons and houses, Right to life, liberty, and property, due process of law, and private property not to be taken for public use, Rights retained by the people, Right to privacy, States shall not deprive citizens of privileges, life, liberty or property, due process of law, and/or equal protection of the laws.

15 U.S.C. § 1261-7 Commerce Code, Chapter 30 Hazardous Substances

15 U.S.C. § 2068-9 Consumer Product Safety, Prohibited Acts and Private Right of Action

18 U.S.C. § 241-2 Criminal Code, Chapter 13, Civil Rights, Conspiracy against rights, Deprivation of rights under color of law

18 U.S.C. § 371 Criminal Code, Chapter 19 Conspiracy to defraud United States

18 U.S.C. § 653 and 666 Criminal Code, Chapter 31 Embezzlement and Theft, Disbursing officer misusing public funds, Theft or bribery concerning programs receiving Federal funds

18 U.S.C. § 1001 and 1018 Criminal Code, Chapter 47 Fraud and False Statements

42 U.S.C. § 1983, 1985 and 1986 Public Health and Welfare Code, Chapter 21 Civil Rights, Civil action for deprivation of rights, Conspiracy to interfere with civil rights, Action for neglect to prevent

42 U.S.C. § 2000bb Public Health and Welfare Code, Chapter 21B, Religious Freedoms Restoration

42 U.S.C. § 3515b Public Health and Welfare Code, Chapter 33, Subchapter I, Prohibition on funding certain experiments involving human participants

42 U.S.C. § 7401, 7412, 7470, and 7477 Public Health and Welfare Code, Chapter 85, Subchapter I, Air Pollution Prevention and Control, Clean air

42 U.S.C. § 9607 Public Health and Welfare Code, Chapter 103, Subchapter I, Hazardous Substances Releases, Liability, Compensation

42 U.S.C. § 13101 Public Health and Welfare Code, Chapter 133, Pollution Prevention, Pollution should be prevented or reduced at the source…

42 U.S.C. § 17381, and 17386 Public Health and Welfare Code, Chapter 152, Subchapter IX, Smart Grid, (8) Provision to consumers of timely information and control options, Matching Fund

45 CFR Part 46 Public Welfare, Protection of Human Subjects, known as the "Common Rule"

STATEMENT OF THE CASE

Petitioner/Plaintiff's federal rights were abridged by the State of California's implementation of the federally-funded, federally-mandated Smart Grid, which caused serious injury and catastrophic loss. Plaintiff lost her home, her business which is her sole means of livelihood, her health, her life savings, her cat, her life partner, her ability to tolerate low levels of RF radiation, her ability to live anywhere in California, and her ability to live anywhere there is a Smart Grid. Petitioner/Plaintiff seeks declaratory and injunctive relief as well as compensatory damages. The Complaint enumerates several Constitutional violations, including but not limited to:

1. First Amendment Free Exercise Clause.

2. Right to petition the government for redress of grievances.

3. Fourth Amendment protection from unlawful search and seizure.

4. Fifth Amendment protection of life and liberty.

5. Fifth Amendment prohibition against private property being taken for public use without just compensation.

6. Fourteenth Amendment Due Process violations arising from Defendant Peevey's prohibited financial and official relations with the utilities that he was entrusted with regulating.

7. Fourteenth Amendment Due Process violations whereas thousands of injuries were reported to Defendant Peevey and the CPUC, who refused to acknowledge or handle them.

8. Right to privacy including the right to be free from vexatious digital noise and disturbance in one's own home.

The Complaint correctly invokes 42 U.S.C. § 1983, 1985-6, which affords a federal private right of action against the Defendants who are public employees, public entities, or public contractors. Many additional federal and state statutes were cited. The lower court inexplicably decided that these laws are inapplicable.

A. FACTUAL BACKGROUND

On or about August 24, 2011, Petitioner/Plaintiff was injured by the Smart Grid equipment, manufactured by Defendant Itron, installed by Defendant SDG&E, and approved or mandated by

Defendant CPUC. Smart Grid equipment was installed on and around Petitioner/Plaintiff's home without her consent and over her express objections. Each of the Defendants knew that the product would be used without inspection by the Plaintiff for defects. The product was defective when it left the control of each Defendant. At the time of injury, the product was being used as intended. Plaintiff was an unwilling user and purchaser of the product, as well as an unwitting bystander.

Petitioner/Plaintiff believes in living in harmony with nature and keeping the body well-nourished, well-rested, and free of toxins. She subscribes to the religious belief of "Do no harm". Defendants have infringed upon her right to practice this religious belief in the privacy of her own home and business.

Her freedom of speech has likewise been abridged or chilled, as she is not able to express her love of nature and health by keeping her home and business free of toxic radiation. Defendants have interfered with the very formulation of speech in the brain by polluting Petitioner/Plaintiff's body with a substance scientifically proven to affect cognitive function. Similar government programs, such as Project MKUltra, have been shut down on the same premise. Moreover, the radio-pollution has caused injuries, homelessness, business loss, and financial crisis. This has significantly curtailed the Petitioner/Plaintiff's participation in civic discourse, again chilling free speech.

Defendants have violated Petitioner/Plaintiff's person (body) and home with their unwanted radiation. Defendants have imposed a permanent physical occupation of Petitioner/Plaintiff's residence without consent and without just compensation. Defendants have used the airwaves in Petitioner/Plaintiff's home for public use without just compensation, without her informed

consent, and over her express objections. Defendants have conducted a toxic intrusion of Petitioner/Plaintiff's person (body) and home, in ways that usurp power and disparage rights.

Defendant Peevey has breached ethics and violated the California Public Utilities Code § 303(a) by holding official relations to and a financial interest in several companies or persons subject to regulation by Defendant CPUC.

"San Francisco, CA- Facing mounting opposition to wireless 'smart' meters being rolled out by California utilities, including 10 local governments who have criminalized installations, and 23 more who have demanded that the CPUC stop the program because of widespread reports of health impacts, the Commission yesterday signaled that it would ask one of California's utilities- PG&E- to develop a plan to allow customers to opt out of having a wireless meter installed- at customers' expense….Environmental health advocates and a burgeoning grassroots movement to halt the installations welcomed the CPUC's admission that there is a health crisis with the smart meter program, but slammed the meager steps proposed to address it…The wireless meters have been widely reported to cause headaches, dizziness, ringing in the ears even memory loss and heart palpitations among susceptible individuals due to bursts of microwave radiation. The movement against wireless meters is the sharp end of a growing movement demanding health-based standards for wireless technology." (March 11, 2011, posting on stopsmartmeters.org)

A June 11, 2012, article in La Maison features Harvard-educated physician, Dr. David O. Carpenter, founder of the University at Albany School of Public Health, joined by more than 50 of his esteemed colleagues to "correct some of the gross misinformation" being propagated by industry-funded studies and rogue government agencies, such as Defendant CPUC. Highlights include:

"A technical study performed by Sage Associates in California indicates that RF levels from various scenarios depicting normal smart meter installation and operation may violate even the out-of-date US public safety standards."

"Wireless smart meters typically produce atypical, relatively potent and very short pulsed RF/microwaves whose biological effects have never been fully tested. They emit these millisecond-long RF bursts on average 9,600 times a day with a maximum of 190,000 daily transmissions and a peak level emission two and a half times higher than the stated safety signal, as the California utility Pacific Gas & Electric recognized before that State's Public Utilities Commission. Thus people in proximity to a smart meter are at risk of significantly greater aggregate of RF/microwave exposure than with a cell phone, not to mention the cumulative exposure received by people living near multiple meters mounted together, pole-mounted routers or utility collector meters using a third antenna to relay RF signals from 500 to 5,000 homes."

"Stop Smart Meters!, the EMF Safety Network, and other groups opposing 'smart' meters continue to receive reports from hundreds of people experiencing health impacts after the wireless meters are installed, including sleep problems, headaches, tinnitus and nausea. The California Public Utilities Commission has received over 2000 complaints of health impacts. The CCST report failed to interview anyone reporting health symptoms, and neglected to cite peer-reviewed findings of non-thermal biological damage from low level RF emissions." (See http://emfsafetynetwork.org/?page_id=3299)

Although there are hundreds of scientific studies showing that RF radiation causes biological harm and even cancer, the industry claims that there is no scientific evidence of harm. The industry commissions its own studies, instructing the scientists to create experiments that show

no harm. Some of their former employees, such as Dr. George Carlo, have confirmed this. The industry then cites their own studies, ignoring all others.

The insurance industry has refused to provide product liability insurance on cell phones, Wi-Fi, and other RF emitting devices, primarily due to fear that this litigation may turn out like tobacco or asbestos litigation did with huge punitive awards.

"Federal law is the supreme law of the land, but there is no constitutional provision that says federal facts are the supreme facts of the land. Federal law can preempt state law, but it cannot preempt scientific fact. The scientific truth, whatever it may be, lies outside of the FCC's regulations about what is 'safe' or 'unsafe.'" Judge Frederick H. Weisberg, Washington D.C. Superior Court: August 8, 2014, Expert Preemption Order (page 5), *Michael Patrick Murray et al. v. Motorola Inc. et al.* Case No. 2001 CA 008479 B in the Superior Court for the District of Columbia

B. PROCEDURAL HISTORY

The District Court never considered the Petitioner/Plaintiff's constitutional claims. It granted the Defendants' Rule 12(b) motions to dismiss for (1) lack of subject matter jurisdiction and (6) failure to state a claim. Its justification relied upon Eleventh Amendment immunity, legislative immunity, a finding of no authority over the Smart Grid, a finding that federal law is inapplicable, a failure to recognize a private right of action, and state law procedural limitations on certain actions concerning the CPUC (Public Utilities Code § 1759). The dismissals were granted with nary a word about the constitutional violations pleaded in the Complaint. A finding of constitutional violations would overrule all of the District Court's other findings, as the

Constitution is the highest statutory authority. Petitioner now asks this Court to review the significant and far-reaching constitutional issues presented here.

The Petitioner is competent and well-educated (Ivy League), but indigent as a result of the injuries described in the Complaint. She has garnered much experience prosecuting numerous cases involving misconduct of public officials which abridges constitutional rights. She has complied with all legal and procedural requirements. She has applied to proceed in forma pauperis in all stages of the case, as she is unable to pay fees. The lower courts have unfairly used her condition of poverty to dismiss any appeal as frivolous, thus skirting the constitutional questions.

The District Court denied the original fee waiver based upon financial considerations, not frivolousness. The District Court surmised that although the Petitioner/Plaintiff was indigent, she should *borrow* money to pay the filing fee and ordered her to do so. Because this is an issue of great public import, Californian for Renewable Energy (CARE) extended the $350 loan to allow the case to move forward. Petitioner maintains that the District Court has no authority to require an indigent incur debt in order to exercise a constitutional right.

Upon curtailed and cursory review, the Ninth Circuit found the petitioner's claims to be frivolous. (App. F) An appeal is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). "Unless there is `indisputably absent any factual or legal basis' for the wrong asserted in the complaint, the trial court, '[i]n a close case,' should permit the claim to proceed at least to the point where responsive pleadings are required." *Neitzke v. Williams*, *supra*, P. 323 quoting *Williams v. Faulkner*, 837 F. 2d 304, 306 (1988). The Ninth Circuit refused to provide any explanation of their reasoning for this finding, pre-empting

any request for clarification. (App. F) The District Court likewise provided no explanation. (App. E) Because the Petitioner is indigent, she was unable to raise the $505 necessary to pay the court fees. She was also discouraged by the appellate court's threat of dismissal even if the fees were paid. Whereas the court refused both to hear the case and to provide a legal basis for dismissal, due process was violated. Unless this Court grants certiorari, collateral attack will likely ensue. This Court should exercise its supervisory powers here, if only to preserve the integrity of American jurisprudence and prevent an endless roundelay of litigation exposing rampant corruption in our courts.

The Petitioner maintains that her case does indeed have "an arguable basis" in law. Not only is there a discernable legal argument, but also a very timely one, relevant to the ongoing public discourse. The constitutional questions presented herein warrant a thorough review by the nation's highest court. Upon granting certiorari, this Court has the option to review the substance of the controversy or to simply find that the case is not frivolous and remand for further briefing in the lower court. Petitioner encourages the Court to embrace this opportunity to review the substantive issues.

REASONS FOR GRANTING THE PETITION

The Petitioner presents the following "compelling reasons" as defined by the Rules of the Supreme Court, Rule 10.

"(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far

departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;"

"(c) a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

1. CONFLICT WITH *FRIEDMAN V. PUBLIC UTILITIES COMMISSION*

In *Friedman v. Public Utilities Commission*, 2012 ME 90, the Maine Supreme Court decreed "Contrary to the Commission's conclusion, we are not persuaded that Friedman's health and safety concerns were "resolved"…" The highest state court in Maine found a lack of due process in Smart Grid proceedings, which bear striking similarity to that of California. In both states, the commissions disregarded the thousands of injuries reported. Both pushed the agenda forward in the face of overwhelming public opposition. Both were unduly influenced by industry. Both ignored reams of scientific evidence showing the adverse biological effects of electromagnetic radiation. Neither took heed of urgent warnings from distinguished doctors and scientists with extensive expertise in the field. Neither required any kind of safety testing.

Supreme Court Rule 10(a) authorizes this Court to resolve the conflict between the decisions of the Maine Supreme Court and those of the Ninth Circuit. This Court should step up to the plate and resolve this issue.

Moreover, the CPUC is under state and federal investigation for wrongdoing in the San Bruno fires. The investigations have turned up a cache of incriminating emails showing ex parte communications between the Commission and the companies it regulates. In one of his emails, Peevey admitted that he was causing people pain and suffering from RF radiation emitted by the

Smart Grid. Another email revealed that Peevey had asked several of the electric utilities for million dollar donations to his various non-profit slush funds, such as the California Clean Energy Fund (CalCEF), the California Emerging Technology Fund (CETF), or the California Foundation on the Environment and the Economy (CFEE). Another $100,000 donation was required from each of the regulated utilities to fund a hedonistic anniversary celebration. This clearly breaches the California Public Utilities Code 303(a), which prohibits commissioners from official or financial relations with any regulated utilities.

On January 7, 2015, former San Diego City Attorney, Michael J. Aguirre, Esq., published a Report of Malfeasance and Institutional Corruption at the California Public Utilities Commission detailing additional abuses. (See http://www.amslawyers.com/Breaking-News/Storm-Warning-CPUC-1-7-14.pdf) The report also implicates Defendant SDG&E in the wrongdoing. "Under Peevey, the CPUC derailed its investigation into the SDG&E equipment that started two of the 2007 fires in San Diego. (Decision D.10-04-047) CPUC staff determined SDG&E was in violation of General Order 95, Rules 31.122 and 3823 at the time of the fires. As in the case of San Bruno, the CPUC under Peevey imposed a fine but bestowed a rate increase large enough to absorb the penalty. (D1112023; Petition 07-11-007)"

In response to this corruption, the California legislature has enacted additional measures to address the overly cozy relationships between the regulators and the industry. The legislature has given a clear signal that it will not tolerate the abuses at the CPUC. (See http://www.sfgate.com/bayarea/article/Budget-tightens-oversight-on-California-PUC-4646033.php) However, the legislature is not empowered to enforce the laws that it enacts. Only the courts can do so. This Court must see these efforts through to fruition. This Court

must honor legislative intent. (*Johnson v. Southern Pacific Co*. (1904) 196 U.S. 1) This Court must grant certiorari.

2. CONFLICT WITH *MURRAY V. MOTOROLA*

The Ninth Circuit's opinion conflict's with the decision of the District of Columbia (DC) Court of Appeals, the equivalent of a state court of last resort (state supreme court), on important issues of federal law concerning RF radiation. The DC Court allowed the cases to move forward where the defendants exceeded FCC standards, as the Petitioner/Plaintiff has alleged, and where there was fraud, also alleged by Petitioner/Plaintiff. Thus, the Petitioner demonstrates a "compelling reason" for granting certiorari under Rule 10(a) of the Supreme Court.

"[W]e conclude that insofar as plaintiffs' claims are premised on allegations that they were injured through use of cell phones that did not meet the FCC standard, the claims are not federally preempted. We also conclude that plaintiffs' claims alleging violations of the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C.Code § 28-3904 (2001), may survive the preemption challenge." *Murray v. Motorola, Inc*., 982 A. 2d 764, 768 - DC: Court of Appeals 2009. Several claims were allowed to go forward on the theory that the defendants made false and misleading statements and failed to disclose information about the dangers of RF radiation emitted by cell phones, as proscribed by CPPA.

3. CONFLICT WITH *ENVIRONMENTAL DEFENSE FUND V. EPA*

The U.S. Court of Appeals for the D.C. Circuit has declared, "the ethical problems of conducting cancer experiments on human beings are too obvious to require discussion." *Environmental Defense Fund v. EPA*, 510 F.2d 1292, 1299 (D.C. Cir. 1975) The Ninth Circuit's decision here directly conflicts with the D.C. Circuit on this issue. The Ninth Circuit ruled that all of the

Petitioner/Plaintiff's claims were frivolous, including the violation of the ban on human experimentation. Whereas RF radiation-emitting Smart Meters have never been tested for safety and the World Health Organization has declared RF radiation a class 2B (possible) carcinogen, the federally-funded Smart Grid is an unethical cancer experiment being performed on human beings. This Court should resolve this conflict as prescribed by Supreme Court Rule 10(a).

4. CONFLICT WITH *U.S. V.JONES*

The facts of *US v. Jones*, 132 S. Ct. 945 - Supreme Court 2012, are remarkably similar to this Smart Grid case. In *Jones*, the government, without consent, placed a GPS radiation-emitting device on Jones' private vehicle in order to track his movements. Likewise, the government mandates or places Smart Meters on private property without consent for the purpose of gathering information. The *Jones* Court found this to be unconstitutional.

The Smart Grid is a federal program which engages in physical intrusion of private homes and businesses in order to obtain information. The Ninth Circuit's opinion conflicts with this Court's determination that "when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment." *US v. Jones*, 132 S. Ct. 945, 951 - Supreme Court 2012 quoting *United States v. Knotts*, 460 US 276, 286 - Supreme Court 1983 The *Jones* opinion was recently upheld again in *ACLU v. Clapper*, United States Court of Appeals for the Second Circuit (Argued: September 2, 2014 Decided: May 7, 2015) Docket No. 14-42-cv. The Ninth Circuit opinion cannot stand. This Court must grant certiorari in accordance with Supreme Court Rule 10(c).

5. CONFLICT WITH *SILVERMAN V. UNITED STATES*

In a rare unanimous opinion, the U. S. Supreme Court proclaimed, "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U. S. 505, 511 (1961) The Ninth Circuit has decided an "important federal question" in a way that conflicts with this decision. The Ninth Circuit has decided that the Petitioner/Plaintiff has no constitutional right to be free from Smart Meters and Smart Grid radiation in her own home. Yet the Smart Grid is completely unnecessary. For decades, we have had a safe, reliable, and lawful electric grid that supplied us with plenty of energy. The Smart Grid is not necessary for energy distribution and is thus, an "unreasonable government intrusion". In this scenario, relief is authorized under Supreme Court Rule 10(c) and should be granted. Now is the time for this Court to solidify its position as stated in *Silverman*.

6. CONFLICT WITH MANY DISABILITY DECISIONS

Many veterans, service men, electrical engineers, and ordinary citizens have been disabled by occupational or non-occupational exposure to RF radiation. Most of them have applied for disability compensation through the Veteran's Administration or through state agencies authorized by the Social Security Administration. These applicants are required to submit extensive medical documentation of their injuries. While the state agencies granted compensation to some of these applicants, others were denied benefits and forced to appeal their cases before a state administrative law judge (ALJ). The ALJ represents the state court of last resort for these claims. Likewise, veterans could appeal to the Board of Veterans' Appeals and ultimately to the Federal Circuit. In many of the appeals, benefits were granted.

Arthur Robert Firstenberg of New Mexico, a Westinghouse/Ivy League scholar, was granted disability compensation through the Social Security Administration in 1992 for non-occupational RF radiation injuries. Paul Kasper of West Virginia, a former military electrical engineer, was granted disability compensation for occupational RF radiation injuries through the U.S. Department of Veterans Affairs. These are but two examples by which the Petitioner demonstrates a "compelling reason" for granting certiorari under Rule 10(a) of the Supreme Court. A state court of last resort and a U. S. Court of Appeals have decided to grant federal benefits to persons disabled by RF radiation injuries. The Ninth Circuit has entered a conflicting decision by denying the Plaintiff/Petitioner redress for similar injuries. This Court has a duty to resolve the conflict. Certiorari should be granted.

7. CONFLICT WITH CALIFORNIA SUPREME COURT

Even if, as the industry claims, there were magically no physical harm from RF radiation, the Defendants would still be liable for psychological injuries and emotional distress. (*Burgess v. Superior Court*, 831 P. 2d 1197 - Cal: Supreme Court 1992) "[W]e conclude that emotional injury may be fully as severe and debilitating as physical harm, and is no less deserving of redress…" (*Molien v. Kaiser Foundation Hospitals*, 616 P. 2d 813, 919 - Cal: Supreme Court 1980) Emotional distress can include "fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, physical pain, or other similar distress." (*Burgess*, supra, Pg. 1085, emphasis added.) Whether the Petitioner/Plaintiff's injuries are physical or psychological makes no difference for the purpose of awarding compensatory damages. Nor does it affect prospective relief.

The Ninth Circuit has issued a decision which conflicts on this issue with several decisions of the California Supreme Court, the state court of last resort. Since the abuses occurred in the State of California, this Court should make a special effort to resolve the conflict between the state and federal courts here. This would help to instill greater confidence in the federal judiciary. Pursuant to Supreme Court Rule 10(a), this Court should grant certiorari.

INTERVENING CHANGES IN LAW

Because this is a rapidly developing, cutting edge issue, several pivotal decisions have been entered since arguments were filed in the District Court. These include the landmark decisions in *ACLU v. Clapper* and *Burwell v. Hobby Lobby*. In accordance with longstanding precedent, intervening changes in law must be considered. A party is entitled to the benefit of changes in the law that occur before a decision becomes final. See, e.g., *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 226-27 (1995); *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 96-97 (1993); *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 109-110 (1801); cf. *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 166-68 (1996).

1. ACLU V. CLAPPER

Just last month, the Second Circuit struck down the National Security Agency's (NSA) mass collection of Americans' phone records as unconstitutional. (*ACLU v. Clapper*, United States Court of Appeals for the Second Circuit (Argued: September 2, 2014 Decided: May 7, 2015) Docket No. 14-42-cv. The government may seek certiorari. If so, these two (or more) cases may be consolidated allowing this Court to examine the similar constitutional issues.

The ACLU alleged both First and Fourth Amendment violations. The Second Circuit found that the data collection, which violated constitutional rights, was never justified by Section 215 of the

Patriot Act of 2001. Likewise, Petitioner proposes that the Smart Grid clause of the Energy Independence and Security Act of 2007 does not justify the constitutional abuses of the California Smart Grid, as implemented by the CPUC.

2. BURWELL V. HOBBY LOBBY

This recent opinion established two important principles: 1) that a fictitious person has legally cognizable religious beliefs if it is "closely held", i.e. more than 50% owned by less than 5 natural persons and 2) that a provision of the Affordable Care Act violated the Religious Freedoms Restoration Act of 1993 (RFRA) because it was not done in the "least restrictive way". (*Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 - Supreme Court 2014) While most natural persons find the first item to be ludicrous, it is the law of the land. As stated above, the Petitioner is also a fictitious person (DBA Celeste). Celeste is more than 50% owned by one person, the Petitioner. Therefore, she should be accorded the same privileges as Hobby Lobby. Her religious beliefs should ascend to the same legally cognizable status as those of Hobby Lobby.

The California Smart Grid is obviously not the "least restrictive way" to distribute and measure energy. The previous electric grid accomplished this goal in a less restrictive way. Therefore, the California Smart Grid must be enjoined under RFRA or the Free Exercise Clause and replaced by the safe analog grid which has worked flawlessly for decades. The Ninth Circuit decision is not yet final as this Court still has an opportunity for review. This Court must grant certiorari in accordance with *Plaut, supra*, and the doctrine of stare decisis.

THE JUDGMENT IS VOID

As it stands the judgment is void. The Ninth Circuit found no jurisdiction and yet proceeded to exercise jurisdiction, dismissing Defendants SDG&E and Itron with prejudice. A void judgment invites collateral attack. This Court should exercise its supervisory power pursuant to Supreme Court Rule 10(a) to restore the dignity and stature of our nation's judiciary. Under these circumstances, certiorari must be granted.

CONFLICT WITH OTHER JURISDICTIONS

Although not controlling, other jurisdictions have decided similar RF radiation issues in a manner conflicting with the Ninth Circuit. The Petitioner presents this information only to demonstrate the magnitude of the problem, in hopes that this will assist the Court in its certiorari determination. As society grapples with this technological encroachment, the U. S., as the leader of the free world, should offer some direction from its highest court.

1. MUNICIPALITIES BAN SMART METERS

Many municipalities across the country have enacted legislation in opposition to Smart Meters. In California alone, to date, 57 local governments have banned Smart Meters. Many have criminalized their installation. The utilities have ignored these public mandates, foisting these radiation-emitting devices on the residents in violation of local ordinances.

Smart Meters have instigated a power struggle between local governments and states. In this epic battle, the municipalities and other subdivisions have championed the will of the people, while the states have become the psychopathic Goliaths beholden only to their corporate masters. States have succumbed to the regulatory capture of their public utilities commissions. Corporate

profit motives have displaced the common good. California, the most populous state in the union, is the epicenter of this upheaval.

The misconduct at the CPUC is the most egregious of any state public utilities commission. California was one of the first states to institute a Smart Grid. Other states followed reading from the same sordid script. The industry handpicked, groomed, and padded the pockets of the man who would lead the efforts, former CPUC President, Defendant Peevey. It is most fitting that the Supreme Court hears a Smart Grid case from California. This controversy provides a suitable vehicle. Certiorari should be granted.

2. ITALIAN COURT FINDS RF RADIATION CAUSES CANCER

The Supreme Court of Italy was the first high court in the world to find a causal link between cell phone radiation and cancer on October 18, 2012. As we know, this is a matter of fact, not law. Thus, the differences between Italian law and American law are of no consequence. The court relied on the research of Dr. Lennart Hardell. Scientific truth knows no national borders. "In upholding the lower court's decision, the Supreme Court held 'that scientific evidence advanced in support of the claim was reliable'…" (See http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403378_text)

3. CANADIAN COURT RULES FOR PLAINTIFFS IN RF RADIATION CASE

On January 27, 2014 the Supreme Court of Nova Scotia overturned summary judgment and issued a ruling against a telecommunications provider, allowing the plaintiffs to go to trial. The plaintiffs were injured and lost their home when a cell phone tower was erected on their property. (*Pettipas v. Bell Alliant Regional Communications, Inc. 2014 NSSC 25 (CANLII)*)

4. CANADA RETHINKS RF EXPOSURE LIMITS

"A Canadian Parliamentary Committee today [June 17, 2015] issued a report with 12 recommendations for increased caution, investigations, reporting and data gathering with regard to RF/EMF and wireless devices... Canada's Safety Code 6 providing guidelines for RF exposure is virtually identical to the 1996 FCC guidelines in the US." (See http://www.mainecoalitiontostopsmartmeters.org/2015/06/canadian-parliamentary-health-committee-calls-for-review-of-guidelines-related-to-wireless-technologies/)

5. FRANCE BANS WI-FI IN NURSERIES

On January 29, 2015, France took the lead in protecting health and ensuring rights by enacting ground-breaking legislation. "Today the French Parliament passed a law addressing electromagnetic fields and electromagnetic hypersensitivity. While the new law does not go nearly far enough, it is the first of its kind in the world. Among its provisions are the following: ...Wireless internet is prohibited in places dedicated to the welcome, rest, and activities of children under 3 years of age. Wireless access for internet in elementary schools must be disabled when not in use for teaching. One year from today, the government shall submit to the Parliament a report on electromagnetic hypersensitivity." (See http://takebackyourpower.net/2015/02/france-new-law-bans-wifi-in-daycares-restricts-wireless-infrastructure/)

6. OVER 200 SCIENTISTS FROM OVER 40 COUNTRIES ADVISE PRECAUTION

"New York, NY, May 11, 2015. Today 190 scientists from 39 nations submitted an appeal to the United Nations, UN member states and the World Health Organization (WHO) requesting they adopt more protective exposure guidelines for electromagnetic fields (EMF) and wireless

technology in the face of increasing evidence of risk. These exposures are a rapidly growing form of environmental pollution worldwide." The roster has already surpassed 200 and continues to grow. (See http://emfscientist.org/images/docs/EMF_Scientist_Press_Release.pdf)

7. HEALTH RISK FROM WIRELESS? THE DEBATE IS OVER.

Top Scandinavian scientists pronounce an end to the controversy. An April 25, 2014, assessment by Drs. Olle Johansson of Sweden and Einar Flydal of Norway finds that the biological effects are no longer subject to debate. RF radiation is indisputably harmful to humans. "Politicians should now take a look at how to get rid of the old 'avoid getting burnt' paradigm that still reigns with the authorities engaged in radiation protection ('How long may you stand or sit in front of a radar before getting burned?'), and replace it with limits based on public health ('How far down may we bring the limits before paralyzing vital societal functions?'). Governments should take a look at how to follow up such a shift to minimal limits. Surely, there will be a lot of regulations to revise, and much food for lawyers." (See http://electromagnetichealth.org/electromagnetic-health-blog/article-by-professor-olle-johansson-health-risk-from-wireless-the-debate-is-over/) This is the moment for Supreme Court intervention.

8. PAPAL ENCYCLICAL URGES GOOD STEWARDSHIP

On June 18, 2015, Pope Francis, the head of the Catholic Church, released an encyclical addressing man-made pollution and urging better stewardship of the earth. "The pope is almost saying: 'You may not believe in God, but if you believe in ecology, you can't ignore this.' " (See http://www.washingtonpost.com/local/an-italian-draft-of-pope-francis-environmental-paper-leaks--setting-off-scurry-to-google-translate/2015/06/15/89af0012-1379-11e5-9ddc-

e3353542100c_story.html) With 1.2 billion members worldwide and six out of nine Justices of this Court, the Catholic Church is sending a powerful message in support of the Petitioner's plea.

The Petitioner was born into the Catholic Church, baptized and confirmed. Shortly after confirmation, at age thirteen, she broke with the Church over the institutionalized rape and sexual abuse of children, the subjugation of women, the worship of persecution and suffering, the infallibility of the pope, the unjust arbitrary and capricious conduct, and other issues. She developed her own religion, "Do No Harm". It seems that the Catholic Church is now coming around, as should this Court.

INTEREST OF THE AMICI

Numerous amici curiae are expected to file supporting briefs. This matter may well inspire briefs from distinguished constitutional scholar and Harvard Law School professor of ethics, Lawrence Lessig, Vermont Senators Patrick Leahy and Jim Jeffords, and public interest groups such as the American Civil Liberties Union (ACLU), the Cellular Phone Task Force, EMF Safety Network, The Utilities Reform Network (TURN), Californians for Renewable Energy (CARE), and others. Lawrence Lessig is actively involved in RF radiation litigation, representing the City of Berkeley in defense of the Cell Phone Right to Know Act, which he also co-drafted. The Vermont Senators have appeared as amici to this Court in a 1997 action by the Cellular Phone Task Force to revisit the FCC's RF radiation exposure limits. The EMF Safety Network, TURN, and CARE have all filed actions with the CPUC to stem the tide of Smart Grid abuses. CARE has previously supported Petitioner in this action.

PETITIONER DEMONSTRATES RIPENESS AND STANDING

Petitioner/Plaintiff has sustained, continues to sustain, and will sustain direct injury or harm as a result of the California Smart Grid. This harm is redressable under 42 U.S.C. ss. 1983, 1985 and 1986 as well as other federal statutes such as RFRA. (*Flast v. Cohen*, 392 U.S. 83 (1968)) The claim is ripe for judicial review by this court as the administrative decisions have been formalized and their effects felt in a concrete way. (*Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967)) The California Smart Grid has been installed, causing Petitioner to suffer bodily injury as well as abridgment of federal rights.

The Complaint "does present an 'actual controversy' within the meaning of the Declaratory Judgment Act, 28 U. S. C. § 2201, that is ripe for decision. The test to be applied, of course, is the familiar one stated in *Maryland Casualty Co. v. Pacific Coal & Oil Co*., 312 U. S. 270, 273 (1941): 'Basically, the question in each case is whether . . . there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Lake Carriers' Assn. v. MacMullan*, 406 US 498, 506 - Supreme Court 1972. Petitioner demonstrates both standing and ripeness in this controversy. Certiorari should be granted.

CONCLUSION

A Supreme Court opinion in this case would help to define the constitutional limits of government-mandated spying. It would restore confidence in the personal, property, and privacy rights of all citizens. It would also create an atmosphere of greater economic certainty, particularly vis-à-vis future investments in the IT industry. This multi-trillion dollar industry needs to know how far they can lawfully extend their business of electronic data collection.

Several recent events have markedly pared back their reach, including the sunset of the Patriot Act and the *ACLU v. Clapper* opinion. The participation of the highest court in this dynamic debate would be most welcome. This Court should allow these momentous issues to be fully briefed. With such high stakes on both sides, all parties and numerous amici should be given the opportunity to state their positions and air their concerns. At the very least, the Petitioner should be accorded full and fair hearing on the merits. This Court should grant the Petition.

VERIFICATION

I, Deborah Cooney, verify and declare that the factual statements in the foregoing Petition for a Writ of Certiorari are true and correct to the best of my knowledge and belief, under penalty of perjury under the laws of the United States.

Respectfully submitted,

Date: June 21, 2015 _____

Deborah Cooney, Petitioner in Propria Persona