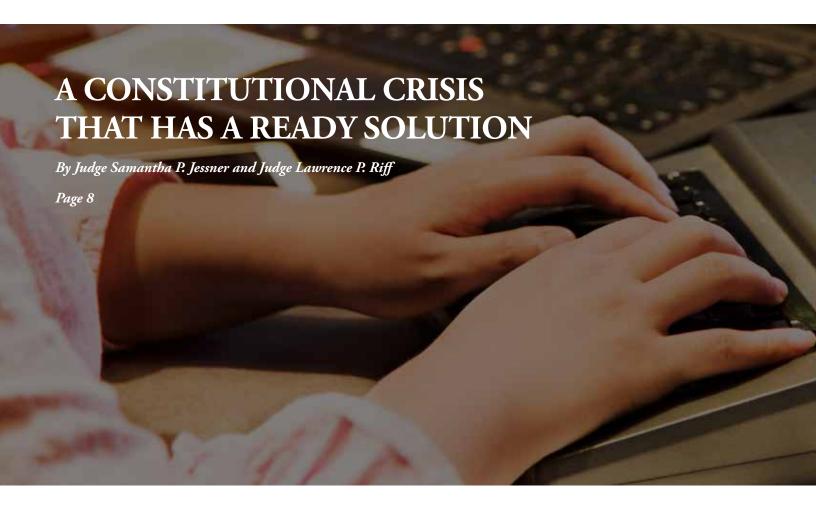


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PRESIDENT'S MESSAGE

by Brian C. Israel

Thank you to all the volunteers who attended the bar leadership event at Bob Kildee Park on July 29, 2023. It was an overwhelming success. It was enjoyable to see familiar faces and to meet new faces and their families. Those in attendance were also able to meet my family and I think it goes without saying (okay, I will say it) that connecting with everyone at the park was more impactful than just passing words at the courthouse.

The bar leadership event was a reflection of all of our volunteers and members who make this organization and community better. The mix of people, food, and weather, made this event a treat to attend. Personally, I was able to take a few minutes to roll around the skatepark and to also jump in the jolly jump. Who doesn't love being able to embrace their inner child? There was also ample opportunity to network and learn new things from other VCBA members and their families. We hope to make this an annual event and I hope to meet more of our volunteers next year.

Looking forward to the end of the year, there are several other events and MCLE's lined up. Of course, one of those events is VCBA's Installation and Annual Awards Dinner. I am hoping you have seen our sponsorship forms and/ or save the date in *Citations* Magazine.

This is another opportunity for us to come together as a community; to celebrate and to strengthen VCBA's mission statement. If you have been to the Installation and Annual Dinner you are aware of how special a night it is. If you have never been or if you have not been for awhile, please join us.

Personally, I have had the privilege of experiencing how VCBA can impact lives. I have seen it on the faces of those in need at legal clinics. I have also seen the impact on local attorneys who have been able to find purpose or a friend or a business connection through VCBA. Regardless, this night helps VCBA make an impact in various ways. Thus, I ask you to please consider sponsoring and/or attending so that we can continue to make a positive impact in Ventura County.





On another note, I was able to get a preview of the Mariano Ranch property in Ventura. With development accelerating, it has been nice to see community members fighting for conservation and more open spaces. Public spaces for recreation are a need and we finally have more options to choose from.

Mariano Ranch is a property stretching from the left tree of Two Trees to Grant Park in Ventura (The right tree is part of the Atmore Family Ranch). This property was purchased by the Ventura Land Trust in 2020 for the public's benefit. The property encompasses 1,645 acres and will become an outdoor public space with miles of trails that anyone can enjoy. Unfortunately, it won't be open until the end of 2025, but it will be a great addition to all of us who enjoy getting outside.

The property is dominated by coastal sage scrub, with some pockets of cactusand cholla-dominated habitat. Invasive species, such as wild mustard, Russian thistle, and fennel, can be found across the property as well. However, Mariano Rancho is criss-crossed by active and abandoned oil and gas infrastructure, including pipelines that complicate the management of the preserve. Utility and communication companies also have easements across the property.

The property has many incredible views, and I thoroughly enjoyed the peacefulness of the property. It will be a boon to Ventura County, and I hope that one day we may all be able to share a hike together at Mariano Ranch.



Brian C. Israel is an associate attorney at Norman Dowler, LLP in Ventura. His practice focuses on estate planning, probate, and trust administration. He can be reached at bisrael@

normandowler.com or at 805-654-0911.

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Michael Marcelo

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Elina Avagimova

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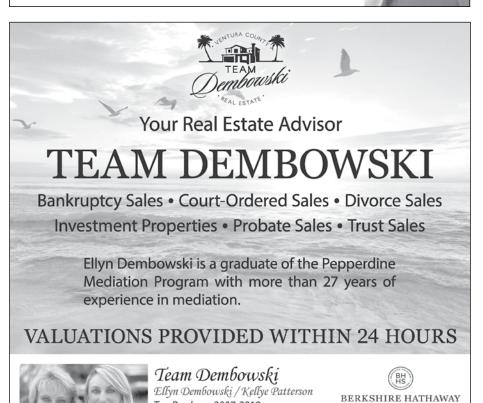
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BAR LEADERSHIP EVENT BARBEQUE Photos: Sandra Rubio



A CONSTITUTIONAL CRISIS – THAT HAS A READY SOLUTION

By Judge Samantha P. Jessner and Judge Lawrence P. Riff

Allan Browne, the Founding President of the ABTL, famously said, "All of us share similar concerns in the courthouse as well as the legislature." We, the Presiding Judge of the Los Angeles Superior Court ("LASC") and the former Supervising Judge of the Family Law Division, write with hope—and expectation—that members of the ABTL indeed share a deep concern about a genuine constitutional crisis in our courtrooms right now.

So far in 2023, tens of thousands of litigants in the LASC - which number will run into the hundreds of thousands this calendar year—are being denied elemental justice, namely, review on appeal. Why? Because of the unavailability of verbatim transcripts of proceedings in family law, probate, and unlimited civil cases. Again, why? Because (a) there is a profound shortage of Certified Shorthand Reporters ("CSRs") - they do not exist to be hired by our court (we have nearly 100 CSR vacancies now), and (b) Government Code section 69957 prohibits the court from using electronic recording devices to generate a verbatim transcript in family law, probate, and unlimited civil cases, even though the identical technology may be used for the identical purpose for infraction, misdemeanor, and limited civil cases. Yet the Appellate Division of the LASC successfully handles over 500 appellate matters every year using transcripts generated by electronic recordation. Electronic recording technology works.

ABTL lawyers and their clients now know that they must dig ever deeper into their pockets to pay a shrinking number of private CSRs to appear for their hearings and trials. No doubt this generates grumbling and dissatisfaction among your clients. But what if there were no pocket to dig into? What if you and your client simply had to forgo a verbatim transcript and, with it, any practical reality of review on appeal? Unthinkable, right? Please think again. This is today's reality for a huge number of modest-means litigants (not just those who are impoverished) in our civil, probate, and family law courts.

Bluntly, here's the question: Should our civil justice system supply a practical possibility of appellate review for potential legal error or abuse of discretion? Take family law as an example: Should the four-year-old child have been permitted to move with a parent to New York, causing heartbreak to the stay-in-LA parent? Or when parents cannot agree, which parent should make medical decisions (e.g., about vaccinations or gender-affirming care) for the 15-yearold child? Or should the restraining order have been imposed upon the father, thereby meaningfully restraining his liberty (e.g., requiring him to stay 100 yards away or refrain from electronic communications), possibly eliminating his custody rights and meaning that his name will appear on state and federal law enforcement websites for years to come? These are very significant issues that each of our family law judicial officers is called upon to decide dozens of times each week. They are very good at it but, like all of us, not perfect. There is a role for the Court of Appeal—but not if there is

No record means no appeal—it's that simple. "If it is not in the record, it did not happen." (Protect Our Water v. County of Merced (2003) 110 Cal.App.4th 362, 364.) Per the California Supreme Court, the lack of a verbatim record will "frequently be fatal" to a litigant's ability to have an appeal decided on the merits. (Jameson v. Desta (2018) 5 Cal.5th 594, 608.) And, in Griffin v. Illinois (1956) 351 U.S. 12, the United States Supreme Court addressed the problem of litigants being denied a transcript, precluding appellate review. Finding that both due process and equal protection rights were violated, Justice Hugo Black, writing for the Court, observed that there is "no meaningful distinction" between denying indigent defendants the right to appeal and denying them a trial. (Id. at p. 18.) What's more, in M.L.B v. S.L.J. (1996) 519 U.S.102, the U.S. Supreme Court held that decrees forever terminating parenting rights are in the category of cases in which the State may not, consistent with the Equal Protection

and Due Process Clauses, "bolt the door to equal justice," meaning that Mississippi could not withhold from M.L.B. a "record of sufficient completeness" to permit proper appellate consideration of her claims. (Id. at pp. 105-106.)

Before going further, let us be clear: In our view, the gold standard for the creation of a verbatim transcript is a licensed (living, breathing) CSR. It is by far our court's preference over any other option. But despite offering unprecedented signing and retention benefits, and very generous salary and employment benefits, our court has been unable to make a dent in our CSR employee shortfall. It is a fact of life—the number of CSRs retiring from court service outpaces the number of new hires. There is no reason to believe in the short or even the long run that the court will be able to staff all of its courtrooms (in which electronic recording is prohibited) with CSRs, and it will not be long before court-employed CSRs will be unavailable for statutorily mandated proceedings such as felony and juvenile justice cases. The licensed CSR population is aging and retiring, and people are not going into the profession. Sufficient CSRs cannot be hired because sufficient CSRs do not exist. We would love to be shown that we - and the 54 Chief Executive Officers of California's Superior Courts who issued a comprehensive report in November 2022 entitled, "There is a court reporter shortage crisis in California" - are wrong. But "wait and see" is not an option.

For these reasons, we say again: We are in the midst of an undeniable constitutional crisis, and none of us should sleep well at night under the assumption that all is well. Or that this will work itself out just fine one of these days. We often hear from lawyers, "What can we do to help the court?" We appreciate the question, but it is not stated correctly. The question, we suggest, as you look in the mirror, is "what did *I* do when thousands of the most vulnerable members of *my* community were frankly being denied basic justice?"

We have a responsibility as leaders in the legal community to ensure that the administration of the law is not unequal or unfair. There is a legislative solution permitting electronic recording in family, probate, and unlimited civil cases to create a verbatim transcript when a CSR is not otherwise available. Senator Susan Rubio's bill SB-662-Courts: court reporters would permit electronic recording under specified conditions. Unfortunately, the legislature will not address it further until 2024 at the earliest. There are no doubt other legislative solutions to be offered and considered.

The point, however, is that this cannot be treated as business as usual. Thus, we ask you to add your voice to ours as we strive to preserve equal and meaningful access to justice.



Judge Samantha P. Jessner is the Presiding Judge of the Los Angeles County Superior Court.



Judge Lawrence P.
Riff is a Judge of the
Los Angeles County
Superior Court and
the former Supervising
Judge of the Family
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(Reprinted from the Summer 2023 Association of Business Trial Lawyers (ABTL) Report (Los Angeles) with permission from the ABTL (www.abtl.org).)



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BARRISTER'S CORNER: HOW TO MAKE YOUR CURRENT JOB YOUR DREAM JOB, IF IT'S NOT ALREADY

By Christal Joy Porter.

Jobs come and go, but there is only one dream job, right? Once you find your dream job, you never plan on leaving, right? Sometimes circumstances, resources, and life events necessitate finding a new job, but what is the secret to longevity at a good job when it's not your "dream job"?

In November 2021, approximately 4.5 million U.S. workers decided to leave their places of employment. This job movement has been a catalyst for U.S. businesses to re-think approaches to retaining talent. The legal market has not been insulated from the "Great Resignation." A 2022 report on the State of the Legal Market found that associate turnover is approaching 25% and predicts firms could expect more than a 100% turnover among associates in the coming five years. According to an *Attorney At Work* article, talent retention is the greatest challenge law firms face.

Studies have shown that there are generational differences in values and approaches to work. CareerBuilder's study of different generational values in the workforce shows that Baby Boomers (57 -75) are motivated by position and prestige, value strong work ethic, and seek stability, Gen X (41 -56) values self-sufficiency, resourcefulness, and freedom in the workplace, and Millennials (25 -40) value self-confidence, flexibility, and work life balance. According to the 2022 ABA article "The Great Resignation" traditional criteria such as compensation and bonuses, assigned practice groups, and partnership prospects remain important, but a new set of criteria is challenging both employees and firms in recruitment and retention: better work-life balance, improved technology and software, flexible hours, and remote work, as well as evaluation of nonbillable activities. As the legal field shifts to adjust to this developing job market, here are a few steps to consider in order to sustain longevity in your current position if it is not your dream job:

Step 1: Identify your Dream Job

In order to work towards your dream job, one must first identify the "dream." Here are a few questions to help you identify your "dream job":

- 1. What do you value in your work life?
- 2. What experiences have you enjoyed/thrived doing?

3. What are your interests? Can you turn those interests into billable/profitable legal work?

These are just a few questions to get you started thinking about the qualities of your dream job. Now that we have aspects of your dream job identified, let's take a look at your current job.

Step 2: Analyze your Current Job

How can you incorporate items from your dream job list into your current work week?

As you think about the day-to-day duties and responsibilities of your current job, identify the things in your current job that are moving you closer toward your dream job. What are the tasks in your current work week that are draining you of energy and motivation? What things do you procrastinate doing the most? Is there some way to replace the draining items with items from the dream job list? If you cannot get rid of the draining items (such as billing), maybe consider restructuring the draining activities in a way that alleviates some of the drudgery. Reconsider the time of day/week you engage in the draining activities, the location of your draining activities (billing on the beach sounds nice), or perhaps try multitasking draining items with other items on your to do list in order to associate a sense of productivity with the draining activities. If all else fails, try "reframing" the draining activities so you view them as something that is moving you closer to your dream job.

Step 3: Environment

What surrounds you in your workspace? Do you look forward to being in your workspace? What do you feel when you look around your workspace? Intentional physical spacing is a small but impactful way to help cultivate energies that will help you enjoy the laborious hours you spend working in your workspace. Consider creating a space that you like/want to be in. What are some of your favorite items you can place in your viewing space? Are there reminders of your "dream job" or goals that you can place in your workspace?

Is your office social environment what you want? How are co worker interactions? What are your office social needs throughout the week? What are your coworkers' social

needs throughout the week? What needs do you share with your coworkers? Everyone must eat; food is always a fun and easy way to promote a positive social working environment. What energy do you bring to your office social environment? Take ownership of your office social environment. Going out of your way to improve your coworkers' social experience may actually help your own personal enjoyment of your office environment.

Step 4: Gratitude

Despite the grind of your current job, an attitude of gratitude can make any position fulfilling work. Numerous studies have shown the effectiveness of gratitude on success. A CNBC article said that researchers concluded keeping a daily journal of moments or events or things you're grateful for is linked to increased happiness. A similar article on Inc.com says research reveals that gratitude can lead to increased determination, energy, enthusiasm, and academic achievement. If you are a barrister, experienced attorney, or professional, you have achieved a certain level of success and whether you feel fulfilled in your everyday work or not, you are in a position to be of great positive influence in your community. Maybe your dream job will have nothing to do with the law (i.e., being a barista or master bread maker), but no matter what your "dream job" is, life is short and living your best life does not mean you have to make drastic changes to your current lifestyle. Small intentional decisions can allow you to live your best life even at a job that may not be your "dream job."

Like you, I am a fellow Barrister, and have yet to attain the badge of staying at the same law firm for over a decade, but I am hopeful to achieve this badge and more.



Christal Joy Porter practices in the areas of estate planning, California probate, trust administration, and litigation. She works for ADK Heritage Law in Santa Paula. She can be reached at (805) 947-4372.

By Sandra Rubio.

Barristers' Annual Wine and Cheese event took place on August 23, 2023. Barristers wish to thank FCOP for use of their lovely venue, Ventura County Community Foundation for the wine and Sierra Nevada for the beer. Barristers also appreciates our VCSC judicial officers and all other attendees for supporting our events.



















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2022, Mike has used his creative approach to resolving employment disputes as a mediator for the very types of cases he litigated as an attorney: wage-and-hour class/PAGA actions and individual disputes involving harassment, discrimination, retaliation, and breaches of contract.



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SAVE THE DATE November 18, 2023

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HAVE YOU HEARD

Kathleen "Kat" Maheu, CITATIONS'



Managing Editor, has taken a new position with the Ventura County Superior Court as a Legal Research Attorney. After fifteen years practicing in the areas of family law and civil litigation with

The Law Offices of Mark Pachowicz, and Pachowicz | Goldenring, Kat is excited about her new position and looks forward to her new role with the Court.

Edward "Ted" Andrews intends to be a candidate for



be a candidate for judicial election to the Ventura County Superior Court. He is a Senior Deputy District Attorney in the Ventura County District Attorney's Office, as well as a volunteer

with the VCBA. He will be making further announcements, and updates will also be available on *andrewsforjudge.com*, this fall.

Judge Marine Dermadzhyan took the



bench on Monday,
August 7, 2023, as
Ventura County's
newest Superior Court
Judge. Presiding Judge
Kevin G. DeNoce
administered Judge
Dermadzhyan's judicial
oath of office. Judge

Dermadzhyan was appointed by Governor Gavin Newsom on July 28, 2023. She fills the vacancy created by the retirement of Judge John R. Smiley in 2022. Prior to her appointment to the bench, Judge Dermadzhyan served as a Deputy District Attorney at the Ventura County District Attorney's Office beginning in 2014. Judge Dermadzhyan has been an Adjunct Professor at the Ventura College of Law since 2022.



The Colleges of Law Board of Trustees has elected new member Ventura attorney Lauren Nicholson. A graduate of the school's Ventura campus, Nicholson joins the

15-member governance body that oversees the region's oldest and largest independent law school. Nicholson currently serves as President of the Women Lawyers of Ventura County and is also a board member at large for the VCBA Family Law Bar Association



DEDICATION HONORING THE MEMORY OF CARMEN RAMIREZ

The City of Oxnard invites you to the mural dedication honoring the memory of former Chair of the Ventura County Board of Supervisors, **Carmen Ramirez.** Dedication will be held on Thursday, September 14, 2023, at 12:00 pm at 328 South B Street, Oxnard, 93030. Parking is available in the Oxnard Downtown parking structure. Remarks will be given by government officials, family, and the artist, Anthony Macri-Ortiz, son of local attorney **Barbara Macri-Ortiz.**



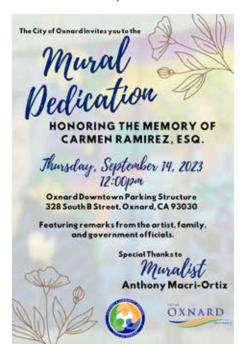
Anthony Macri-Ortiz

The idea of a mural honoring Carmen was that of Mr. Macri-Ortiz. He has known Carmen since he was 4 years old, and wanted to share a tribute with those close to Carmen as

well as with the community. With the assistance of Alex Nguyen, Oxnard's City Manager, the City designated the site on the wall of the parking garage.

Recently, Carmen's papers have been donated to the CSUCI Archives with over 300 of Carmen's books to Broome library.

In Carmen's memory, family and her staff have established a Legacy Scholarship Fund in collaboration with the Ventura County Community Foundation to honor her lifelong work and support the next generation of public service leaders. Inquiries about the Scholarship Fund may be directed to the District 5 Office at 805-654-2613 or *District5@ventura.org*.



SCOTUS DECISIONS STALL EFFORTS AT STUDENT LOAN DEBT RELIEF

By Sparky Abraham



At the end of June, the Supreme Court struck down the Biden administration's student debt relief plan. The plan, enacted under the HEROES Act (Higher Education Relief Opportunities for Students Act of 2003), which allows the Secretary of Education to "waive or modify" any provision of the federal student lending system in response to a national emergency, sought to reduce the balances for over 40 million student debtors by up to \$10,000, or up to \$20,000 for those who received Pell Grants. The plan was based on economic analyses showing that student debtors suffered serious financial consequences as a result of the pandemic, and that without relief they would be in a financially worse position due to the pandemic after payments resumed. Between the time that the program was opened and a few weeks later when it was halted, 26 million people applied for the relief and 16 million were approved.

For many people with student debt, including many attorneys, this would not have significantly reduced what is often a *very* high balance. (My own is \$73,000 at the moment.) But the Department of Education estimated this program would have completely eliminated the balances of

nearly 20 million people, setting them free from student loans that can subject debtors to unusually harsh collection procedures like public benefit garnishment. These loans are not easily discharged in bankruptcy, and have no statute of limitations.

The program, announced in August of 2022, was soon challenged by a number of parties including six state attorneys general. The Supreme Court granted certiorari for two cases on a very fast timeline: (1) the case filed by the states; and (2) a case filed by two individuals who sought to invalidate the program because they didn't qualify for the relief offered by the plan.

The first hurdle for both challengers to overcome was standing. This hurdle proved too high for the individual plaintiffs. In *Department of Education v. Brown*, the Supreme Court held that the individuals had not articulated harm sufficient to confer standing. The plaintiffs' argument was that by enacting a program under the HEROES Act without notice and comment, instead of under the Higher Education Act which would have required notice and comment, the Department of Education had deprived them of the ability to argue that they should be included in the program. The

Court disagreed, holding that the plaintiffs "cannot meaningfully connect the absence of loan relief under the [Higher Education Act] to the adoption of the [HEROES Act program]," and therefore their alleged injury was not fairly traceable to the action they challenged.

A divided Court found the states' action more convincing on the standing issue. In a 6-3 split in Biden v. Nebraska, the Court held that Missouri had adequately alleged harm from the debt cancellation plan to confer standing. The reasoning, here, had to do with a corporate entity created by Missouri decades ago to participate in the guaranteed student loan market: the Missouri Higher Education Loan Authority, or MOHELA. The Department of Education recently contracted with MOHELA to service federal student loans, and payment on that contract is made on a per-loan basis. So, Missouri argued, MOHELA would see a reduction in revenue if some of those loans were cancelled.

This last contention is up for debate. MOHELA did not sue to block this plan, though it could have. In fact, MOHELA did not seem to want anything to do with this lawsuit. It stated that the only information it had provided the Attorney General's office relating to the lawsuit was in response to public record act requests. Publicly disclosed internal emails showed MOHELA employees musing that MOHELA was "opposed to this move," that the suit should be dismissed "as lacking standing," and wondering: "Are we the bad guys?" Also, there is an undeveloped factual question about the financial harm MOHELA would suffer. Importantly, MOHELA's contract also includes an additional fee for processing loan cancellations. Neither the parties nor the Court addressed whether this fee might outweigh any reduction in revenue.

Despite these complications, the Court sided with the states. It held that despite MOHELA having independent litigating authority and independent finances, it is nonetheless an arm of Missouri such that the Attorney General can sue on its behalf (even, apparently, without its consent). And it held that the alleged financial harm to MOHELA from reduced servicing fees was sufficient to confer standing on Missouri.

Having found standing, the Court turned to the merits. It held that the words "waive" and "modify" in the HEROES Act did not allow for the cancellation program put into motion by the administration. Essentially, the Court held the program is too big. To quote the Chief Justice: "The Secretary's plan has 'modified' the cited provisions only in the same sense that the French Revolution 'modified' the status of the French nobility—it has abolished them and supplanted them with a new regime entirely." The Court opined that the case invoked the Major Questions Doctrine - a view that where federal agencies seek to decide an issue of major national significance, and Congress has not clearly empowered the agency to so act, a general delegation of authority to the agency is insufficient to authorize the action. Justice Barrett wrote a separate concurrence to emphasize that the opinion was gardenvariety statutory interpretation, and did not require the Major Questions Doctrine to reach its holding.

Justice Kagan's dissent, joined by Justices Sotomayor and Jackson, is notable for the strength of its disagreement, characterizing the states' challenge as baldly political, with no real underlying injury to confer standing. And, it makes a rare accusation: that the Court itself has violated the Constitution in reaching its decision: "[T]hat means the Court, by deciding this case, exercises authority it does not have. It violates the Constitution." The Dissent concludes by noting that in a "case not a case, the majority overrides the combined judgment of the Legislative and Executive Branches, with the consequence of eliminating loan forgiveness for 43 million Americans."

Fortunately for those of us with student debt, this is not the end of the road. Although the Court struck down this particular relief plan under the HEROES Act, the Secretary of Education does have broad authority under the Higher Education Act to "compromise," "settle," and "release" federal student loan obligations. Debt relief advocates have pushed the administration to take immediate action under these and other authorities to deliver on the promised relief before payments are set to resume in October.

The administration, for its part, has initiated a negotiated rulemaking process pursuant to the Higher Education Act on the topic of student loan relief. Hope persists, though the likelihood of meaningful action before payments turn back on seems slim. The administration has announced that for the first 12 months after payments resume, it will not report missed payments to credit bureaus or consider debtors delinquent or in default. But, for the first time in more than three years, the loans will accrue interest.

Those of us with student debt should not despair. One silver lining to this painful court battle is the attention focused on existing pathways to loan cancellation. Those include Public Service Loan Forgiveness, income-driven repayment forgiveness, closed school discharges, and borrower defense to repayment (when a

school has misled students). And student debtors and their advocates have been mobilizing as a political force, with groups like the Debt Collective (a union of debtors), and Student Borrower Protection Center and Project on Predatory Student Lending (legal and policy organizations) leading the charge. This fight is far from



Sparky Abraham founded *Iubilee* Legal in Oxnard, California, to help Californians escape burdensome debt. He can be reached at (805) 946-0386 or sparky@jubilee.legal



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www.santaclaravalleylegalaid.com *By Laura Bartels*

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