

Case No. S296535

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

DARRYL COTTON,

Plaintiff, Appellant, and Petitioner,

v.

LAWRENCE GERACI,

Defendant and Respondent.

After a Decision by the Court of Appeal

Fourth Appellate District, Division One

Case No. D084992

(Filed March 25, 2026; modified on rehearing April 21, 2026)

(Cotton v. Geraci, 2026 Cal.App. Unpub. LEXIS 2087)

On Appeal from the Superior Court of California,

County of San Diego, Case No. 37-2022-00000023-CU-MC-CTL

Honorable James A. Mangione, Judge

PETITION FOR REVIEW

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Petitioner and Plaintiff, In Propria Persona

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, rule 8.208)

Pursuant to California Rules of Court, rule 8.208, petitioner Darryl Cotton certifies that he knows of no interested entities or persons, other than the parties themselves, that must be listed under rule 8.208(e)(1) or (2).

Dated: May 5, 2026

A handwritten signature in black ink, appearing to read 'Darryl Cotton', is written over a horizontal line.

DARRYL COTTON

Petitioner, In Propria Persona

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ISSUES PRESENTED FOR REVIEW

1. Whether, to settle an important and recurring question of California law (Cal. Rules of Court, rule 8.500(b)(1)), the deemed-admission rule of Code of Civil Procedure section 170.3, subdivision (c)(3), as construed in *Keating v. Superior Court* (1955) 45 Cal.2d 440 and *Calhoun v. Superior Court* (1958) 51 Cal.2d 257, requires the factual allegations of a verified statement of disqualification to be taken as true where the challenged judge filed no verified answer denying those allegations and the order striking the statement engaged the underlying facts in only one place — by attacking the documentary citation supporting one allegation while leaving the underlying factual claims unrebutted and the remaining allegations unaddressed.

2. Whether, to settle an important question of constitutional and equitable doctrine (Cal. Rules of Court, rule 8.500(b)(1)), the “fair adversary hearing” premise of California’s independent-action doctrine — articulated in *Olivera v. Grace* (1942) 19 Cal.2d 570, *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, and *Kachig v. Boothe* (1971) 22 Cal.App.3d 626 — incorporates the federal due process requirement of a neutral adjudicator under *Williams v. Pennsylvania* (2016) 579 U.S. 1, *Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, and *In re Murchison* (1955) 349 U.S. 133, so that record-established structural bias defeats the premise — and whether the availability of direct appeal in the original action can categorically cure such a defect.

WHY REVIEW SHOULD BE GRANTED

Review is warranted under California Rules of Court, rule 8.500(b)(1), because this case presents an important and unresolved question of California law at the intersection of three doctrines whose interaction this Court has not squarely addressed: (a) the rule restricting independent equitable actions to vacate final judgments to cases involving denial of a fair adversary hearing; (b) California’s statutory disqualification framework, including the deemed-admission rule of section 170.3, subdivision (c)(3) under which undenied verified facts in a disqualification statement must be taken as true; and (c) the federal constitutional requirement of a neutral adjudicator as a structural element of due process.

At the outset, two related but distinct propositions must be kept separate. First, the substantive question whether bias existed is governed by section 170.3, subdivision (c)(3) and this Court’s decisions in *Calhoun* and *Keating*: undenied verified facts of bias are taken as true. Second, the remedial question whether the statutory writ-review remedy was preserved is governed by section 170.3, subdivision (d). Petitioner concedes the second but presses the first. The Court of Appeal’s reasoning collapses these two questions into one — and that conflation is itself a question of statewide importance.

On April 21, 2026, the Court of Appeal denied rehearing of its March 25, 2026 opinion and modified the opinion to add footnote 5, which reasoned that even accepting petitioner’s contention that he was denied a fair hearing before the original judge, “the remedy for the wrong he alleges was to appeal the [original] Judgment, not to file an independent action, and nowhere does he suggest that he could not have received a fair hearing on appeal.” (Order Modifying Opinion and Denying Rehearing, Apr. 21, 2026, fn. 5.) That sentence resolves this case on a categorical proposition: that wherever a litigant alleges the original tribunal lacked

constitutional neutrality, the availability of direct appeal in the original action is a complete answer.

That proposition is in tension with the federal structural-bias cases. The United States Supreme Court has held that “an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote.” (*Williams v. Pennsylvania* (2016) 579 U.S. 1, 14.) The reason is that a biased tribunal is a defect in “the framework within which the trial proceeds,” not “discrete error” correctable by later review. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 309–310.) Whether California’s independent-action doctrine — which conditions finality on the existence of “a fair adversary hearing” (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575) — incorporates that constitutional premise, or whether it permits the categorical “cure-by-appeal” rationale the Court of Appeal adopted, is the question presented.

The questions presented are review-worthy for three reasons.

First, this case is not an ordinary appearance-of-bias dispute or an ordinary forfeited-statutory-remedy dispute. The disqualification record establishes *actual* judicial bias as a matter of law: petitioner’s verified statement of disqualification alleged specific facts of bias on personal knowledge, the trial judge filed no verified answer denying those facts, and the strike order engaged only one of the three allegations and did so by attacking the documentary citation rather than the underlying fact. Under section 170.3, subdivision (c)(3) and this Court’s decisions in *Calhoun* and *Keating*, those undenied facts must be taken as true. The bias claim therefore is not merely “probable” under *Caperton*’s objective standard; it is established by the disqualification record itself.

Second, the question recurs and is generalizable beyond the particular procedural history of this case. California courts routinely confront litigants who attempt to relabel forfeited trial complaints as voidness or equitable claims, and they rightly reject most such efforts. But this case asks whether the same categorical bar applies when undenied verified disqualification facts establish that the merits tribunal itself was constitutionally non-neutral as to the very conduct it adjudicated. The answer footnote 5 supplies — that direct appeal always cures the defect — will govern future cases regardless of how this petitioner came before the Court of Appeal. California’s equity cases tie finality to the existence of a fair adversary hearing; the federal due process cases treat unconstitutional bias as a defect in the tribunal itself. What is missing is a decision from this Court explaining how those doctrines fit together.

Third, the case has significance beyond this dispute. California regulates many industries in which owner disclosure is a statutory precondition to lawful operation — cannabis, gambling, alcohol, gaming, and numerous licensed trades. Whenever a litigant alleges that a civil judgment in such a regulated-industry dispute was rendered by a non-neutral tribunal, the doctrinal question presented here will determine whether any forum exists to test that claim. That is a question of statewide procedure, not of this case’s facts.

STATEMENT OF THE CASE AND FACTS

A. The Cotton I judgment and the disqualification record.

In 2017, respondent Lawrence Geraci sued petitioner for breach of contract concerning the sale of real property in San Diego's Encanto neighborhood that had value as a potential cannabis dispensary site. (*Geraci v. Cotton*, S.D. Super. Ct. No. 37-2017-00010073-CU-BC-CTL, hereafter *Cotton I*.) Petitioner defended and cross-complained, alleging the transaction, if enforced, would make Geraci the concealed beneficial owner of a cannabis conditional use permit ("CUP") that Geraci was statutorily disqualified from holding because Geraci had been administratively sanctioned in 2014 and 2015 for operating unlicensed cannabis dispensaries in violation of Business and Professions Code section 19323. (1 CT 134–168.) Petitioner alleged that respondent's attorneys, Michael Weinstein and Gina Austin, prepared and filed a CUP application through respondent's secretary as nominal applicant, concealing respondent's beneficial ownership.

On September 12, 2018, during the *Cotton I* proceedings, petitioner's counsel filed a verified statement of disqualification under Code of Civil Procedure section 170.3 against the trial judge, the Honorable Joel R. Wohlfeil. (1 CT 134–168.) The verified statement made three specific factual allegations of actual bias on personal knowledge:

(i) that Judge Wohlfeil had stated on the record that he was personally acquainted with respondent's attorneys Michael Weinstein and Gina Austin and that he did not believe they would act unethically by filing a meritless suit;

(ii) that Judge Wohlfeil had stated on a separate occasion that he had known attorney Weinstein for decades since early in their careers; and

(iii) that Judge Wohlfeil had acknowledged on the record that he “may have made” a statement regarding his beliefs about Weinstein’s and Austin’s inability to act unethically.

(1 CT 136–137.) Those attorneys’ alleged conduct — the preparation and filing of CUP applications concealing respondent’s beneficial ownership — formed the core of petitioner’s illegality defense.

On September 17, 2018, Judge Wohlfeil filed a written order striking the verified statement under Code of Civil Procedure section 170.4, subdivision (b). (1 CT 169–175.) The order struck on three procedural grounds: improper service, untimeliness, and “overall fail[ure] to state any legal basis for disqualification on its face.” (1 CT 170.) Judge Wohlfeil did not file a verified answer admitting or denying the factual allegations under section 170.3, subdivision (c)(3).

The strike order engaged the factual allegations in only one place. Footnote 2 of the order addressed the first allegation by attacking the documentary citation supporting it, stating: “Although Defendant asserts that Judge Wohlfeil made a statement that he was personally acquainted with Plaintiff’s counsel and ‘does not believe that they would act unethically by filing a meritless suit,’ citing to Exhibit B, ln. 6–10; p. 1051, 25–28; p. 1055, the documents cited do not contain any such statements by Judge Wohlfeil.” (1 CT 172, fn. 2.) The footnote did not deny that the underlying statement was made; it stated only that the cited paragraphs of Exhibit B did not contain such statements. The order did not address the second or third factual allegations at all. The order’s general conclusion that the allegations “do not show any bias” (1 CT 174) was a legal conclusion under section 170.4, subdivision (b) that, by the structure of that statute, presupposed the factual allegations true and

rejected them as legally insufficient. Petitioner did not seek writ review within the ten-day window under section 170.3, subdivision (d).

Judgment was entered in favor of respondent in August 2019 following trial before Judge Wohlfeil. Petitioner filed a notice of appeal but did not timely designate the record or deposit costs, and the appeal was dismissed in February 2020.

B. The present independent equitable action (Cotton II).

In January 2022, petitioner filed the present action (*Cotton II*) as a “Verified Complaint in Equity to Set Aside Void Judgment.” Petitioner sought to vacate the 2019 *Cotton I* judgment on two integrated grounds: first, that the judgment enforced an illegal contract whose object was respondent’s secret ownership of a regulated cannabis CUP in violation of Business and Professions Code sections 19323 and 26057; and second, that the judgment was rendered by a tribunal that was not constitutionally neutral as to the very conduct at the center of petitioner’s illegality evidence, because the verified disqualification record — by operation of the deemed-admission rule of section 170.3, subdivision (c)(3) — established that the trial judge had pre-committed to the credibility of the attorneys whose alleged misconduct was the disputed illegality. Petitioner presented these as a single claim: that *Cotton I* did not provide the “fair adversary hearing” on which California’s independent-action doctrine conditions finality.

The superior court (Honorable James A. Mangione) denied petitioner’s 2022 motion to vacate and a renewed 2024 motion, citing *Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 632, and reasoning that petitioner “was not precluded from presenting his illegality argument to the court” in *Cotton I*. The court dismissed the action with prejudice in a signed minute order on July 12, 2024.

C. The Court of Appeal's opinion and modification on rehearing.

The Court of Appeal affirmed in an unpublished opinion filed March 25, 2026. (*Cotton v. Geraci*, 2026 Cal.App. Unpub. LEXIS 2087.) The opinion held the dismissal order appealable under Code of Civil Procedure section 581d (Slip Opn. 4) but affirmed on the merits. It reasoned that (i) California's independent-action doctrine requires denial of a "fair adversary hearing," which petitioner could not show because he presented his illegality argument in *Cotton I* and lost (Slip Opn. 5–7, citing *Kulchar v. Kulchar* (1969) 1 Cal.3d 467; *Kachig*); (ii) a judgment based on an allegedly illegal contract is void only where the illegality appears on the face of the judgment (*id.* at p. 6, citing *Signal Oil & Gas Co. v. Ashland Oil & Refining Co.* (1958) 49 Cal.2d 764, 778); and (iii) petitioner's bias allegations provide "no basis for an independent action in equity" because, although *People v. Freeman* (2010) 47 Cal.4th 993 recognizes that "in rare circumstances, a showing of the 'probability of actual bias' by the court that entered a judgment may constitute a basis to claim a violation of due process on appeal from that judgment" (*id.* at pp. 1000–1001), petitioner "is not appealing the *Cotton I* Judgment" (Slip Opn. 7–8).

Petitioner timely petitioned for rehearing, arguing that the opinion had treated his illegality and bias theories as sequential independent grounds when they had always been presented as a single integrated theory — bias as the reason the original opportunity was not a "fair adversary hearing." On April 21, 2026, the Court of Appeal denied rehearing and modified the opinion by adding footnote 5:

"In his petition for rehearing, Cotton explains that he believes he was denied a fair adversary hearing in *Cotton I* precisely because Judge Wohlfeil was not a neutral decision maker. But his 'integrated' theory misses the point. The remedy for the wrong he alleges was to appeal the *Cotton I* Judgment, not to file an independent

action, and nowhere does he suggest that he could not have received a fair hearing on appeal.”

(Order Modifying Opinion and Denying Rehearing, Apr. 21, 2026, fn. 5.)

The order stated: “There is no change in judgment.” This petition follows.

ARGUMENT

I. Footnote 5 announces a categorical cure-by-appeal rule that warrants this Court's review.

This is a petition about a narrow doctrinal sentence with broad implications. Footnote 5 of the rehearing order states that even accepting petitioner's claim that he was denied a fair adversary hearing because the original judge was not a neutral decision maker, the remedy was to appeal the original judgment, and nothing suggests petitioner "could not have received a fair hearing on appeal."

That sentence resolves this case, but it does much more. The Court of Appeal did not limit its rationale to ordinary legal error, forfeited statutory remedies, or appearance-of-bias complaints. It applied the rule categorically, to an alleged structural defect in the tribunal itself — holding, in effect, that the availability of direct appeal in the original action is always a complete answer to a structural-bias claim, even where the disqualification record itself establishes bias by operation of California's deemed-admission rule.

Petitioner does not ask this Court to loosen California's finality rules for ordinary legal error, intrinsic fraud, or garden-variety disqualification disputes. The question is narrower: whether appellate review of a judgment can, as a categorical matter, substitute for the neutral adjudicator that federal due process requires at the merits stage — particularly where the disqualification record establishes actual bias as a matter of law under section 170.3, subdivision (c)(3). That question has not been squarely answered by this Court, and the federal authorities suggest the answer is no.

II. The disqualification record establishes actual judicial bias as a matter of law: petitioner’s verified factual allegations were not denied by verified answer, and the strike order did not deny the underlying facts.

A. Section 170.3(c)(3) and this Court’s decisions in Calhoun and Keating require undenied verified disqualification facts to be taken as true.

Code of Civil Procedure section 170.3, subdivision (c)(3), provides that within ten days after the filing of a verified statement of disqualification, the challenged judge “may file a consent to disqualification or may file a written verified answer admitting or denying any or all of the allegations.” This Court has long held that the failure to file a verified answer denying the alleged facts has a definitive evidentiary consequence: those facts are deemed admitted as a matter of law.

In *Keating v. Superior Court* (1955) 45 Cal.2d 440, this Court explained: “Under this section, if the written statement objecting to the trial of a matter before a judge is not answered the matters set forth therein, if legally sufficient, must be taken as true.” (Id. at p. 443.) Three years later, in *Calhoun v. Superior Court* (1958) 51 Cal.2d 257, this Court applied that principle in circumstances closely paralleling the present case. The trial judge in *Calhoun* did not file a verified answer admitting or denying the petitioner’s factual allegations of bias. Instead, he denied the oral disqualification motion on procedural grounds and “str[uck] from the record the statement of disqualification ... as being sham and frivolous.” (Id. at p. 260.) This Court held that the strike did not substitute for the verified answer the statute required. Because the trial judge had “failed to file a written answer verified as required by section 170,” the petitioner’s factual allegations “must be taken as true since there was no denial of the allegations thereof.” (Id. at pp. 260–261.) The remedy was categorical: this Court issued a writ of prohibition declaring “all acts

taken in such action by the [judge]” after the disqualification statement was filed “null, void and of no effect.” (Id. at p. 263.)

More recent authority is to the same effect. In *Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, the Court of Appeal held that a temporary judge’s “failure to contest the claims that she failed to disclose in writing or on the record, and also that she was biased and prejudiced against petitioner, means that those factual allegations must be taken as true.” (Id. at pp. 38–39.) And the procedural rigidity of section 170.3 has been reinforced in *Magana v. Superior Court* (2018) 22 Cal.App.5th 840, which catalogues the limited “options” available to a challenged judge — consent, verified answer, or strike for facial insufficiency — and treats them as discrete and non-substitutable procedural acts.

Petitioner acknowledges that *Calhoun*, *Hayward*, and *Magana* applied the deemed-admission rule in contemporaneous proceedings rather than to attack a final judgment years later. But the deemed-admission rule speaks to the substantive question whether bias existed — a question that does not change depending on when it is raised. Whether the resulting bias supports relief from a final judgment is a separate question, governed by the structural-bias and finality doctrines addressed in Sections III and IV below.

B. The verified statement made three specific factual allegations; the strike order did not deny any of them.

Petitioner’s verified statement of disqualification made three specific factual allegations of actual bias on personal knowledge:

(i) Judge Wohlfeil had stated on the record that he was personally acquainted with attorneys Weinstein and Austin and did not believe they would act unethically by filing a meritless suit;

(ii) Judge Wohlfeil had stated on a separate occasion that he had known attorney Weinstein for decades since early in their careers; and

(iii) Judge Wohlfeil had acknowledged on the record that he “may have made” a statement regarding his beliefs about Weinstein’s and Austin’s inability to act unethically.

(1 CT 136–137.) Judge Wohlfeil did not file a verified answer admitting or denying any of these allegations under section 170.3, subdivision (c)(3). The strike order he did file was not a verified answer and did not deny any of the three allegations.

As to the first allegation, the strike order’s footnote 2 stated only that the documents cited in support of that allegation — specific paragraphs of Exhibit B — did not contain such statements by the judge. (1 CT 172, fn. 2.) That is a citation attack, not a factual denial. A judge who in fact made the alleged statements at some other time or place could have written exactly this footnote truthfully. A judge who had never made the alleged statements would presumably have written something like “I never made any such statement” or “I deny the allegation.” The footnote’s careful focus on the documentary citation rather than the underlying fact is itself evidence that the underlying fact was not denied. Section 170.3, subdivision (c)(3) does not require the challenger to perfectly cite supporting record material; it requires the judge to admit or deny the allegations themselves, on penalty of deemed admission. A response addressing only one piece of evidence offered in support of

an allegation, while leaving the underlying factual claim unrebutted, is not a denial of the allegation.

As to the second and third allegations — the decades-long professional relationship with Weinstein, and the on-record acknowledgment that the judge “may have made” the statement — the strike order did not address them at all. Those allegations stand undenied on the face of the record.

The strike order’s general conclusion that the allegations “do not show any bias” (1 CT 174) was a legal conclusion under section 170.4, subdivision (b), not a factual denial. A section 170.4, subdivision (b) strike for facial insufficiency presupposes the factual allegations true and rejects them as legally insufficient to establish bias as a matter of law. By the structure of the statute, the strike was not a finding that the alleged statements were not made; it was a determination that the alleged statements, even if made, did not warrant disqualification. That structure cannot substitute for a verified answer denying the factual allegations under section 170.3, subdivision (c)(3).

C. Calhoun directly forecloses any argument that the strike order substituted for a verified answer.

Any argument that Judge Wohlfeil’s strike order substituted for the verified answer required by section 170.3, subdivision (c)(3) is foreclosed by *Calhoun* itself. In *Calhoun*, the trial judge had also struck the disqualification statement — there, as “sham and frivolous” — yet this Court held the undenied facts were nonetheless deemed admitted because no verified answer was filed. (*Calhoun*, supra, 51 Cal.2d at pp. 260–261.) The same result follows here. A section 170.4, subdivision (b) strike addresses the procedural and facial-legal sufficiency of the statement; it does not deny its factual content. *Urias v. Harris Farms* (1991) 234 Cal.App.3d 415

reinforces the procedural rigidity of this scheme: a strike must occur within the same ten-day window prescribed for filing a verified answer; otherwise the judge is deemed disqualified and lacks power to act. (Id. at pp. 421–422.) The procedural strictures cut both ways: the strike order, like the verified answer it replaced, is bounded and discrete, and cannot be enlarged by judicial gloss to perform the substantive function of denying factual allegations.

D. The deemed-admission inquiry is distinct from the section 170.3(d) writ-review forfeiture; the former goes to whether bias existed substantively, the latter goes to whether the statutory remedy is preserved.

It is important to keep two questions distinct. The deemed-admission rule of section 170.3, subdivision (c)(3), as applied in *Calhoun* and *Keating*, governs the substantive question whether the alleged facts of bias must be taken as true. That question turns on whether the judge filed a verified answer denying the allegations — not on whether the challenger pursued every available statutory remedy.

By contrast, the section 170.3, subdivision (d) ten-day writ-review provision governs a different and separate question: whether the challenger has preserved the statutory remedy of writ review of the disqualification ruling itself. The Court of Appeal’s holding that petitioner forfeited the statutory writ-review remedy under *Freeman* addresses only this second question. It does not bear on whether the underlying factual allegations of bias are deemed admitted, and it does not bear on whether the resulting structural bias supports an independent equitable action under California’s fair-adversary-hearing doctrine. Conflating the two questions — as footnote 5 does — elides the substantive existence of bias into a remedial-forfeiture analysis. That conflation is itself a doctrinal error warranting this Court’s correction.

III. Federal due process treats adjudication before a non-neutral tribunal as structural error not curable by later appellate review.

A fair tribunal is a “basic requirement of due process.” (*In re Murchison* (1955) 349 U.S. 133, 136.) “When due process requires a hearing, the adjudicator must be impartial.” (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025.) Due process is denied where “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,” and the inquiry asks “whether the average judge in his position is likely to be neutral.” (*Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, 872, 883; see also *Rippo v. Baker* (2017) 580 U.S. 285, 287–288 [reaffirming the objective probability standard].) These principles apply with equal force in civil cases. (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 191 [impartial tribunal a “fundamental component” of due process in civil and quasi-judicial proceedings].)

Critically, the United States Supreme Court has classified unconstitutional non-recusal as *structural error* — a defect not in any particular ruling, but in “the framework within which the trial proceeds.” (*Arizona v. Fulminante*, *supra*, 499 U.S. at pp. 309–310; see also *Chapman v. California* (1967) 386 U.S. 18, 23 & fn. 8 [identifying constitutional errors not subject to harmless-error review].) In *Williams v. Pennsylvania*, *supra*, 579 U.S. at p. 14, the Court confirmed that “an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote,” because the presence of a non-neutral adjudicator is an injury “that cannot be cured just by focusing on the final judgment.” The Court explained that “an appellate panel’s decision does not override the effect of” the non-neutral adjudicator on the proceedings below. (*Id.* at p. 14.) California has long recognized the structural-error category as well. (See *People v. Brown* (1993) 6 Cal.4th 322, 333–334 [recognizing structural defects in the trial framework as a discrete category].)

The reason appellate review does not cure structural bias is grounded in the limited nature of what review does. Appeal tests rulings for legal error, reviews the sufficiency of evidence in the record as built, and applies doctrinal constraints to the record. It does not hear live witnesses, judge credibility in the first instance, or recreate the original merits forum in which the adjudicator's assessments shaped the evidentiary record. A party who presents his case to a factfinder who has publicly pre-committed to the credibility of the witnesses whose conduct is the central disputed issue has not presented his case to a neutral adjudicator, and no amount of appellate review can retroactively give him one.

California courts recognize the same principle. “Judicial bias amounting to structural error ‘permeates the judicial process so deeply that prejudice need not (and often cannot) be proven, and reversal is mandated as a matter of law without regard for the strength of the evidence or other circumstances.’” (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 1007.) And in the civil-administrative context, the courts have made the prejudgment point explicit: “the right to a fair hearing requires not only an impartial decisionmaker but also one who has not prejudged the case.” (*Tarkington v. California Unemployment Ins. Appeals Bd.* (2009) 172 Cal.App.4th 1494, 1501–1502.) A tribunal infected by structural bias is not made neutral by the fact that rulings are appealable.

IV. California’s “fair adversary hearing” premise must be read in light of the neutral-tribunal requirement.

California equity doctrine does not rest finality on mere procedural opportunity to speak. It rests finality on the existence of a fair adversary hearing. As this Court explained, “equity’s jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action.” (*Olivera v. Grace,*

supra, 19 Cal.2d at p. 575.) *Kulchar* and *Kachig* apply the same rule, relieving from final judgments where the complaining party was “fraudulently prevented from presenting his claim or defense” or otherwise denied the fair adversary hearing on which preclusion and finality depend. (*Kulchar*, supra, 1 Cal.3d at p. 471; *Kachig*, supra, 22 Cal.App.3d at pp. 632–633.)

Footnote 5 reads “fair adversary hearing” as a purely procedural concept satisfied so long as the litigant appeared and argued. That reading is in tension with the constitutional component of the phrase. A “fair” hearing under California equity doctrine cannot demand less neutrality than a “fair” hearing under federal due process, and the due process cases are clear that the adjudicator must be impartial for the hearing to count at all.

Petitioner’s integrated theory follows from that premise. He did not argue that he was prevented from physically presenting his illegality evidence in the original action. He argued that the proceeding in which he presented that evidence was not a fair adversary hearing within the meaning of California equity doctrine because the disqualification record — by operation of section 170.3, subdivision (c)(3), *Calhoun*, and *Keating* — establishes that the tribunal had pre-committed to the credibility of the very attorneys whose alleged misconduct was the disputed illegality. Whether that record-established bias negates the fair-adversary-hearing premise on which the Court of Appeal’s affirmance rests is the significant legal question this Court should resolve.

The Court of Appeal’s answer in footnote 5 — that later appellate review cures the defect — does not engage that question. It assumes its resolution. If appellate review sufficed to cure a structural bias defect, the federal structural-error cases would be wrong, and this Court has never so held.

V. The Court of Appeal acknowledged *Freeman*'s constitutional pathway but limited it to direct appeals from the underlying judgment; that limitation cannot be reconciled with *Williams*'s structural-error rule.

Unlike many forfeiture-and-review cases, the Court of Appeal here squarely engaged *Freeman*'s constitutional reservation. The opinion acknowledges that “in rare circumstances, a showing of the ‘probability of actual bias’ by the court that entered a judgment may constitute a basis to claim a violation of due process on appeal from that judgment.” (Slip Opn. 7, citing *Freeman*, 47 Cal.4th at pp. 1000–1001.) The opinion holds the constitutional pathway exists but is unavailable to petitioner because he is “not appealing the *Cotton I* Judgment.” (Slip Opn. 7–8.) Footnote 5 reinforces this limitation: the remedy for structural bias “was to appeal the *Cotton I* Judgment, not to file an independent action.”

This procedural-vehicle limitation is the precise question warranting review. The Court of Appeal's reasoning makes the constitutional pathway available only on direct appeal from the underlying judgment, and unavailable in any collateral proceeding — even where, as here, the disqualification record establishes actual bias as a matter of law and the litigant has lost the direct-appeal opportunity. That limitation cannot be reconciled with three propositions.

First, the institutional rationale *Freeman* identified — that judicial-disqualification statutes are “not solely concerned with the rights of the parties before the court” but are also “intended to ensure public confidence in the judiciary” (*Freeman* at p. 1000) — does not turn on procedural posture. The interest in public confidence operates wherever a bias claim is presented to an appellate court with authority to address it, not only on a direct appeal from the underlying judgment.

Second, *Williams v. Pennsylvania* classifies unconstitutional non-recusal as structural error precisely because such a defect “cannot be cured just by focusing on the final judgment.” (*Williams*, supra, 579 U.S. at p. 14.) The Court of Appeal’s limitation — that the only available remedy is direct appeal of the underlying judgment, where the appellate panel reviews the rulings of the same biased tribunal — asks the very thing *Williams* says cannot be done. It treats appellate review of a judgment rendered by a non-neutral tribunal as a substitute for the neutral tribunal due process required, even though the federal cases hold the opposite.

Third, the limitation is in tension with California’s own cumulative-remedies doctrine. “It is well settled in California that a judgment procured by extrinsic fraud or mistake may be attacked either by a motion in the same action or by an independent action in a court having equity jurisdiction, and that each remedy is distinct and cumulative.” (*Rohrbasser v. Lederer* (1986) 179 Cal.App.3d 290, 298, citing *Bacon v. Bacon* (1907) 150 Cal. 477, 484; *Estudillo v. Security Loan etc. Co.* (1906) 149 Cal. 556, 565; see also *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180–181 [restating cumulative-remedies rule]; *McClain v. Kissler* (2019) 39 Cal.App.5th 399, 415 [independent equitable action remains available alongside other modes of attack on a judgment].) California has never held that the past availability of one remedy categorically forecloses another remedy for relief from a judgment, and the federal structural-bias cases supply an additional reason that one of those remedies — the equitable independent action — should remain available where the disqualification record establishes structural bias as a matter of law.

Petitioner accepts that *Freeman*’s rule of statutory forfeiture under section 170.3, subdivision (d), bars him from re-litigating the disqualification ruling itself. He does not seek that result. He seeks instead the recognition that *Freeman*’s constitutional reservation — which the Court of Appeal acknowledged — reaches the present procedural posture, where the disqualification record establishes actual

bias as a matter of law and direct appeal of the underlying judgment is no longer available. Whether the Court of Appeal's procedural-vehicle limitation on *Freeman* is correct in light of *Williams* and California's cumulative-remedies doctrine is itself a question warranting review.

VI. The case has significance beyond this dispute.

The structural-bias question warrants review on its own doctrinal terms. It also has broader application. California regulates many industries in which civil disputes between applicants and asserted beneficial owners are common, including cannabis, gambling, alcohol, and numerous licensed trades. Whether a civil judgment in such a dispute, alleged to have been rendered by a non-neutral tribunal, is subject to equitable re-examination is a question that will recur. Petitioner's underlying contract-illegality theory rests on Business and Professions Code sections 19323 and 26057, which condition cannabis licensure on disclosure of every owner and financial-interest holder and bar licensure of applicants previously sanctioned for unlicensed commercial cannabis activity. Whether or not that theory is meritorious, it places the doctrinal question in a concrete regulated-industry setting and illustrates why the procedural question presented has statewide significance.

The Court should not be deterred from review by the procedural posture of this particular case. The rule announced in footnote 5 is not limited to litigants who failed to designate the record on direct appeal; it applies on its face to every litigant who alleges structural bias and who is past the window for direct review. The Court of Appeal's reasoning would resolve future cases the same way regardless of how diligently the litigant pursued direct remedies, because the rule treats the bare availability of those remedies (rather than their actual completion) as the cure. That

is precisely the kind of categorical doctrinal pronouncement that calls for this Court's clarifying review.

Petitioner does not contend that public policy alone reopens a final civil judgment. He contends only that when ordinary finality doctrine is applied without regard to whether the original hearing was constitutionally fair, the result is a rule that leaves no forum in which the fair-hearing premise itself can be tested. That is a legitimate concern of the statewide administration of justice, and a further reason why the relationship between California's finality rules and the constitutional neutral-tribunal requirement should be clarified.

VII. The petition does not ask this Court to disturb settled finality rules; it asks only that the “fair adversary hearing” premise be clarified in light of structural-bias doctrine and the deemed-admission effect of section 170.3(c)(3).

The adverse authority is real and must be taken seriously. California law disfavors successive collateral attacks. Void-versus-voidable doctrine channels most defects to direct review. Disqualification disputes are ordinarily resolved through the statutory mechanism of section 170.3 and writ review.

Petitioner accepts these principles. This petition does not contend that every forfeited disqualification claim survives as a constitutional one, that every allegation of unfairness defeats finality, or that illegality of a contract alone renders a judgment void on its face. It asks a narrower question: whether, when the disqualification record establishes actual bias as a matter of law under section 170.3, subdivision (c)(3), and when the federal due process cases treat such bias as structural error not curable by later appellate review, California's equitable finality doctrine incorporates the federal neutral-tribunal requirement as part of the “fair adversary


hearing” premise on which Olivera, Kulchar, and Kachig depend. The question is serious, unresolved, and narrow enough to resolve without disturbing the general rule.

The Court of Appeal’s footnote 5 answers that question categorically in the negative — without analysis of the structural-bias cases or the deemed-admission effect of section 170.3, subdivision (c)(3). This Court’s review is needed to decide whether that answer is correct.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court grant review. The case presents a significant, unresolved question at the intersection of California's independent-action doctrine, the deemed-admission rule of section 170.3, subdivision (c)(3), and federal structural-bias doctrine. The Court of Appeal's rehearing order crystallized the question by announcing a categorical rule that any lack of a fair hearing before the original tribunal is cured by the availability of direct appeal. That rule is in tension with *Williams* and *Rippo*; with this Court's decisions in *Calhoun*, *Keating*, and *Freeman*; and with California's own equity doctrine grounding finality in a fair adversary hearing. If review is granted, petitioner respectfully requests that this Court reverse and remand to the Court of Appeal with directions to address whether the *Kulchar* fair-adversary-hearing premise is satisfied where the disqualification record establishes actual bias by deemed admission under section 170.3, subdivision (c)(3). Review is warranted so that the relationship between these doctrines may be clarified for California trial and appellate courts.

Dated: May 5, 2026



DARRYL COTTON

Petitioner, In Propria Persona

CERTIFICATE OF COMPLIANCE

(Cal. Rules of Court, rule 8.504(d)(1))

Pursuant to California Rules of Court, rule 8.504(d)(1), I certify that this petition for review was prepared using word-processing software in 13-point Times New Roman typeface and, excluding those portions not required to be counted under rule 8.504(d)(3) (caption, tables, signature blocks, verification, certificate of word count, and proof of service), contains 6,186 words, which is within the 8,400-word limit permitted by rule 8.504(d)(1).

Dated: May 5, 2026

A handwritten signature in black ink, appearing to read 'Darryl Cotton', is written above a horizontal line.

DARRYL COTTON

Petitioner, In Propria Persona

PROOF OF SERVICE

Cotton v. Geraci, California Supreme Court Case No. _____; Court of Appeal, Fourth Appellate District, Division One, Case No. D084992

I, the undersigned, declare:

I am over the age of 18 and not a party to this action. I am employed in or reside in the County of San Diego, California. My business address is 6176 Federal Boulevard, San Diego, CA 92114.

On May 5, 2026, I served the foregoing PETITION FOR REVIEW on the following parties, in the manner indicated:

Clerk, California Supreme Court

Via TrueFiling electronic service

Clerk, California Court of Appeal, Fourth Appellate District, Division One

Via TrueFiling electronic service

Clerk, Superior Court of California, County of San Diego

330 West Broadway, San Diego, CA 92101

Via United States Mail, first-class postage prepaid

James D. Crosby, Esq. / Tereza L. Callender, Esq.

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Attorneys for Respondent Lawrence Geraci

Via TrueFiling electronic service

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 5, 2026, at San Diego, California.

A handwritten signature in black ink, appearing to read 'Darryl Cotton', is written above a horizontal line.

DARRYL COTTON

Petitioner, In Propria Persona