No. _____

In the Supreme Court of the United States

DEBORAH A. PURNELL, Individually and as Surviving Heir, Personal Representative and Successor-in-Interest of EUGENE E. PURNELL, Deceased, *Petitioners,*

vs.

ST. MARY'S HOSPITAL; DIGNITY HEALTH dba ST. MARY'S HOSPITAL; RHONDA BANKS-MOORE, Respiratory Therapist; DEBBIE SILVER, Wound Nurse; RONALD PHILIPP, M.D.; JYOYTI S. DATTA, M.D.; STEPHEN J. SCHNEIDER, M.D.; TIMOTHY SIMMONS, M.D.; and ALICE J. PARK, M.D., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

DEBORAH A. PURNELL
P.O. Box 642583
Los Angeles, CA 90064
Telephone: (310) 871-7245
Petitioner in Pro Per

QUESTIONS PRESENTED

Whether ***statutory elder abuse***[1] inherently includes acts of violence and brutalization, reckless medical care that causes life-threatening conditions such as Stage 4 or Stage 5 bedsores/wounds/ulcers,[2] and violations of the civil and human rights of the elderly and disabled. There are conflicting rulings and questions of law regarding the constitutionality of judicial decisions involving elderly and disabled persons that exclude acts of violence, reckless medical care, and civil rights violations from statutory elder abuse claims.

Whether all parties to an appeal have equal federal, state and Constitutional rights and protections under the law to ***purchase*** a true, correct and complete copy of the *Reporter's Transcript of Proceedings on Appeal, Title, Indices, and Certificates ("Reporter's Transcript on Appeal")* from the government agency that assembled, sequentially-numbered, bound and/or housed it; or whether the courts can sell the public's records to select parties in an action while refusing to sell the same records to other parties in the same action without constituting *"invidious discrimination,"* which is forbidden under the equal protection clause of the Fourteenth Amendment of the U.S. Constitution[3] and Article 1 of the California Constitution.[4]

Whether due process rights and equal protection laws under the 14th Amendment of the U.S. Constitution, Article 1 Section 3(b)(1) of the California Constitution, California Public Records Act, Freedom of Information Act, Freedom of Information Law (California), and California

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1 The definition of "elder abuse" is set forth in pertinent part in the Elder Abuse Act of 1965 aka Older Americans Act of 1965, §42 U.S.C. 3001 (revised 2016) (Pet.App.28a-44a) at p.31a(11)-(12); the Elder Justice Act (Pet.App.45a-53a) at pp.49a, §5(1) and 52a (16)(A); and in California's Elder Abuse Act [Welfare & Institutions Code §§15600-15675] (Pet.App.54a-64a) at pp.55a §15610.05(a)(1)-(2) and 64a AB2149 ¶1.

2 A Stage 4 bedsore/ulcer/wound is a life-threatening wound; however, a Stage 5 bedsore/ulcer/wound is the worse stage that a wound can develop into. Appellant Pastor Eugene Emmanuel Purnell ("Pastor") had a Stage 5 bedsore/wound on his buttocks on the day he was discharged from St. Mary's Hospital after a 5-1/2 consecutive month hospital stay. (Pet.App.143a to 148a). The Stage 5 wound/bedsore/ulcer on Pastor's buttocks caused and/or contributed to his death, which occurred one day after he was discharged to go home. (Pet.App.150a); (Decl. of Oscar Lamas, RN at Pet.App.118a, ¶19).

3 14th Amendment of the U.S. Constitution §1 recited in part at p.2.

4 Article 1, Section 3(b)(1)(4)(5)(7) of the California Constitution recited in part at p.3.

Rules of Court §8.150(a),[5] individually or collectively, grant all parties to an appeal equal rights to ***purchase*** a true, correct and complete copy of the *Reporter's Transcript on Appeal* that was assembled, sequentially-numbered, bound by the courts, and in the court's possession, custody and control.

Whether a reviewing court can perform acts that sway the outcome of an appeal without betraying the public trust and violating the federal and state mandates that guarantee the impartiality and independence of the judiciary.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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[5] California Public Records Act recited in part at p.4; Freedom of Information Act 5 U.S.C. §552 recited in part at Pet.App.65a-67a; Freedom of Information Law (California) recited in part at Pet.App.68a; and California Rules of Court §8.150(a) recited in part at p.4.

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Order by California Supreme Court filed November 15, 2017, Denying Review, attached to Appellant's Petition for Writ of Certiorari Appendix ("Pet.App.") as 1a.

Order by Court of Appeal filed September 22, 2017, denying Appellants' Motion to Set Aside the default and reinstate the appeal (Pet.App.2a)

Order by Court of Appeal filed August 24, 2017, re Default. (Pet.App.3a)

Order by the California Supreme Court filed August 23, 2017, denying Review and Application for Stay. (Pet.App.4a)

Order by California Supreme Court dated August 9, 2017, denying Review (Pet.App.5a)

Order by Court of Appeal dated August 3, 2017, notifying all parties that Appellant was in default. (Pet.App.6a)

Order by Court of Appeal dated July 20, 2017, stating in pertinent part that Appellants received a copy of the *Reporter's Transcript on Appeal* from opposing counsel and must utilize whatever they sent Appellants instead of being sold a true and correct copy from the Court of Appeal that had sole custody and control of that Transcript. (Pet.App.7a-8a)

Order by Court of Appeal dated June 22, 2017, denying Appellant's motion to correct docket entries, augment record and transfer case to another jurisdiction due to prejudice. (Pet.App.9a)

Order by Court of Appeal dated December 27, 2016, ruling in pertinent part that Appellant designated one transcript and can only use that one transcript (76 pages) on appeal instead of the 629 page transcript that Civil Appeals prepared for the appeal in this case and sold to all parties except Appellants. (Pet.App.10a-11a)

Order by Superior Court filed January 14, 2015, granting Defendants' Motions for Summary Judgments and dismissing the case without a trial. (Pet.App.12a-16a; see also, cover pages to Complaint and First Amended Complaint for causes of action (Pet.App.98a-99a)

Order by Superior Court filed October 7, 2014, granting Defendants' Demurrers and Motions to Strike First Amended Complaint. (Pet.App.17a-21a); see also, cover pages to Complaint and First Amended Complaint for causes of action (Pet.App.98a-99a)

Order by Superior Court filed August 28, 2014, granting Defendants' Demurrers & Motions to Strike First Amended Complaint re punitive damages. (Pet.App.22a-25a); see also, cover pages to Complaint and First Amended Complaint for causes of action (Pet.App.98a-99a)

Order by Superior Court filed April 3, 2014, granting Defendants' Demurrers and Motions to Strike Civil Rights violations, Elder Abuse, and Punitive Damages causes of action. (Pet.App.27a-27a); see also, cover pages to Complaint and First Amended Complaint for causes of action (Pet.App. 98a-99a)

JURISDICTION

The decision of the California Courts was final upon the denial of review by the California Supreme Court, entered on November 15, 2017. (Pet.App.1a). The Petition for a Writ of Certiorari was mailed on February 13, 2018.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a), as it involves an issue of Federal preemption under the Supremacy Clause of the U.S. Constitution (Article VI, clause 2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the U.S. Constitution, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution, Article 1, Section 3(b)(1)(4)(5)(7):

> The people have the right of access to information concerning the conduct of the people's business, and therefore, the meeting of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
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> * * *
>
> (4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.
>
> (5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
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> * * *
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> (7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) or Division 7 of Title 1 of the Government Code) . . . and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purpose of this section.

The California Public Records Act (Statutes of 1968, Chapter 1473); currently codified as Government Code §§6250 through 6276.48) states in pertinent part:

> Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state . . . access to government records has been deemed a fundamental interest of citizenship . . . maximum disclosure of the conduct of government operations [is] to be promoted by the act. . . . intended to safeguard the accountability of government to the public.
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> * * *
>
> Implicit in a democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrarily exercise of official power and secrecy in the political process.
>
> Public records are broadly defined to include "any writing containing information relating to the conduct of a public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic.

A broader definition of public records adopted by the California Attorney General stated:

> This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.

STATUTES

California Rules of Court §8.150(a) states in pertinent part:

> When the record is complete, the clerk or reporter must transmit it immediately to the Appellant.

U.S. Supreme Court, Rule 10 states in pertinent part that review of a Writ of Certiorari may be granted when:

> (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;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeal 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.

U.S. Supreme Court, Rule 11 states in pertinent part:

> A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

STATEMENT OF THE CASE

The Constitutional rights and protections of elderly and disabled persons have been increasingly denied and violated due to the vague and ambiguous definition of what constitutes "statutory elder abuse," which term is being used by the courts to defend against elder abuse claims. While federal and state legislators have gone to great lengths to enact, revise and enhance legislation and funding to aid in the fight against ***elder abuse*** in America (as set forth in fn.1), many courts are dismissing cases without a

trial due to contrary opinions and questions of federal, state and constitutional law regarding the practical application of ***"statutory elder abuse."***

The subject case is an example of how the vagueness and ambiguity of the term "statutory elder abuse" is being used by certain courts in ways that support every abusive and prejudicial act that has ever been committed by those who believe that medical providers, relatives and/or younger, more able-bodied persons should be able to exercise dominant rights over the lives, interests and decisions of the elderly and disabled, despite directives to the contrary. What occurs with this deviation of rights is that abusers always do what is in ***their*** best interest, which oftentimes involves pecuniary gain at the expense of the elderly or disabled person. Medical providers such as the ones in the subject action aggressively demanded that the Appellants do what was in their best interest, which was to allow Appellant's dad to die. The hospital administrators took that position immediately after *their* respiratory therapist ruptured open Appellant's dad's esophagus and nasal cavity during a routine suctioning of mucus procedure that had been performed numerous times a day by different respiratory therapists. (Pet.App.131a-132a). However, despite the hospital administrator's aggressive, self-serving intentions, Appellant's dad ***consciously*** fought to live (Pet.App.140a-141a), which the hospital administrators rebelled against with acts of violence, brutalization (Pet.App.142a), mutilation (Pet.App.143a-147a) and attempted murder, which the trial court concluded did not constitute a viable claim for "statutory elder abuse."

Therefore, this case is an ideal example of how the term "statutory elder abuse" is being used to undermine the intent of the Elder Abuse Acts; and until this highest Court instructs the lower courts how that term is to be used and whether or not it gives medical providers and/or abusive relatives dominant rights and powers over elderly and disabled persons to take from them whatever they please, including their lives, certain courts will use that term to do just that.

The trial court in the subject case strategically separated the term "statutory elder abuse" from ordinary "elder abuse" because ordinary "elder abuse" readily identifies acts of violence, civil rights violations and abusive acts by trusted persons or medical providers as unlawful and punishable by law, but the term "statutory elder abuse" sounds more ominous, undefined, vague and ambiguous which is why the trial court used it to disregard acts of overt violence and oppression against an elderly, disabled person so that a medical institution could impose their objectives upon a member of that

vulnerable class of individuals despite the patient's directives to the contrary. In sum, the use of the term "statutory elder abuse" has become a priceless legal tool in the courtroom to attempt to justify unscrupulous deeds which will likely continue until this Court rules exactly how and when that term is to be used and applied.

There is no doubt that there is a contingent of persons who believe that medical providers, relatives and/or more healthy persons should have the right to purge the surface population of elderly and/or disabled persons; particularly when there is an economic advantage to be had, but the Elder Abuse Acts[1] have taken firm stands against such viewpoints and actions, even to the extent of imposing enhanced remedies against those who physically and/or financially abuse the elderly and disabled; yet this and other cases are currently being denied trials despite physical, financial and civil rights violations against the elderly and disabled.

While the definitions of "elder abuse" are consistent in the various Elder Abuse Acts[1], the constitutional protections are being rendered sterile and ineffective in certain courts due to the vagueness and ambiguity of the term "statutory elder abuse" and its practical application in courts that do not agree with or respect the Legislative intent to empower the elderly and disabled with making decisions regarding their well-being. In fact, the ambiguity and vagueness regarding the term "statutory elder abuse" is further paralyzing this nation's war against elder abuse, as proven by cases like this one which was dismissed without a trial despite a plethora of material evidence of physical violence, violations of human and civil rights, and reckless medical care by trusted medical providers who prey on the elderly and disabled with a vengeance and chilling ease.

The lack of clarity in what constitutes "statutory elder abuse" has also hindered all levels of government in this country's fight against elder abuse. This Appellant contacted numerous governmental agencies about this case that were established to follow-up and/or investigate allegations of elder abuse, but despite the 3" by 5" open bedsore, wound, ulcer to-the-bone (Pet.App.144a-148a), photographs of facial bruising (Pet.App.142a), a Police Report (Pet.App.124a-127a), and allegations of violence against an 86-year old in-patient in the form of attempted murder (Pet.App.111a, ¶¶38-39), "elder abuse" support agencies, including but not limited to, the State Attorney General's office, U.S. Attorney General's office, U.S. Department of Justice, California Department of Justice, Department of Health and Welfare, Special Committee on Aging, Joint Commission, Quality Hospitals at Joint Commission, Health Insurance Counsel Advocate, National Elder

Law Foundation, National Center for Elder Abuse, Human Rights First Organization, California Health Advocates, Office of Civil Rights, U.S. Dept. of Health and Human Service, and more, refused to investigate the subject Catholic Church hospital dba Dignity Health and St. Mary's in Long Beach, California; even though there was no doubt in many person's minds, as was discussed at a Town Hall meeting with the Honorable Congressperson Karen Bass, that if Appellant's dad had come from home or a nursing facility with a wound like the one on his buttocks (Pet.App.144a-148a) on the day he died, which was one day after he was discharged with a diagnosis of "Dehydration," which is also a form of "elder abuse" (Pet.App.59a, *Winn v. Pioneer* at 74a, 75a and 112a), Appellant or someone from a nursing home would have been tried in a court of law for elder abuse and likely in jail by now; yet, none of these organizations nor the heads of various Elder Abuse Commissions, nor numerous politicians, responded that this case was worth investigating and trying in a civil and/or criminal court of law because they feared the power and influence of the wealthy Catholic Church which has convinced certain courts that brutalizing, mutilating and murdering an elderly disabled human being does not constitute statutory elder abuse.

The fact that the Department of Justice, California and U.S. District Attorneys' offices did not consider these allegations and pictorial evidence worth investigating despite the Elder Justice Act of 2009, California Elder Abuse laws and the Elder Abuse Act of 1965 aka Older American's Act (revised 2016) (see fn.2) after they were sent several of the photos and arguments set forth in Pet.App.124a to 150a), proves that while millions of dollars and hundreds of pages of legislation have been dedicated to the "elder abuse" cause, there is ambiguity and vagueness on a nationwide scale as to which specific actions are categorized as "statutory elder abuse;" and the Constitutional rights and protections of the elderly and disabled are being grossly violated as a direct result of that vagueness and ambiguity, causing viable cases of elder abuse to be dismissed without a trial.

The plight of the elderly and disabled who are being abused will continue to spread like an untreated cancer unless this highest Court clarifies to the lower courts and the public at large that certain acts of violence, reckless medical care and violations of a person's rights are inherently classified as "statutory elder abuse" which must be investigated by government officials and tried in a court of law.

The Attorney Generals' Offices' refusal to investigate is notable because the Elder Abuse Acts specifically empower them with certain powers to intervene in elder abuse claims (Pet.App.35a, 53a); and it should not be

limited to ***financial*** elder abuse which directly influences the treasury, but should also include brutalization, gross recklessness that leads to Stage 4 or Stage 5 bedsores and/or allegations of violence against an elderly or disabled person, and violations of their right to designate representation that will speak for them when they cannot speak for themselves.

Due to the conflicts in the interpretation and application of that statute, only this Supreme Court can cure the constitutional injustices that now allows elderly and disabled persons to be brutalized, mutilated and murdered without it being considered a crime. One fact is true, that when the perpetrators of hate crimes go uninvestigated and unpunished, such crimes will continue at alarming rates.

It is therefore a matter of national importance for this Court to clarify whether or not physical violence and reckless medical care that leads to life-threatening outcomes such as Stage 4 to 5 open bedsores are ***always*** grounds for a "statutory elder abuse" claim so that this country's courtrooms and agencies are clear that certain types of behavior must be investigated, prosecuted and tried. This is the only way this government can seriously hinder elder abusers because writing reports of the increasing numbers of abuses without intervening to capture and prosecute the predators is utterly ineffective because it sends a message to abusers that they can do whatever they want to this vulnerable class of individuals and get away with it, including murder; particularly when they hide behind large, wealthy institutions like the Catholic Church's Dignity Health.

In *Maxine Stewart v. St. Joseph Health Care Center; St. Mary's* Medical Center, __ Cal.App.5th (4th Dist. Div. 2) (2017), another Catholic Church Hospital called St. Mary's Medical Center in Riverside, California took over an elderly patient's rights, Anthony Carter, from his representative, Maxine Stewart, performed an unnecessary pacemaker surgery on Mr. Carter despite Ms. Stewart's objection, which surgery led to Mr. Carter's death. The trial court dismissed the elder abuse claims but the Fourth District Court of Appeal, Division Two, objected to such gross violations of civil and human rights and reversed the ruling so that the case could be tried.

There are similar elder abuse cases all over the country that have been and are now being wrongfully denied trials due to the ambiguity and vagueness of "statutory elder abuse," and the courts will continue to dismiss viable claims of elder abuse without trial if there is not clarity regarding violent acts, reckless medical care, and violations of basic constitutional rights to life which includes choosing a representative to a speak for them

concerning one's legal and medical directives. Large medical institutions must be held accountable for their abuses against the elderly and disabled in the same manner that private citizens and nursing homes are held accountable, tried and/or punished, or we are sending a message that the lives of the elderly and disabled are only as valuable as the medical providers or their caretakers deem them to be.

This case is also of public interest in that it examines whether all parties to an appeal have equal rights to **purchase** a true, correct and complete copy of the *Reporter's Transcript on Appeal* from the government agency that assembled, sequentially-numbered, bound and/or housed it, or whether a court can sell copies of public documents to favored parties and refuse to ***sell*** copies to less-favored parties to sway the outcome of the court action, which makes a distinction that violates a party's Constitutionally-protected rights to equal access and due process under the law.

In this case, the Court of Appeal, on its own,[6] ruled that these Appellants had no "right" to ***purchase*** the *Reporter's Transcript on Appeal* after the courts sold copies of said document to five opposing parties. Such an act blatantly contradicted the California Constitution that included the Public Records Act into its Constitution, which granted Appellants and all parties to an action an equal "right" to ***purchase*** a public document, in addition to the protections under the Freedom of Information Law (California) and Freedom of Information Act. (see fn.5)

Therefore, this case also involves the integrity and independence of the courts, and whether a court can lawfully forbid the sale of the *Reporter's Transcript on Appeal* to certain parties in an appeal after the courts have established its public use by selling copies to the opposing parties in the same appeal; or whether such actions violate the court's duty to uphold the integrity and independence of the judicial process, avoid impropriety, and perform the duties of the judicial office impartially, competently, and diligently.[7]

Appellants therefore request that this highest American court hear this case regarding the Constitutional rights and protections of the elderly

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6 No motion was ever brought before the Court of Appeal to prohibit the sale of the *Reporter's Transcript* from Appellants, and no case law was ever cited to support the Court's position. Division 4 independently refused to sell Appellants a true, correct and certified copy of the Reporter's Transcript that was prepared for this appeal by Civil Appeals.

7 California Code of Judicial Ethics, Canons 1, 2 and 3.

and disabled to have the ambiguity and vagueness surrounding "statutory elder abuse" clarified in order to provide consistency and fairness in the courts and governmental watchdog agencies in their handling of elder abuse claims; as well as examine the Constitutionality of a court refusing to allow an Appellant (or any party to an appeal) an equal right to ***purchase*** the *Reporter's Transcript on Appeal* which unduly influences the outcome of an appeal.

SUMMARY OF ARGUMENT

A. A Review of the term "Statutory Elder Abuse" is Needed to Effectively Change the Current Course of Escalating Elder Abuse Claims in this Country

The judicial events in this case revealed how large medical institutions avoid elder abuse trials despite photographs, declarations and claims of brutality, mutilation, attempted murder and murder under the guise that "statutory elder abuse" does not include such acts of violence and civil rights crimes on elderly, disabled patients. This case did, however, expose a valuable weapon that has been used to defeat elder abuse claims under the umbrella that "statutory elder abuse" is somehow different from ordinary elder abuse; which is how some of the most heinous crimes against the elderly and disabled have been denied trials. As a result of the use of that term to ignore brutal acts, violations of the rights of the elderly and disabled and outright murder, government agencies that were established to enforce the elder abuse laws are prevented and/or stifled from going after wealthy medical providers in the same manner they go after laypersons because of this loophole in the law which can excuse the very behavior that the Elder Abuse Acts were designed to prevent.

The legislators enacted laws to protect the elderly and disabled but because "statutory elder abuse" has redefined elder abuse to exclude brutality, violations of civil rights and murder, many elder abuse law enforcement agencies have become little more than census bureaus whose primary duty is to monitor the rise in crimes against the elderly and disabled without being able to investigate and/or prosecute large wealthy institutions. Yet, the reason that these agencies have been impotent in stopping elder abuse is because certain courts have taken away their ability to fight what is categorized as an obvious crime when committed by a layperson. Law enforcement has been paralyzed by courts like the subject court that ruled that bruises on the face of an elderly, disabled person may somehow be as justified as a giant 3" by 5" open bedsore to-the-bone on an elderly, disabled

patient. The Courts have blurred the line between good and evil, abuse and questionable care to such an extent that catching a male nurse in the act of smothering your elderly dad to death is hearsay, irrelevant, not statutory elder abuse and will not merit an investigation or trial. Only this court can take away the power that the lower courts have abused when they allowed violent acts to be committed against the elderly and disabled without allowing the matter to be tried in a court of law. Only this court clarify that "statutory elder abuse" includes violent crimes and violations of civil rights wherever it is identified, no matter if the assailant is wealthy or poor.

The photographs that are attached to this Petition as Pet.App.128a-150a were amongst the evidence that was submitted to the courts (without the narratives) as evidence of negligence, reckless medical care and abuse during Pastor's 5-1/2 consecutive month hospital stay at St. Mary's Hospital in Long Beach, California. The narratives have been added to this brief to assist in explaining the events that were heretofore explained in the Complaints and Oppositions to Defendants' Motions for Summary Judgment.

This is a story of cruelty, greed and murder; yet the courts ruled that if a wealthy institution decides that an elderly, disabled person should die for the hospital's pecuniary gain, then the laws should support that decision because the opinions of persons in positions of power should prevail over the civil and constitutional rights of elderly, disabled human beings. That is not what the law says and we are supposed to be a country of laws not men.

The most chilling part about this violation of basic human and civil rights is that most people believe or convince themselves that these type of events will never happen to them; when in fact, anytime we are sedated or unconscious (old or young), we can become at the mercy of the medical providers whom we entrusted with our care. So, if this highest Court does not find that the abuses imposed upon Appellant's dad worthy of review, perhaps it will review this matter on the grounds that if each of us live long enough to become elderly and/or disabled and are abused, the perpetrators of the crimes against us will not escape investigation and prosecution based on a court's ruling that violent abuses are acceptable under the "statutory elder abuse" umbrella.

B. Elder Abuse Affects this Entire Nation and the term "Statutory Elder Abuse" is Now Being Used to Distort Constitutional Protections for the Elderly and Disabled

The United States Government and Worldwide Health Organization

have both acknowledged the travesty and growth of elder abuse throughout the world; yet the ambiguity and vagueness of the term "statutory elder abuse" has allowed the courts and public agencies to categorize violent acts and reckless medical care as lawful when certain medical providers, particularly wealthy ones, are the accused. The Elder Justice Act of 2009 reports in pertinent part that:

> (2) Each year, anywhere between 500,000 and 5,000,000 elders in the United States are abused, neglected, or exploited.
>
> (3) Elder Abuse, neglect and exploitation have no boundaries, and cross all racial, social class, gender, and geographic lines.
>
> (4) Victims of elder abuse, neglect, and exploitation are not only subject to injury from mistreatment and neglect, they are also 3.1 times more likely . . . to die at an earlier age than expected. (Pet.App.45a(2)-(4))

We have the statistics and are well aware of the escalating crimes against the elderly and disabled. Yet, as a direct result of the ambiguities and vagueness concerning the Constitutional rights and protections of the elderly and disabled to have specific violent and intrusive acts characterized as "statutory elder abuse" by the courts and public entities, millions of elderly and disabled persons will continue to be abused, neglected and exploited without their perpetrators standing trial or having reason to cease their crimes against that vulnerable class of human beings.

The test of any law, act, code or case does not lie in its definition alone, but in the practical application of the Legislative intent. In *Brown v. Board of Education* 347 U.S. 483; 74 S.Ct. 686 (1954), this Court concluded that *"separate but equal was inherently unequal."* This Court ruled that federal and state laws establishing separate schools for Black and White students was unconstitutional, and racial segregation was ruled to be a violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution. While this ruling paved the way for integration and was a major victory in the civil rights movement, the decision did not spell out any sort of method for ending racial segregation in schools, so the Court's ruled in Brown II (349 U.S. 294 (1955)) that the states were to desegregate *"with all deliberate speed."*

However, despite these rulings, it was eight years later in 1963, at the University of Alabama in Tuscaloosa, Alabama, when Governor George Wallace in a symbolic attempt to keep his inaugural promise of *"segregation*

now, segregation tomorrow, and segregation forever" stood at the door of the auditorium to try to block the entry of two African American students before this country took a definitive stand that ***certain specific acts*** were contrary to the Constitutional laws. President John F. Kennedy had to issue an Executive Order federalizing the Alabama National Guard to command Governor Wallace to step aside, or be moved, before it became clear to this nation that ***certain specific actions*** such as prohibiting Black students from entering White schools was unconstitutional, prohibited by law and would be enforced by this government.

Similar to that landmark decision, this country now struggles with the practical application of the federal and state constitutions and laws against elder abuse; as the Legislative intent and objectives of those laws are being ignored or deliberately disobeyed under the shroud of vagueness and ambiguity in the interpretation of "statutory elder abuse," which allows the Constitutional rights of the elderly and disabled to be violated by the courts and law enforcement agencies at record numbers.

It is no accident that the numbers of abused elderly and disabled persons in this country has skyrocketed since the Older American's Act of 1965. The numbers have increased at such an alarming rate for the simple reason that medical providers are getting away with murder, literally. When President John F. Kennedy sent National Guard troops to enforce *Brown v. Board of Education I and II, supra,* segregation in the schools no longer escalated but dwindled into non-existence because this Court and this Government made it clear exactly what the states must do to abide by this ruling.

In a like manner, if this Court clarifies that certain acts of violence, reckless care that leads to Stage 4 or Stage 5 wounds, as well as the violation of an elderly or disabled person's rights to have their medical decisions respected, the numbers of elder abuse cases will drop because the courts and the law officials will finally have the clarification they need to punish the offenders until they are afraid to take out their ***personal evils*** on one of the most vulnerable classes of persons in human existence.

The fact that larger medical institutions such as this Catholic Church hospital dba Dignity Health dba St. Mary's Hospital in Long Beach, California can mutilate and smother elderly or disabled patients to death, demand to take over making medical decisions from the patient's representatives for the hospital's pecuniary gain, end the lives of elderly/disabled patients who are ***consciously*** fighting to live, brutalize and

mutilate their bodies without it being considered "statutory elder abuse" is a travesty before God and man; and the vagueness and ambiguity of what constitutes "statutory elder abuse" allows the Constitutional rights and protections of the elderly and disabled to be violated, which should merit review by this Court.

The smothering incident was recited in open court after Judge Vicencia granted Defendants' Demurrers and Motions to Strike Appellants' First Amended Complaint without leave to amend their causes of action for elder abuse, civil rights and punitive damages. (Pet.App.99a). Judge Vicencia reiterated that he found no "statutory elder abuse," civil rights violations, nor was he going to allow punitive damages, even though he personally refused to hear Appellants' Motion for Punitive Damages, stamped "CANCELLED" on Appellants' motion papers and returned them to her. (Pet.App.100a-101a)

The trial court ruled that Appellant's eye-witness testimony and Declaration (Pet.App.102a-113a) was "hearsay" and "irrelevant." Appellants' Nurse Expert, Oscar Lamas attested that the rupturing of Pastor Emmanuel's esophagus and nasal cavity was negligent, the wound was cared for in such a reckless manner as to lead to a life-threatening Stage 5 wound without referral to a wound *medical doctor* or wound center, evidencing that Pastor Emmanuel was misdiagnosed and not treated in the same manner a younger person would be treated; and that such conscious disregard for his health, safety and well-being constituted elder abuse that led to his death the day after he was discharged. Lamas declared that the murder attempt was deplorable and the overall medical care was below the minimum standard of care allowed by law. (Decl. of Oscar Lamas at Pet.App.114a-123a) Judge Vicencia ruled that Plaintiffs' Expert Lamas was not qualified to opine on a wound cared for by Wound Nurse Debbie Silver and her supervising doctors, nor the rupture of a patient's esophagus and nasal cavity by Respiratory Therapist Rhonda Banks-Moore, even though he is an Administrator who supervises and *teaches* nursing and causation. Judge Vicencia ruled that Lamas was not qualified to testify on causation and granted Defendants' motion to strike the testimonies of Purnell and Lamas in their entirety. Judge Vicencia therefore dismissed the elder abuse, civil rights and punitive damages causes of action and later granted summary judgment on the remaining causes of action for medical malpractice and wrongful death; after which he dismissed this case in its entirety without a trial. (Pet.App.12a-16a).

Judge Vicencia's detailed explanations for his rulings can only be found in the *Reporter's Transcript* that the Court of Appeal ***refused*** to allow

this Appellant to ***purchase*** after the courts sold copies to all the opposing parties; which violated these Appellants' constitutional right to a full appellate review.

Dignity Health dba St. Mary's Hospital betrayed Appellants' trust and committed unspeakable acts that are considered malicious, oppressive and despicable. "Malice means the "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others (Cal.Civ.Code §3294). Oppression "means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ.Code §3294). The meanings of 'oppression' and 'malice' with regard to Civil Code §3294 are explained in *Richardson v. Employers Liab. Assur. Corp.* (1972) 25 Cal.App.3d 232, 245-246, 102 Cal.Rptr. 547. 'Malice' means a wrongful intent to vex or annoy. 'Oppression' means 'subjecting a person to cruel and unjust hardship in conscious disregard of his rights. Malice and oppression may be inferred from the circumstances of a defendant's conduct. (*Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 511). "Despicable conduct" is described as conduct which is "...so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331[quoting BAJI No. 14.72.1 (1989 rev.)].) "Such conduct has been described as [having] the character of outrage recently associated with crime." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894. This conduct adequately describes the Administrators and certain employees, surrogates and/or representatives at St. Mary's Hospital in Long Beach, California during the subject hospital visit.

These Respondents never stood trial for their abuses and crimes against an elderly human being, so other Catholic Church hospitals have continued that same type of unholy rein of terror and violation of Constitutional, civil and human rights on other elderly and/or disabled patients. In *Maxine Stewart v. St. Joseph Health Care Center; St. Mary's* case (2017) __ Cal.App.5th (4th Dist. Div. 2), St. Mary's Medical Center in Riverside, California took over an elderly patient's rights from his representative and demanded to perform an unnecessary surgery which led to the patient's death. This is the same type of Constitutionally-violative actions that were performed by St. Mary's Hospital in Long Beach, where the Administrators took over making the medical decisions so the Hospital could do what was in the best financial interest for them, which was for Pastor Emmanuel to die. However, in the Riverside case, the Fourth District Court of Appeal, Division Two, objected to such gross violations of human rights.

The Court ruled that elders have a right to autonomy in their medical decisions. That Court of Appeal ruled in pertinent part:

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law . . . "The right to one's person may be said to be a right of complete immunity: to be let alone.
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> * * *
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> Speaking for the New York Court of Appeals, Justice Benjamin Cardozo echoed this precept of personal autonomy in observing, 'Every human being of adult years and sound mind has a right to determine what shall be done with his own body. . . . And over two decades ago, Justice Mosk reiterated the same principle for this court: '[A] person of adult years and in sound mind has the right, in exercise of control over his body, to determine whether or not to submit to lawful medical treatment.
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> * * *
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> Furthermore, 'the patient's reasons for refusing are irrelevant. For self-determination to have any meaning it cannot be subject to the scrutiny of anyone else's conscious or sensibilities.'

Thor v. Superior Court (1993) 5 Cal.4th 725, 731.

In *Winn v. Pioneer Medical Group, Inc.*, 63 Cal.App.4th 148, 161 (2016) (the Opinion of which is set forth in full at Pet.App.69a-84a), the California Supreme Court opined that an elder abuse cause of action requires consistent medical care like the in-patient care that Pastor Emmanuel received which caused a 3"x 5" open bedsore/ulcer to the bone (Pet.App.144a-148a) after 5-1/2 consecutive months at St. Mary's Hospital; however, the California Supreme Court denied review of all of the matters in this appeal.

The Constitutional dispute does not rest merely in the definition of "elder abuse" which the various Elder Abuse Acts have defined [see fn.2] as '[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering' (Welf. & Inst. Code, §15610.07 . . . '[t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering' (id., §15610.07, subd.(b)); . . . Recklessness, unlike negligence,

involves more than 'inadvertence, incompetence, unskillfulness or a failure to take precautions' but rather rises to the level of a 'conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.' (*Delaney v. Baker,* 20 Cal.4th at 31 (1999).

The Constitutional violations to elders and the disabled are caused as a result of the uncertainty and vagueness in what ***specific actions*** constitute "statutory elder abuse." Without clarity on this issue, courts and public agencies alike will continue to fail in their duty to fight systematic elder abuse.

The trial court in this matter dismissed Appellants' expert testimony on the grounds that a nurse cannot testify against a doctor, despite Federal Rules of Evidence 702, which state in pertinent part:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specified knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is the product of reliable principles and methods; and (c) the expert has reliably applied the principles and methods to the facts of the case.

Appellants' Administrative Supervisory Instructor Nurse Expert Oscar Lamas was more than qualified to testify regarding the substandard quality of care provided by the Respiratory Therapist that ruptured the deceased Appellant's esophagus and nasal cavity during a routine suctioning of mucus procedure that had been performed numerous time each day by different respiratory therapists because Pastor did not spit his phlegm (Pet.App.118, ¶20-119a); as well as causation regarding the reckless care of the wound that led to Pastor Emmanuel's death. Nurses can testify in areas that they have expertise in; and they can also testify as to causation. *Freed v. Geisinger Medical Center* (Pa 2009) 971, A.2d 1202; 601 Pa.233. The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. *Miller v. Brass Rail Tavern, Inc.* (1995) 541 Pa. 474, 481, 664 A.2d 525; *Commonwealth v. Jennings,* 958 A.2d 536, 540 (Pa. Super. 2008); *McClain v. Welke*r, 761 A.2d 155 (Pa.Sup.2000) [expert can testify as to causation; *Mack v. Soung,* 80 Cal.App.4th 968 (2000) [reckless withdrawal of needed medicine re bedsores]; *Carter v. Prime Health Care Paradise Valley LC,* 198 Cal.App.4th 396 (2011) [egregious withholding of medical care], *Covenant*

Care, Inc. v. Superior Court, 32 Cal.4th 771 (2004) [failure to provide medical care for physical and mental health]; *Frausto v. Yakima HMA, LLC,* 393 P.3d 776 (2017) [expert qualified to testify on causation re bedsores]; *Fenimore v. The Regents of the University,* Cal.App. Lexis 231 (2016) [deliberate indifference on Alzheimer's Disease patient].

C. This Court Has the Ability to Stop the Progression of Elder Abuse in this Country by Disarming the the Most Powerful Weapon Used to Defeat the Elder Abuse Laws called "Statutory Elder Abuse"

Elder abuse is rising in this country because the adversaries of elder abuse laws use a weapon that only this highest Court can defeat — the use of "statutory elder abuse" as a vague and ambiguous term that distorts the clarity of conventional acts of violence and civil rights denials. The unexplained, ambiguous use of that term has become a powerful weapon to distort the Legislative intent of identifying and prosecuting wrongdoings against the elderly and disabled. This case is proof that under the umbrella of "statutory elder abuse," brutalization and murder can disappear as some unknown reason why beating the face of an elderly disabled person is no longer a beating, smothering a disabled elderly person who cannot defend himself or positively identify his assailants is no longer attempted murder and reckless medial care that allow a surface skin abrasion to grow and fester over 5-1/2 months into a life threatening Stage 5 open bedsore on a well-insured elderly disabled man's buttocks is no longer one of the brightest red flags of elder abuse (bedsores) but rather a natural occurrence in medical facilities. Such a representation of elder abuse laws is a travesty before God and man, and only this Court can set that record straight with a definitive meaning for "statutory elder abuse" which is consistent with the definitions in the Elder Abuse Acts.[1]

This court has an opportunity to stop wealthy abusers who currently pride themselves in getting away with murder when they prey on the elderly or disabled who are many times alone and/or have few visitors. This court can define "statutory elder abuse" in such a way that this country can stop or at least discourage powerful elder abusers in their own medical facilities by giving protectorate agencies what they need again investigate claims of elder abuse without hesitation or respective persons; i.e., clear and definitive examples of crimes against the elderly and disabled which should place bedsores near the top of the list as signs of abuse.

The protectorates of the elder abuse laws should have the power to conduct independent examinations of elder abuse claims without the court's permission. Elder abuse prosecutions should not be limited to personal households or small nursing homes. The law should not be enforced in such a way as to let those who kill a lot hide behind those who kill a few (like the different in arresting a drug dealer on the street and stopping the flow of millions of dollars in drugs from coming into this country).

Appellant compared this case to *Brown v. Board of Education I and II* (1955) 349 U.S.294 because it was years before the right President, Legislators and U.S. Supreme Court figured out why, after the laws were on the books, was segregation continuing to grow and fester like elder abuse is growing and festering in this country today. The reason was clear – it took the right case, the right President and the right U.S. Supreme Court who were willing to take on the states and schools that refused to abide by the laws. It was a change for good whose time had come.

This is such a case wherein the material evidence in the form of over 100 photos, videos and the like should have proved that something abusive and horrific happened in the wealthy Catholic Church hospital. However, even when the doctors at Harbor General Hospital who pronounced Pastor Emmanuel dead and later refused to sign the Death Certificate so his body could be released for burial refused to challenge the powerful Catholic Church Hospital despite a 3" by 5" open wound to the bone that wreaked havoc with those doctor's conscious to such an extent that they collectively refused to sign the Death Certificate and state that anything other than that wound was the cause of death. Yet, they gave St. Mary's a pass also by refusing to call the Coroner's office like they would have if my dad had come from home or a nursing facility. Shame on them and shame on the California courts for encouraging this sort of abuse on an elderly disabled man.

On the positive side, this case had so much evidence in dispute to merit a trial that the trial court's refusal of trial forced Judge Vicencia to expose his greatest weapon against acts of elder abuse by wealthy institutions. Judge Vicencia repeated that despite Appellant's testimony of watching ICU Nurse Ernie Villado smother her dad which caused the courtroom to gasp aloud, Judge Vicencia responded in stone that he found no "statutory elder abuse" or any abuse whatsoever! To that end, we hope that this U.S. Supreme Court is committed to correct that terrible wrong.

The events in this case were not isolated to this Appellant and her dad. In fact, shortly before my dad's discharge and death, during the time that the

ICU nurses were forbidding this Appellant from sitting quietly next to her dad holding his hand for encouragement, she met others in the ICU waiting room who offered to help her fight to be by her dad's side because they were a group of many who were allowed to visit their mother in groups and my dad only had me yet I was being denied the privilege of sitting by his bedside, holding his hand as he consciously fought to live.

While in the waiting room, one Latin male in his 50s sat next to me and started crying. I had seen him for one or two days. He was alone like me. He told me that they [the hospital administrators] told him that he should let his dad die. He explained that his dad had passed out at the table while reading the newspaper but his dad was very strong and just passed out. He said he could not believe that they demanded that his dad should be allowed to die. I asked him did his dad want to live and he said yes, yes, he was sure that he wanted to live. So, I told him to help his dad fight to live any way he could. I told him that they also demanded that I let my dad die but I will help him fight to live also. My dad was transferred to a non-telemetry room so I do not know what happened to that man; however, I have contact information from him and others that I met in that hospital waiting room. This is to say that if this Court does not stop these type of medical monsters from preying on the elderly and disabled, they have no reason to stop such abuses targeted at the elderly and disabled unless and until this Courts gives them one. Eliminate the weapon that courts who oppose the rights of the elderly and disabled use to protect wealthy medical providers who get away with murder. Empower the governmental agencies with the clarity they need to go after these serial elder abusers like the courts finally prosecuted these same wealthy Catholic institutions for serial child molestation which continued for centuries until the right court and the right law enforcement agencies finally prosecuted them in the name of all that is right and just. Use your power for good and the rest of the world will thank you.

D. The Court of Appeal's Refusal to Sell an Appellant the Reporter's Transcript that was Prepared for Appellants' Appeal Affects the Constitutional Rights of all Participants in an Appeal

This petition also requests this Court hear this case to examine the far constitutional departure from the norm that occurred when Division Four of the Court of Appeal refused to ***sell*** this Appellant a true and correct copy of the *Reporter's Transcript* that was prepared for this appeal after the courts sold copies to the opposing parties; and whether a court can perform actions

that sway the outcome of an appeal without violating the integrity of the courts and Constitutional rights and protections of the parties in an appeal.

As soon as Civil Appeals completed assembling the *Reporter's Transcript on Appeal,* they sold copies to all five opposing parties in this appeal but refused to ***sell*** Appellants a copy because they said they were instructed that Appellants must get a copy directly from Division 4 of the Court of Appeal, which repeatedly refused to ***sell*** Appellants a copy.

At the same time that Appellants were denied the *official Reporter's Transcript on Appeal,* Appellants were also motioning the Court to correct the *Clerk's Transcript* because Appellant's exhibits (many of which are in Pet.App.128a-150a) were ***removed*** from Appellant's Complaint, First Amended Complaint and Oppositions to the Motions for Summary Judgment so that Appellants would have no supportive evidence to prove their case. Attached are five cover pages of motions that Appellants brought requesting that Appellant's evidence is returned to the Clerk's Transcript and Appellants are allowed to ***purchase*** a true and correct copy of the *Reporter's Transcript* that was prepared by Civil Appeals and sold to opposing counsels. (Pet.App.85a-93a)

The court ruled that the Clerk's record could be augmented with ***some*** of the pages that were removed from Appellant's court documents but Appellants must only utilize the transcript they submitted for ***inclusion into*** the *Reporter's Transcript on Appeal* (76 pages) instead of selling Appellants the 629 page *Reporter's Transcript on Appeal* that they sold to the opposing parties in this appeal. (Proof that said Transcript is 629 pages is evidenced at Pet.App.94a-96a).

Appellants rebutted that all five Respondents were able to purchase the official *Reporter's Transcript* on Appeal that Civil Appeals prepared yet most of them did not submit any transcripts to be included in the master *Reporter's Transcript,* so the Court's position that a party can only utilize the transcript(s) that they submitted to Civil Appeals to be included in the master *Reporters Transcript on Appeal* was not correct because all of the opposing parties were allowed to purchase the *Reporter's Transcript* that Civil Appeals prepared when only one or two of them (out of five) submitted transcripts for inclusion into the master *Reporter's Transcript.* Furthermore, pursuant to California Rules of Court §8.150(a), Civil Appeals should have immediately forwarded the *Reporter's Transcript* that they prepared ***to the Appellant***, but instead sold copies to the opposing parties and ***refused*** to sell Appellants a copy.

The Court of Appeal then ruled that because counsel for the Catholic Church dba Dignity Health dba St. Mary's Hospital, Carroll, Kelly, Trotter, Franzen, McKenna & Peabody ***falsely*** claimed to have forwarded Appellants a copy of the *Reporter's Transcript on Appeal* (Pet.App.97a), that Appellants had a true, correct and complete copy of the two volume set, 629 page *Reporter's Transcript on Appeal* all the time we were requesting a true and correct copy from the courts. Therefore, the Court ordered Appellant to utilize whatever garbage opposing counsel sent to them, which was 76 pages of an unknown, unverified, unsolicited, uncertified document. The Court concluded that Appellants had no right to purchase an authentic, true, correct and certified copy of the 629 page *Reporter's Transcript* that the courts sold to opposing counsel. (Pet.App.7a-8a) The Court further stated that there was nothing in the court's May 23, 2017 Order preventing Appellant her from purchasing the *Reporter's Transcript.* While a May 23, 2017 Order is unknown to this Appellant, the July 20, 2017 Order specifically stated that *"Mr. Pruett* [opposing counsel] *stated that he was providing appellant a copy of the two-volume reporter's transcript without charge. As there is no further relief to be had from this court, the motion to stay is denied . . . Appellant's opening brief is due 10 days from the date of this order"* (Pet.App.7a-8a). Therefore, the July 20, 2017 Order clearly denied Appellant's request to purchase the official *Reporter's Transcript on Appeal* and instructed Appellants to utilize a document from the Catholic Church's untrustworthy firm of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody that forged and falsified the Discharge papers of the deceased Appellant because the original discharge papers stated "Dehydration" on them, which is a form of elder abuse in and of itself.

Appellants argued they were entitled by Constitution law, the Public Record's Act, Freedom of Information Law (California) and Freedom of Information Act to ***purchase*** a true, correct and complete copy directly from the courts that assembled and/or housed it[8] but the Court of Appeal disagreed (Pet.App.2a,3a) and the California Supreme Court refused to review Appellant's arguments (Pet.App. 1a,4a,5a).

The Court of Appeal ordered Appellants to prepare an Opening Brief without the official 629 page *Reporter's Transcript on Appeal* (Pet.App.7a-8a),

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[8] Initially, Appellant believed that the *Reporter's Transcript on Appeal* was only 300 pages, then she was informed from a Civil Appeals clerk and the docket (Pet.App.94a-96a) that Volume I was 300 pages, but the entire Reporter's Transcript on Appeal was 629 pages; which is why some of Appellant's requests for the transcript state "300 page Transcript" but later states "629 or 650+ page transcript."

and when Appellants argued that the crux of their arguments and explanations on appeal were in the *Reporter's Transcript on Appeal* that Civil Appeals prepared, the Court of Appeal responded with a dismissal of the case (Pet.App.2a-3a), which the California Supreme Court refused to review. (Pet.App.1a, 4a, 5a).

The California Pubic Records Act states that the *"public interest in disclosure outweighs the public interest in nondisclosure."* In *County of Santa Clara v. California First Amendment Coalition,* 170 Cal.App.4th 1301, the court ruled in favor of unrestricted disclosure of public documents. On November 2, 2004, California voters overwhelmingly approved Proposition 59, commonly called the Sunshine Amendment, which added Article I, Section 3(b) to the California Constitution, which reads in part:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of the public bodies and the writings of the public officials and agencies shall be open to the public scrutiny. (p.3)

The U.S. Supreme Court has a history of ruling against justice that is administered to an individual depending upon whether he is "rich or poor" [which should also apply to being an attorney, pro per litigant, or any other prejudicial grounds.] (*Griffin v. Illinois* (1956) 351 U.S. 12, 17 [100 L.Ed. 891, 898]). As concluded in *Douglas v. The People of the State of California,* 372 U.S. 353, 83 S.Ct.814, 9 L.Ed.2d 811, ***"the evil of discrimination is the same,*** when discriminating against an indigent defendant; or in this case, a financially-challenged pro per appellant who repeatedly offered to ***purchase*** the *Reporter's Transcript on Appeal* but was denied the purchase, as if Appellant's currency was unclean, counterfeit and of no value in Division 4's courtroom.

The U.S. Supreme Court has guaranteed that "indigents" have an adequate opportunity to present their claims fairly within the appellate adversary system. *Ross v. Moffitt,* 417 U.S. at 612; see also *Griffin v. Illinois,* 351 U.S. 12 (indigent has right to free transcript); *Entsminger v. Iowa,* 386 U.S. 748 (1967) (indigent's right to entire record on appeal); *Draper v. Washington,* 372 U.S. 487 (1963) (indigent's right to a transcript to challenge trial court's finding of frivolity); and *Eskridge v. Washington Prison Board,* 357 U.S. 214 (1958) (right to a free transcript despite judge's finding that trial was error free). In *Eskridge v. Washington Prison Board,* 357 U.S. 214 (1958), the Supreme Court specifically ruled that it was unconstitutional for a Judge to deny a transcript on the grounds that the Judge concluded that

there was no reversible error; and that the judge's opinion was not an adequate substitute for a full appellate review.

This Supreme Court concluded that:

> When a Reporter's Transcript is denied to an indigent party, the equality that is demanded by the Fourteenth Amendment is absent because the rich man, who appeals as a right, enjoys the benefit of counsel's examination into the record, research of law, and marshalling of argument on his behalf, while the indigent or discriminated party who was already burdened by a preliminary determination that his case is without merit, is forced to fin for himself. Therefore, the indigent [or discriminated] person, where the record is unclear or the errors are hidden, has only the right to a meaningless ritual, while the rich man has a meaningful appeal.

Douglas v. The People of the State of California, 372 U.S. 353 (83 S.Ct. 814, 9 L.Ed.2d 811); (*Griffin v. Illinois* (1956) 351 U.S. 12, 17 [100 L.Ed. 891, 898]); *Rinaldi v. Yeager* (1966) 384 U.S. 305, 310, 16 L.Ed.2d 577.

While *Griffin,* supra, addressed the necessity of an indigent party to receiving a free Reporter's transcript to ensure a fair and just appellate process, the underlying premise of that case is identical to this one in that it addresses the "***discrimination***" of certain classes of people in the courts and whether American justice is just for the rich, just for persons of a certain skin color and/or just for friends of the court.

The *Griffin* principle which *"reflect[s] both equal protection and due process concerns," M.L.B. v. S.L.J,* 519 U.S. 102,120 (1996) (citations omitted) safeguards the *"right of access to the courts." Lewis v. Casey,* 518 U.S. 343, 350 (1996). The Supreme Court has repeatedly struck down barriers to providing *"the indigent [with] as adequate and effective an appellate review as that given appellants with funds . . . (Draper v. Washington* (1963) 372 U.S. 487, 496, 9 L.Ed.2d 899, 906; Fourteenth Amendment. U.S.C.A. Const. Amend. 14; West's Ann.Cal.Const. Art. 1, §7. *Bernardo v. Planned Parenthood Federation of America,* 115 Cal.App.4th 322, 9 Cal.Rptr.3d 197 (4th Dist. 2004)).

The Court of Appeal's decision not to ***sell*** Appellants a true and complete copy of the *Reporter's Transcript* after it sold copies to the opposing counsels is at odds with this Court's previous findings as cited above,

Constitutional protections of due process and equal protection under the law, the Freedom of Information Law (California), Freedom of Information Act and California Public Records Act; and merits review due to its nationwide impact on the way the courts disseminate the public's records; particularly records that carry the power to sway the outcome of an appeal, such as the *Reporter's Transcript on Appeal.*

REASONS FOR GRANTING THE WRIT

Pursuant to U.S. Supreme Court Rules 10 and 11 (recited in pertinent part at p.4), the reasons for granting this Writ are to examine the far departure by a court from the accepted and usual course of judicial proceedings; examine the vagueness and ambiguity of "statutory elder abuse" as it pertains to the Constitutional rights and protections of the elderly and disabled; and examine whether violent acts, reckless care that leads to a Stage 4 or Stage 5 bedsore, and the denial of the rights to representation should be clearly set forth as "statutory elder abuse" in order to protect the rights of the elderly and disabled.

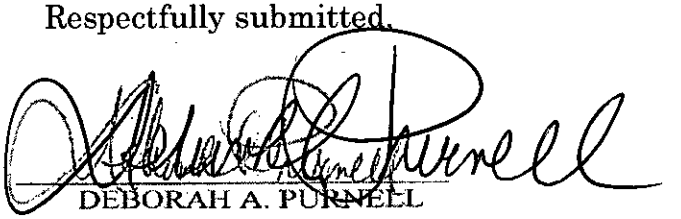
Appellant also requests that this petition is granted to examine the Court of Appeal's deviation from the normal appellate practice regarding the sale of the *Reporter's Transcript on Appeal;* and whether a court can sell the *Reporter's Transcript on Appeal* to certain parties in an appeal and deny its *sale* to other parties in the same appeal without violating the denied party's Constitutional right to due process, equal protection under the law, and a full appellate review.

CONCLUSION

Based on the foregoing, Appellants request that this Court grant this Petition for Writ of Certiorari.

Dated: 2/13/18*4/20/18*7/20/18

Respectfully submitted,



DEBORAH A. PURNELL