

No._____

IN THE SUPREME COURT OF THE UNITED
STATES

ESTATE OF MONROE F. MARSH, Deceased

MICHAEL WEISS, Individually and as Executor, etc.,
Petitioner

v,
DAMON MARSH, as Executor, etc. et. al.,
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEALS, DISTRICT
4, DIV 3

PETITION FOR WRIT OF CERTIORARI

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1. QUESTIONS FOR REVIEW

(1) Whether Full Faith and Credit can be given to the appellate opinion in G058123 and other of its specified opinions; (2) Do Code of Civ.Proc. 391.7, Code of Civ.Proc. 128.7, and/or the appellate opinion in G058123 and the prior opinions in this case it refers to, on their face or as applied, violate the First Amendment and other provisions of the Bill of Rights (3) Whether or not petitioner is himself a vexatious litigant may he challenge statute on its face as void for overbreadth in violation of the 1st and 14th amendments and (4) Whether declaring a specified grant deed to be void as a result of above alleged violations is a proper remedy in these proceedings.

STATEMENT OF RELATED CASES: 19-713 is factually and legally related and petitioner will move to consolidate.

2. LIST OF PARTIES:

Damon Marsh, Individually and as Co-Executor of Estate of Monroe F. Marsh; Stephen Marsh Individually and as Co-Executors of Estate of Monroe F. Marsh and; Michael Weiss, Individually and as Executor of Estate of Jane L. Marsh. Stephen Marsh is now deceased and Jane Hodson Marsh is Administrator of Estate of Stephen Marsh but made no appearance; and, neither has anyone else in his stead

	Page
3. TABLE OF CONTENTS	ii
1. QUESTION PRESENTED	i
STATEMENT OF RELATED CASES	
2. LIST OF PARTIES	ii
4. JURISDICTION & STATUTORY BASIS	1
5. CONSTITUTIONAL CLAUSES & STATUTES	1
6. STATEMENT OF THE CASE	1
7. ARGUMENT	4
A. VOID GRANT DEED FALLS AS RESULT OF VOID COURT OPINIONS AND SUCH DECLARATION IS NECESSARY FOR PROPER DISPOSITION OF THIS CASE	
B. CALIFORNIA'S VEXATIOUS LITIGANT	16

STATUTES AND APPELLATE OPINIONS VIOLATE
THE FIRST AMENDMENT

C. NO FULL FAITH AND CREDIT CAN BE GIVEN TO APPELLATE OPINION IN GO58123 BY THIS COURT CONCLUSION	45
APPENDIX TABLE OF CONTENTS	
1. Opinion Filed 8-30-19 Dismiss Appeal G058123	1
2. Minute Order Filed 6-4-19 Granting Final Probate Distribution, and re: Objections and Cross Complaint	2
3. Minute Order Filed 7-31-19 Denying Motion to Vacate Pre Filing Order and Remove Name From Vexatious Litigation List & Form Order	7
4. Minute Order Filed 2-7-17 CCP 391.7 Vex Litigant	9
5. Order Filed 2-10-15 CCP 128.7 Vex Lit (Partial)	14
6. Consolidation Order filed 8-12-10	17
7. Order filed 11-20-19 Cal Supreme Court	22
8. Constitutional Clauses & Statutes Involved	23
9. Time, Method & Manner of Raising & Denying Federal Issues	38
A. Prior Restraint	38
B. U.S. Constitution Rights	42
C. Fundamental Principles	51
D. Lack of Juris in Probate & Unclean Hands re \$640,000 cashier check	52
E. J.L.M Notice of Election to take Under Law	54
F. Ct Appeal Acknowledge Heir Could Pay	56
Mortgage	
G. Unfairness Issue	56
H. False Recitals in Orders	58
10. Other Materials Essential to Understanding the Petition	59
A. Trust Deed Payoff Docs	59

TABLE OF AUTHORITIES
CASES

<u>Aitchison v. Bank of America Nat. Trust & Savings Ass'n</u> (1937) 8 Cal.2d 400 [65 P.2d 890].....	16
<u>Armstrong v. U. S.</u> (1960) 364 U.S. 40 [80 S.Ct. 1563].	17
<u>Bond v. U.S.</u> (2011) 564 U.S. 211 [131 S.Ct. 2355, 180 L.Ed.2d 269].	52
<u>Cantwell v. State of Connecticut</u> (1940) 310 U.S. 296 [60 S.Ct. 900, 84 L.Ed. 1213].	41
<u>Carroll v. President and Com'rs of Princess Anne</u> (1968) 393 U.S. 175 [89 S.Ct. 347, 21 L.Ed.2d 325].	35
<u>Citizens' Savings & Loan Ass'n v. City of Topeka</u> (1874) 87 U.S. 655 [22 L.Ed. 455, 20 Wall. 655].....	18
<u>Cox Broadcasting Corp. v. Cohn</u> (1975) 420 U.S. 469 [95 S.Ct. 1029, 43 L.Ed.2d 328].	31
<u>Dennis v. United States</u> (1951) 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137].	41
<u>Fleisher v. Continental Auxiliary Co.</u> (1963) 215 Cal.App.2d 136 [30 Cal.Rptr. 137].	10
<u>Harrison v. St. Louis & S.F.R. Co.</u> (1914) 232 U.S. 318 [34 S.Ct. 333, 58 L.Ed. 621].	31
<u>Holder v. Humanitarian Law Project</u> (2010) 561 U.S. 1 [130 S.Ct. 2705, 177 L.Ed.2d 355].	43
<u>Koontz v. St. Johns River Water Management Dist.</u> (2013) 570 U.S. 595 [133 S.Ct. 2586, 186 L.Ed.2d 697].	49
<u>Louisville Joint Stock Land Bank v. Radford</u> (1935) 295 U.S. 555 [55 S.Ct. 854, 79 L.Ed. 1593].....	16
<u>Luckett v. Panos</u> (2008) 161 Cal.App.4th 77.....	39
<u>Luscomb v. Fintzelberg</u> (1912) 162 Cal. 433 [123 P. 247]B	
<u>In re Marriage of Marsden</u> (1982) 130 Cal.App.3d 426 [181 Cal.Rptr. 910].	12
<u>In re Marriage of Moore</u> (1980) 28 Cal.3d 366 [168 Cal.Rptr. 662].	12
<u>Marsh v. State of Ala.</u> (1946) 326 U.S. 501 [66 S.Ct. 276,	

90 L.Ed. 265].	42
<u>Members of City Council of City of Los Angeles v. Taxpayers for Vincent</u> (1984) 466 U.S. 789 [104 S.Ct. 2118, 80 L.Ed.2d 772].	44
<u>Near v. State of Minnesota ex rel. Olson</u> (1931) 283 U.S. 697 [51 S.Ct. 625, 75 L.Ed. 1357].	41
<u>Organization for a Better Austin v. Keefe</u> (1971) 402 U.S. 415 [91 S.Ct. 1575, 29 L.Ed.2d 1].	23
<u>Peltz v. Clarke</u> (1831) 30 U.S. 481 [5 Pet. 481, 8 L.Ed. 199].	15
<u>Phelps v. American Mortg. Co.</u> (1940) 40 Cal.App.2d 361 [104 P.2d 880].	10
<u>In re R.H.</u> (2009) 170 Cal.App.4th 678.	39
<u>Schneider v. State of New Jersey, Town of Irvington</u> (1939) 308 U.S. 147 [60 S.Ct. 146, 84 L.Ed. 155].	41
<u>Scott v. McNeal</u> (1894) 154 U.S. 34 [14 S.Ct. 1108, 38 L.Ed. 896].	20
<u>St. Romes v. Levee Steam Cotton-Press Co.</u> (1888) 127 U.S. 614 [8 S.Ct. 1335, 32 L.Ed. 289].	46
<u>Surowitz v. Hilton Hotels Corp.</u> (1966) 383 U.S. 363 [86 S.Ct. 845, 15 L.Ed.2d 807].	44
<u>Thomas v. Collins</u> (1945) 323 U.S. 516 [65 S.Ct. 315, 89 L.Ed. 430].	41
<u>Thompson v. Whitman</u> (1873) 85 U.S. 457 [21 L.Ed. 895].	
<u>Town of Castle Rock, Colo. v. Gonzales</u> (2005) 545 U.S. 748 [125 S.Ct. 2796, 162 L.Ed.2d 658].	10
<u>Tulsa Professional Collection Services, Inc. v. Pope</u> (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565].	
<u>U.S. v. Butler</u> (1936) 297 U.S. 1 [56 S.Ct. 312, 80 L.Ed. 477].	19
<u>U.S. v. Dunn</u> (1925) 268 U.S. 121 [45 S.Ct. 451, 69 L.Ed. 876].	13
<u>U.S. v. James Daniel Good Real Property</u> (1993) 510 U.S. 43 [114 S.Ct. 492, 126 L.Ed.2d 490].	40
<u>Vance v. Universal Amusement Co., Inc.</u> (1980) 445 U.S.	

308 [100 S.Ct. 1156, 63 L.Ed.2d 413].	45
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STATUTES

28 U.S.C. 1257.	6
28 U.S.C. 2403(e).	7
42 U.S.C. 1983.	21
Cal. Const. Art. 6 Sec 4.	14
U.S. Const. Art 3 Sec 2.	6

CITATION OF OPINIONS ENTERED IN THE CASE:

2012 WL 385441; 2012 WL 384625; 2012 WL 606-3534;	
2014 WL 266-7709; 2016 WL 658-1173; 2016 WL 657-6490;	
2016 WL 667-0443; 2018 WL 173-7161; 2018 WL 173-7177;	
139 S.Ct. 1558, 203 L.Ed.2d 714 [2019 WL 1590263]; 139 S.Ct. 2768, 204 L.Ed.2d 1149 [2019 WL 2570769]	

4. JURISDICTIONAL BASIS

This petition is filed under U.S. Const. Art 3 Sec 2, this Courts inherent jurisdiction, 28 U.S.C. 1257 and Rule 12(4), 13(3), [and 24(a)(1)], re infringement of U.S. Constitutional rights, privileges and immunities as specified in Appx 9(A-) p. 38-60. The date of the last opinion sought to be reviewed is 8-30-19 in G058123 and per Rule 12(4) all the judgments in this case of the California 4th Appellate District are sought selective and permissive review of as authorized by this Court. No petition for rehearing was filed in Court of Appeals. A petition for review was denied by California Supreme Court on 11-20-19. Per Rule 29.4(c), 28 U.S.C. 2403(e) may apply.

5. CONSTITUTIONAL PROVISIONS AND STATUTES

See Appx 8.

6. STATEMENT OF THE CASE

The following facts are taken from Appx 10 (judgment roll evidence Probate Code 1050): On 11-22-09 Monroe F.

Marsh died. On 11-23-09 Jane L. Marsh his wife elected to take her rights under law and not under Monroe's last will. On 12-28-09 the trustee on Monroe Marsh's trust deed gave notice of default. On 2-4-10 Weiss purchased a \$638,963.86 cashiers check which he loaned to his mother Jane L. Marsh so she could acquire whatever interest Monroe Marsh held in the Irvine condo. On 3-3-10 Jane L. Marsh contracted to sell the Irvine condo to Weiss. On 3-11-10 Weiss sent a letter to mortgage lender with inquiry about the execution of the reconveyance deed; and, on 3-17-10 a reconveyance deed was filed, showing its execution date on 2-23-10. For review is the final opinion in G058123 dated 8-30-19 (Appx 1 p. 1). G058123 concerns a petition and order in probate for final distribution which was granted; and, an objection and cross complaint under 42 U.S.C. 1983 which was denied (Appx 2 p. 6), and a 7-31-19 Minute & Form Order denying application to Vacate a Vexatious Litigant Order and to reopen the probate final distribution

proceedings (Appx 3 p. 8). The initial appeal decision in G044938 and all subsequent opinions (except appeal over granting probate of Monroe's last will) concerned only questions of law. G044938 refused to determine the \$640,000 reimbursement matter, and ordered Jane L. Marsh to file any new pleadings in the court sitting in probate according to probate law and practice; so, Jane L. Marsh immediately filed 11 probate petitions because each proceeding in probate is separate and independent from others (instead of one amended civil complaint) all of which were dismissed on res judicata and related grounds, for which filings and dismissals two vexatious litigant prior restraint orders were entered (Appx 4 p. 10 & 5 p. 17) which have operated to deprive her executor of right to appeal in the present and past. About \$1.3 million of Jane L. Marsh's separate and community interests has been distributed to her husbands last will devisees, some

\$530,000 to their attorney Mr. Magro. The California Supreme Court denied review on 11-20-19 (Appx 7 p.46). Petitioner contends the appeal and trial courts failed to read Petitioners papers which resulted in half truths mis-determined that Jane L. Marsh had no property interests.

"Half a truth is often a great lie." ~ Benjamin Franklin.
"Independence means you decide according to the law and the facts." ~ Stephen Breyer, Supreme Court Justice. "There are loads of countries that have nice written constitutions like ours. But there aren't loads of countries where they're followed." ~ Stephen Breyer, Supreme Court Justice. "By failing to prepare, you are preparing to fail." ~ Benjamin Franklin

7. ARGUMENT

A. VOID GRANT DEED FALLS AS RESULT OF VOID COURT OPINIONS AND SUCH DECLARATION IS NECESSARY FOR PROPER DISPOSITION OF THIS CASE.

Town of Castle Rock, Colo. v. Gonzales (2005) 545 U.S. 748, 757 [125 S.Ct. 2796, 162 L.Ed.2d 658] held that although the underlying standard of property interest existence is created by state laws, federal constitutional law determines whether that interest rises to a legitimate

claim of entitlement protected by the due process clause.

The following California cases show Jane L. Marsh's entitlement to the Irvine condo because of Monroe's F. Marsh's trust deed trustee reconveyance deed to her:

Fleisher v. Continental Auxiliary Co. (1963) 215 Cal.App.2d 136, 139 [30 Cal.Rptr. 137] Phelps v. American Mortg. Co. (1940) 40 Cal.App.2d 361, 373-374 [104 P.2d 880] and Citrus El Dorado, LLC v. Chicago Title Co. (2019) 32 Cal.App.5th 943, 949 [244 Cal.Rptr.3d 372]. They all echoed the California principle of law that a trustee under a trust deed is not an ordinary trustee with fiduciary duty because he is some kind of double agent for the mortgagee and mortgagor thus having inherent conflict of interest; but takes his power per contract. Fleisher cited the Carpenter case for the holding that if a power to convey under prescribed conditions is contained in the trust deed it is the trustee's ministerial duty to so reconvey. And so did the

Citrus court. In our case trustee MERS exercised its contract power of disposition and followed paragraphs 10 and 16 of Monroe's trust deed making it's reconveyance deed a fully executed contract under Civil Code 1034. The following California laws show Jane L. Marsh's entitlement to the Irvine condo: California Constitution article 1 section 21 (separate property) in conjunction with article 1 section 26 (mandatory and prohibitory clause); Fam. Code 751; Probate Code 7000 (devisees take subject to the rights of others namely Jane L. Marsh's and Estate of Jane L. Marsh); Probate Code 100 (community property and accumulations and Moore-Marsden interests (In re Marriage of Moore (1980) 28 Cal.3d 366 [168 Cal.Rptr. 662] In re Marriage of Marsden (1982) 130 Cal.App.3d 426 [181 Cal.Rptr. 910]); and Probate Code 6600(b) & (c) (Irvine condo excluded from Monroe's estate). Because the judgment roll evidence (Appx 10) showed Jane L. Marsh

had entitlement to her separate property interests the converse must be said about Respondent entitlement to it and the lack of the probate and appeals court subject matter jurisdiction over it. There is no prohibition in California law against inserting powers of appointment in trust deeds and so today this Court may take opportunity to create some new common law precedent for the benefit of all US and foreign citizens who may have property in California and want to insert a power of appointment regarding it, in addition to its existing 16 cases. Across the globe some approximate 8 billion persons must dispose of their property, whether it be by way of inter vivos power of appointment or by last will. Individuals, corporations, associations, partnerships, and even the federal and state governments all must dispose of their property.

U.S. v. Dunn (1925) 268 U.S. 121 [45 S.Ct. 451, 69 L.Ed. 876] and Luscomb v. Fintzelberg (1912) 162 Cal. 433, 443

[123 P. 247] both echoed the same principle of law. In our case Jane L. Marsh and petitioner never dismissed her appeals concerning her right to restitution in specie. In the Dunn case as an ours Respondent knowingly misused their fiduciary power to dispose of Jane L. Marsh separate property under the guise that it was property belonging in the estate of her deceased husband and did so to benefit themselves. Their petitions to confirm sale of the Irvine condo and distribute its proceeds were hence feigned controversies resulting in feigned orders. Jane L. Marsh and Estate of Jane L. Marsh pleadings always sought in the alternative either restitution of title or reimbursement as in the Dunn case. Because the court sitting in probate had no subject matter jurisdiction over Jane L. Marsh's separate property including the Irvine condo since her civil cause was assigned for all purposes to Judge Banks; and because the Cal. Const. Art. 6 Sec 4 in conjunction with

Art. 1 Sec. 26 prohibited dismissal by any other Department of Court; and because prior restraints were prohibited per Cal. Constitution Art 1 Sec 2(a) (Appx), the California Judiciary and Legislature had no U.S. Constitution 10th Amendment power to impose prior restraint, nor dismiss the civil cause, nor take subject matter jurisdiction of her separate property. Further, because of violation of other U.S. Constitution clauses including its Due Process, Equal Protection, Association, Petition, and the fundamental principles recognized thereunder. This court is asked to declare void the grant deed from Monroe's co-executors to Mr & Mrs Yi for the Irvine condo. This remedy would clear the title back to Jane L. Marsh. This remedy appears more direct than under the doctrine that equity regards as done that which ought to have been done by way of imposing a constructive trust order upon the Yi's. Estate of Jane L. Marsh today has no adequate remedy at law left.

Peltz v. Clarke (1831) 30 U.S. 481, 483-484 [5 Pet. 481, 8 L.Ed. 199] is nearly identical to the facts in our case because Jane L. Marsh paid the underlying \$640,000 debt per paragraphs 10 and 16 of her deceased husband's trust deed and did so on her own behalf and became the owner of whatever Monroe had conveyed to his trustee under his trust deed. In our case the only difference is the existence of a trust deed in addition and subsequent to a reverse mortgage contract.

Aitchison v. Bank of America Nat. Trust & Savings Ass'n (1937) 8 Cal.2d 400, 404 [65 P.2d 890] as applied to the facts of our case holds that after the reconveyance deed was executed, delivered and accepted by Jane L. Marsh, that Respondent were strangers to the reconveyance deed as well as whatever title Monroe held theretofore.

Louisville Joint Stock Land Bank v. Radford (1935) 295 U.S. 555, 601 [55 S.Ct. 854, 79 L.Ed. 1593] held that a

statute, as applied, violated the U. S. Constitution Fifth Amendment by taking from one person his property interest lien rights and giving them to another private person without paying compensation, making the statute void and requiring reversal of the court's judgment. This Court held that in order to accomplish that goal the plaintiff must resort to eminent domain proceedings (Id. p. 602). In our case Monroe's co-executors never filed or proved up an eminent domain proceeding so the appellate opinion in G058123 represents a attempted destruction of Estate of Jane L. Marsh's separate property as in the cited case (Id. p. 594).

Armstrong v. U. S. (1960) 364 U.S. 40 [80 S.Ct. 1563] held the same as in Louisville, *supra*. In bankruptcy the bankruptcy statutes, like the probate statutes in California, do not enlarge nor diminish the substantive rights or privileges of a mortgagee (Id. p. 582); and, the bankruptcy

court power to allow possession to trustees is just a stay premised upon the assumption that all of the mortgagee's rights will remain intact. The High Court said as applied to our case (Id. p. 46) that the mortgage law did not prohibit subsequent trust deed contract arrangements of the owner. In our case Jane L. Marsh's contractual trust deed rights and interest in the Irvine condominium under paragraphs 10 and 16 related back to the day Monroe F. Marsh executed his trust deed in October 2002.

Citizens' Savings & Loan Ass'n v. City of Topeka (1874) 87 U.S. 655 [22 L.Ed. 455, 20 Wall. 655] held that even in the absence of a U. S. Constitution Clause prohibiting taking of property without paying compensation, there was at common law an implied limitation built into every state government prohibiting the same (Id. p. 663). It gave as applied to our case the example of taking Jane L. Marsh's title and security interests in the Irvine condo and

distributing it to her husband's devisees. This implied duty rest upon not just the legislative and executive departments but also on the Judiciary (Id. p. 664-665).

Finally this Court held that, as applied to our facts, payment by the purchasers to the co-executors did not work any estoppel because the sale was void and no payment in regards to it can create of itself the power which never existed (Id. p. 667).

U.S. v. Butler (1936) 297 U.S. 1 [56 S.Ct. 312, 80 L.Ed. 477] first answered a lack of standing contention by holding the tax imposition was merely a step in an unauthorized statutory scheme (Id. p. 58). The same is true in our case of the prior restraint opinion in G044938 and the statutory prior restraint orders. All powers of the State judiciary are, as in the rest of the law, powers that are either conferred, retained, or prohibited; and, without original power there is nothing but usurpation which under the normal law of

agency cannot be ratified (Id. p. 78). The powers delegated may be express or implied but attainment of a prohibited end may not be accomplished under the pretext of the exercise of powers which are conferred (Id. p. 68) any more than under an ostensible (Id. p. 69) exercise of such powers. Misuse of U. S. Constitution 10th Amendment State Power to wrest away not only Jane L. Marsh's title interest but also her \$640,000 cash and security interest in order to "give" a small portion of it to Monroe's devisees and the majority of it, some \$530,000 to their attorney Stephen Magro has occurred.

Scott v. McNeal (1894) 154 U.S. 34 [14 S.Ct. 1108, 38 L.Ed. 896] held that no state department whether legislative, judicial, or executive, can declare by mere pronouncement anything on any matter without fundamental jurisdiction; and, if such pronouncement takes property of another without payment of just compensation

it violates the U. S. Constitution Due Process Clause (Id. p. 50-51). Devisees and purchasers pursuant to same acquire no property rights (Id. p. 49). In the cited case this Court held by way of writ of error a direct attack on the State Supreme Court opinion; and allowance of a collateral attack on the trial court orders of the court sitting in probate (Id. p. 37, 45, 47, 49). In our this court may wish to take collateral review of trial court orders and other appellate opinions; and, not just the last appellate opinion because if the court sitting in probate had no fundamental jurisdiction over Jane L. Marsh's separate property neither did the Appeals Court; and, every act of Monroe's personal representatives were likewise void and they became trespassers (Id. p. 49). When the absence of fundamental jurisdiction appears during a direct attack by proof in the ROA; or, by proof in the judgment roll on collateral attack, the fundamental jurisdiction is impeached (Id. p. 50). Code

of Civ. Proc. 1916 is declaratory of the same principle of law. (Appx 8) "By ensuring that no one in government has too much power, the Constitution helps protect ordinary Americans every day against abuse of power by those in authority." ~ John Roberts, Supreme Court Justice. "The Supreme Court, of course, has the responsibility of ensuring that our government never oversteps its proper bounds or violates the rights of individuals. But the Court must also recognize the limits on itself and respect the choices made by the American people." ~ Elena Kagan, Supreme Court Justice. "A judge can't have any preferred outcome in any particular case. The judge's only obligation - and it's a solemn obligation - is to the rule of law." ~ Samuel Alito, Supreme Court Justice.

B. CALIFORNIA'S VEXATIOUS LITIGANT STATUTES AND APPELLATE OPINIONS VIOLATE THE FIRST AMENDMENT

California's vexatious litigant scheme including Code of

Civ.Proc. 391.7 is grounded on content namely petition clause speech including but not limited to pleadings, motions and appeals. Nothing requires the injunction to be limited to a pending case as a remedy therein but is a statute designed to regulate the rights of persons to file in the California federal and state courts as a matter of general public statutory regulation of speech. Code of Civ.Proc. 391.7 does not even require a finding of unlawful or unconstitutional speech to make its status determination. Content is also considered when determining the validity of subsequent restraints. Code of Civ.Proc. 391.7 authorizes the supervising judge/justice (hereafter referred to as censor) to restrain a subsequent pleading or appeal based on content; namely, solely to harass or solely to delay and the word “solely” implies no combination of the two states of mind (Appx 4 shows no sole state of mind). Code of Civ.Proc. 391.7 is a prior

restraint on the exercise of free speech in the condemnatory sense- that is- not issued as a remedy in a specific case based upon a finding of prior adjudication of unlawful speech. See *Organization for a Better Austin v. Keefe* (1971) 402 U.S. 415, 418-419 [91 S.Ct. 1575, 29 L.Ed.2d 1] (injunction operates not to redress private wrongs but to suppress speech on the basis of previous speech) and *Near v. State of Minnesota ex rel. Olson* (1931) 283 U.S. 697 [51 S.Ct. 625, 75 L.Ed. 1357] (injunction not aimed at redress of private wrongs by way of punishment; but, suppression). In our case the RT reveals that Trial judge said she would issue it even in the absence of a pending case and she issued her 2nd prefiling order because her first prior restraint order under Code of Civ.Proc. 128.7 (Appx 5) was not effective to terminate Weiss from filing any new papers; and, it was applied whether or not he was in pro per on his own behalf and hence is being used to prohibit his filing

new litigation on behalf of his client. The RT of Trial judge's 2nd prefiling order shows she made no finding of fact that any prior filings by him or his client contained unconstitutional or unlawful speech but simply because he probably would file more papers since the probate case was not finished but had one more final distribution proceeding to go. Code of Civ.Proc. 391.7 is initially not directed merely at the message content but also at the reaction of the listener decisionmaker who determined whether the speech should win or loose a motion, case, or appeal, as it requires proof of 5 "lost" motions within 7 years. Code of Civ.Proc. 391.7 does not require the loss to be on the merits but could be for failure to state a viable cause of action etc. This court has noted that the people who voted in the First Amendment did so because of their hostility to prior restraints and there is not one case in the history of the U.S. Supreme Court dealing with prior restraint statutes

like that of Code of Civ.Proc. 391.7, et seq which restrains as a matter of general law and not as a matter of injunctive relief in a pending case. Without a ruling from this court today it is easy to see that more than the existing 7 other states such as Texas in Case No 19-713, will enact similar statutes and the loser would be free speech which means the loser is the United States of America whose interest it is in upholding the First Amendment rights, privileges and immunities from encroachment by the states of the Union. Code of Civ.Proc. 391.7 did not even require a new summons or complaint in its in rem special proceedings under Title 3A to alter the legal status of a person; nay, just a motion and no newspaper publication even then. California law does not allow status changes in other cases such as in divorce to be made by simple motion practice. Every cause of action is a form of property yet it is taken without payment of just compensation under Code of

Civ.Proc. 391.7 and furthermore the very existence of the statute infringes upon every other right under the United States Constitution. Even if a new litigation concerns national security emergency needs alleging imminent physical destruction of the United States it will be prohibited from filing; and 6 weeks was the average time of censor judge review in our case. The right to jury trial is taken away, and procedural and substantive rights fundamental under the United States Constitution are taken away. Code of Civ.Proc. 391.7 is viewpoint based. Petitioners case could have been “lost” due to a biased prosecutor or biased judge as Petitioner’s cross-complaint under 42 U.S.C. 1983 alleged. In our case Respondent had no standing under Code of Civ.Proc. 1008(b) & (e) (Appx 8) to file their 2nd motion for a prefiling order because those subsections were express mandatory and jurisdictional requirements; yet despite challenge thereunder both trial

and appeals refused to quash it. Code of Civ. Proc. 1008(b) & (e) prohibited judicial entertainment of the motion because the declaration accompanying it did not identify the judge to whom the first motion for a prefiling order was made. More to the point void orders/opinions lead to not only further void orders but also void personal representative transactions when grounded on such initial void order/opinion such as the first through final probate distribution orders and appeals. In our case the prior restraint orders are not merely void due to absence of California subject matter jurisdictional requirements; but, due to violation of the U.S. Constitution Free Speech, Petition, Due Process (procedural and substantive), Equal Protection, Excessive Punishment and State Power Clauses. California Code of Civ. Proc. 367 limits standing to real parties in interest; yet, Respondent showed no connection to any John Doe or Mary Jo let alone any

connection with the filings against them by way of what occurred in this case because Jane L. Marsh's separate property was never a part of her deceased husbands probate estate and hence it was beyond the State's 10th Amendment power to order she must litigate her contract rights in probate. Respondent never had constitutional standing to file a 2nd motion for a prefiling order seeking a worldwide remedy on behalf of all the possible defendants in the world. Code of Civ.Proc. 391.7 also unnecessarily burdens the federal courts by requiring them to expend their resources and their time by reviewing new litigation to determine whether it was filed solely to harass, solely to delay, or had no merit, as contrasted with the federal test of colorable merit. Yet the California legislature failed to allocate any money to the federal courts to perform such services. The California Legislature in Code of Civ.Proc. 391.7 acted as a worldwide monarch to have federal and

state courts in California police against its self defined classification of vexatious litigants in order to prohibit them from filing any new litigation; and, the remedy is all or nothing because either permission is granted to file a new litigation or it is denied as there is no authority in Title 3A to merely strike out various paragraphs or causes of action. The federal courts fashion their own remedies, are bound by their own practices and procedures, as well as the U.S. Constitution Art 4 Sec 2 jurisdictional requirements which are supreme. Code of Civ.Proc. 391.7 imposes a status discrimination just like age, race, and gender discrimination. The application to file new litigation begins with the words "I am a vexatious litigant". Hence subconscious stereotyping is perpetuated instead of giving a completely neutral examination to a proposed pleading. The public may view such applications; and, regard vexatious litigant's as being an unpopular group, yet not

grounded on any prior adjudication of unconstitutional speech and hence for reasons beyond their control as measured under the U.S. Constitutional Free Speech Clause. Are vexatious litigants a new class of persons entitled to special U.S. Constitutional protection similar to race, religion, sex, or national origin. Everyone in the world is thus invited to discriminate against them as their privacy rights in identity is not required to be shielded as in Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469 [95 S.Ct. 1029, 43 L.Ed.2d 328]. The goal and purpose of the United States Constitution is elimination of discriminatory bias in all systems; the Equal Protection clause and every other clause in the United States Constitution is so geared.

Create your own blacklist against your litigant losers by use of numbers says the California Legislature to other states in the union and to the governments of other countries. Petitioners seek a permanent injunction against

further enforcement of such prior restraint, overbreadth, discrimination and annulment of all opinions herein and statutes grounded on prior restraint.

Harrison v. St. Louis & S.F.R. Co. (1914) 232 U.S. 318 [34 S.Ct. 333, 58 L.Ed. 621] said:

“The assignments of error in general terms assail the overruling of the demurrer, the striking of matter from the answer, and the final decree. The propositions, however, which are urged at bar to sustain these general assignments, are numerous and we think in some aspects redundant. We hence come to consider the fundamental propositions necessary to be taken into view in order to determine whether the court below was right in holding that the law under which the secretary of state acted, as well as the action of that officer, was void because inconsistent with the judicial power of the United States, reserving until that is done such separate consideration of the propositions relied on as we may deem it necessary to make.”

As in the Harrison case this petition for certiorari seeks review collaterally or permissively of everything from the first appeal to the last; and, it may be that the dispositive issues are whether the appellate opinions in G0449382 and G058123 are void because inconsistent with the States 10th

Amendment power; or, the United States power (Id.p. 3 to 7), or are not entitled to Full Faith and Credit. G044938 directed Jane L. Marsh to file all her future pleadings in the state superior court sitting in probate according to probate law and procedure which operated to prevent free speech in the form of diversity removal to the federal courts because both Stephen and Damon Marsh (Monroe's co-executors) were residents of Utah and when removal to the federal court was suggested it was vociferously objected to and quashed. The right to file in federal court should not be restrained controlled or burdened by state authority; and, it followed that when a state statute penalizes, forbids, or controls, access to the federal court on the ground that pleadings are unauthorized or illegal that the same is prohibited (Id.p. 329). The following passages from G044938 show prior restraint on Jane L. Marsh's free speech rights and prohibition upon her right to file in the

federal court on diversity basis:

"P. 7 All challenges to administration of a decedents estate must be brought in probate proceedings; p. 10 Jane's claims must be tested under California family law in the context of an administration of the probate of Monroe's estate; the Pereira-Van Camp claim would necessarily have had to be brought under the procedures of probate administration and not as a civil action; p. 11 we express no opinion as to the right or status of any claim by Jane for reimbursement of her \$633,061 to pay off the reverse mortgage. Even here any such claim should have been made in the probate proceedings, not a separate civil action."

The Court of Appeal in G044938 did not address its appellate jurisdiction; but, rather the right or appealability of Jane L. Marsh to file her appeal (Id p. 3). Under Cal Constitution Art 6 sec 11(a) appellate jurisdiction was limited to "causes" which are types of claims over which the trial court had original subject matter jurisdiction; not, to the effect of court orders since orders are not causes. The Cal Constitution secondly authorized appeal as provided by probate statute; but, since Jane L. Marsh's civil cause

never “arose under” any probate code statutory proceeding as required by Probate Code 800 and Probate Code 7050 the demurrer and dismissal of her civil cause was not a probate order statutorily authorized. Hence the Court of Appeals in G044938 was without 10th amendment power under its own Constitution to entertain the appeal. This court cited its Herndon case (Id.p. 332) for its holding that there is no US 10th amendment state power in any state, to directly or indirectly destroy or deprive any right, privilege, or immunity conferred by the Constitution and laws of the United States.

Carroll v. President and Com'rs of Princess Anne (1968) 393 U.S. 175 [89 S.Ct. 347, 21 L.Ed.2d 325] grounded its holding solely on the ex parte nature of the proceeding at which an injunction against free speech was granted and held that the fullest presentation and consideration of the matter is required (Id.p. 181). It held that both parties are

necessary to assure a fully informed use of discretion by the judge who is to balance the interests of the speaker, the state, and the United States (Id.p. 183-184). The reporter's transcript to the 2nd pre filing order proceeding in our case shows an absence of full and fair adversary hearing since Trial judge directed Petitioner to stop speaking at least 10 times; that she admitted that the timing of the motion was too short and she had not even read the 2nd set of papers Petitioner had filed but that she would attempt to read them thereafter. She could not find them thereafter yet did not order any continuance or await decision until she could locate them in order to make a fully informed decision based upon them either. Such is contended to be pre-judgment and structural defect as her expressed intent as revealed in the RT was to terminate petitioner from ever filing any more papers even on appeal. The high court noted the Mathews v. Eldridge risk of error was high when

both parties do not participate at the hearing nor in reviewing the injunctive order to voice any objection (Id.p. 184). Furthermore motion to remove status can be made only once every year and continues the inflexible unconstitutional infringement of speech for 363 days. The high court noted the different roles that the United States First Amendment can apply namely (1) as an immunity [aff. defense], (2) as a right [claim] and (3) as a privilege [claim or aff. defense]; and noted that punishment after speech has been the regular ordinary rule of law because it can be tailored to precisely pinpoint the facts warranting it in an existing case (Id.p. 180-181). In our case as the RT revealed neither Trial judge nor Respondent wanted any punishment, nor a bond, nor any more sanctions; rather the only thing they wanted was an order prohibiting filing of any new litigation from Petitioner. But such wants were beyond their power to produce due to failure to respect U.S.

Constitution Free Speech as affirmative defense or claim of right or privilege. Our case involves U.S. Constitution Petition Clause and other Clause rights and there are findings and conclusions that they were not violated (Appx 9 A&B). The high court noted the expressions of congressional intent authorizing prior restraint of speech in the labor context (Id. Fn. 7); yet, in our case there is no legislative history Law Revision Commission comment that discloses the reasons for enactment of Code of Civ.Proc. 391.7. Even in the cited case 10 days was held to be too long for judicial review; yet in our case Code of Civ.Proc. 391.7 authorizes 7 years (2555 days-the same amount of time Cal. Evidence Code presumes a person be dead if not heard from) during which the prior restraint is operative; and, the Code of Civ.Proc. 128.7 prior restraint has no expiration date at all. In our case Jane L. Marsh's separate property was unconstitutionally seized and distributed on

ex parte basis in probate because the court of appeals in G044938 ordered her to file in the court sitting in probate and because no censor permission order existed in writing, although writing was not required by Code of Civ.Proc 391.7, to authorize opposition to the sale and distribution so Respondent laundered \$640,000 of Jane L. Marsh's separate property as part of Monroe's estate in their sale and distribution scheme. The High Court noted that the legal standards in the cited case were inescapably imprecise (Id.p. 183); and in our case the statutory scheme including Code of Civ.Proc. 391.7 suffers from vagueness and overbreadth as well. In California the appellate courts relish its license permit system, its overbreadth, and the required mending of his ways, as noted by Luckett v. Panos (2008) 161 Cal.App.4th 77, 81, 83, 94. 96 and In re R.H. (2009) 170 Cal.App.4th 678 [88 Cal.Rptr.3d 650]; and, that is why Trial judge herself said Code of Civ.Proc. 128.7

was not effective to accomplish the goal of termination of any new filing by Petitioner. Code of Civ.Proc. 391.7 does not provide for constitutionally reliable judicial determination nor review. The High Court echoed the rule that any system of prior restraints comes to that court with a presumption against its constitutionality (Id.p. 18), yet Code of Civ.Proc. 391.7 places the burden of persuasion and proof on the vexatious litigant. The unconstitutional burden regarding evidence was beyond the California Legislature's capacity to enact when challenged as violating the 1st Amendment.

U.S. v. James Daniel Good Real Property (1993) 510 U.S. 43, 49, 50 [114 S.Ct. 492, 126 L.Ed.2d 490] held that when a search and seizure occurs, various and different U.S. constitutional causes can be violated; and, the proper question is not which Clause or amendment controls, but whether any Clause or amendment was violated. The Due

Process Clause was violated because the seizure was authorized only by an ex parte order instead of a adversary hearing proceeding. In our case co-executors seized Jane L. Marsh's property ex parte. This is because the effect of the prefiling G044938 opinion and the lack of standing law of the case in its 6th opinion and the statutory prior restraint orders prevented any contest on the merits.

Dennis v. United States (1951) 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137] is cited for the contention that in our case the lower court should have asked itself these questions: At all three phases of the vexatious litigant scheme is the nature or gravity in the context of probate proceedings of losing 5 matters during the 7 year period, etc., discounted by the improbability of causing unfair administration of justice in the present or any future case, of such a substantial state interest as to justify invasion of the United States constitution free speech rights,

privileges, and immunities, by way of imposing a prior restraint? The High Court cited its prior decisions in Schneider v. State of New Jersey, Town of Irvington (1939) 308 U.S. 147 [60 S.Ct. 146, 84 L.Ed. 155], Cantwell v. State of Connecticut (1940) 310 U.S. 296 [60 S.Ct. 900, 84 L.Ed. 1213], Thomas v. Collins (1945) 323 U.S. 516 [65 S.Ct. 315, 89 L.Ed. 430], Marsh v. State of Ala. (1946) 326 U.S. 501, 508-509 [66 S.Ct. 276, 90 L.Ed. 265], as well as its cases in Gitlow, Fiske, Dodds, and DeJong (Id.p. 507) which held that the state interests in those cases did not rise to the level of a substantial state interest because only isolated dangers existed. The High Court at Fn. 5 cited cases where clear and present danger analysis has been applied as relevant to the validity of a state statute and that is what this petition for certiorari challenges. Because the co-executors filed no Notice of New Litigation in the trial court with regards to their final probate distribution proceeding;

and, because no appeal brief or ROA of its determination was allowed thereafter, there was no opportunity to serve either the California Attorney General or the United States Solicitor; but, they were served with this Petition because the attack is on the face of the vexatious litigant statutory scheme including Code of Civ.Proc. 391.7. Were there any other available remedies? Yes. In our case numerous other remedies including demurrers, all pretrial proceedings to dismiss, posting of bond, more sanctions, criminal prosecutions etc. The High Court in Dennis (Id.p. 498) and in Douds (70 S. Ct. 674) (Id p. 376) noted that Congress made findings of fact before passage of the statute that Communists who held labor union offices presented a substantial injury to the interstate commerce. Similar findings of fact by Congress and an Attorney General blacklist were made and taken note of in Holder v.

Humanitarian Law Project (2010) 561 U.S. 1 [130 S.Ct.

2705, 177 L.Ed.2d 355] with regards to the Liberation Tigers of Tamil Eelam. In our case the Judicial Council Vexatious Litigant blacklist is created after the prior restraint is imposed; not, before. Jane L. Marsh's pleadings were supported by documents establishing that the court sitting in probate had no subject matter jurisdiction of her separate property and were contained in the judgment rolls starting from G044938. That evidence itself impeached that opinion and every subsequent opinion and order generated by the court sitting in probate against her and her estate, and it was far more than this court found sufficient to support attorney Brilliant's pleadings in Suowitz v. Hilton Hotels Corp. (1966) 383 U.S. 363 [86 S.Ct. 845, 15 L.Ed.2d 807]. Jane L. Marsh did appear by Court Call and filed numerous declarations as the ROA reveals contrary to trial judge determination.

Members of City Council of City of Los Angeles v.

Taxpayers for Vincent (1984) 466 U.S. 789 [104 S.Ct. 2118, 80 L.Ed.2d 772] is cited for the contention that Code of Civ.Proc. 391.7 by not requiring proof of a prior adjudication of unconstitutional speech makes it overbroad in every case. Objective frivolity and subjective intent are both required nothing less. The high court at Fn. 15 cited a list of cases giving enforcers of prior restraint statutes insufficient standards and in our case that is what Code of Civ.Proc. 391.7 does for federal and state judges and justices.

Vance v. Universal Amusement Co., Inc. (1980) 445 U.S. 308 [100 S.Ct. 1156, 63 L.Ed.2d 413] is cited to support the contention that the Court of Appeals lack of standing opinions themselves constitute prior restraints just as did Code of Civ.Proc. 391.7 and Code of Civ.Proc. 128.7. Yet standing to complain of them existed due to overbreadth because the danger of sweeping and improper application

(Id. Fn. 12). When in G058123 the appeals court referred to G054796 which referred to its 6th appellate opinion as a permanent bar to standing it swept in prohibition against consideration of new facts and law and prohibition against rehearing due to fraud, inadvertence, or other imposition which caused a miscarriage of justice. The Court of Appeals 6th opinion said that it was on the merits however that appeal was from the order confirming sale of real property wherein Estate of Jane L. Marsh was adjudged not to be a person interested in the estate who could participate and counsel was asked to leave counsels table and hence there was no determination of the merits per St. Romes v. Levee Steam Cotton-Press Co. (1888) 127 U.S. 614, 519 [8 S.Ct. 1335, 32 L.Ed. 289] [dismissal of suit for want of parties does not render the subject of controversy res judicata. It leaves the merits undisposed of.] It prohibited consideration of the matters left open in G044938 [Westlaw

version p.4]:

“By virtue of that consolidation the Oct 7 order [dismissing Jane L. Marsh’s civil cause] cannot really be considered the final judgment in the consolidated proceeding since any number of appealable orders within the 1535 probate action would remain for the future.”

Misuse of the law of the case doctrine was a form of prior restraint on future petition clause activity after the appeals court realized its res judicata reasoning was inapplicable. Prior restraints have appeared in our case from sustained demurrers to pleadings, to motions, to appeals, to res adjudicata, to statutes, to minute orders, to written judicial opinions.

Near v. State of Minnesota ex rel. Olson (1931) 283 U.S. 697 [51 S.Ct. 625, 75 L.Ed. 1357] involved a grant of certiorari because the case raised questions of grave importance to the administration of justice beyond the interests of the particular parties (Id.p. 707), namely the limits of the legislative and judicial branch to impose prior

restraint on petition and association clause activity. So does our case. In all First Amendment cases the United States Supreme Court is concerned with the statute on its face and as applied, namely its purpose and effect but not whether the court acted ultra virus and in excess of authority given to it by statute (Id.p. 708-709). In our case Cal Constitution Art 1 section 1 prohibited prior restraints and hence the U.S. Constitution 10th amendment prohibited the California Judiciary or Legislative branches from imposing prior restraints. Neither California’s Judiciary or Legislative branch can infuse 10th amendment power in themselves when under its own constitution Art. 1 Sec. 26 such power was prohibited to them. If the judiciary could prohibit the first publication they could have a complete system of censorship (Id.p. 721). In our case Code of Civ.Proc. 391.7 provides a complete system of censorship from the declaration of status, to filing of any new

litigation, to its review, and even in the request to remove a person's name from the Judicial Council list. They are all undertaken without any prior adjudication of unlawful speech and without adversary hearing before the censor judge who makes the latter 2 decisions. Viewpoint censorship is just as fatal as content censorship and Trial judge grounded her Code of Civ.Proc. 391.7 prior restraint order on a finding that the same patterns of writing could only come from the same speaker.

Koontz v. St. Johns River Water Management Dist.
(2013) 570 U.S. 595, FN2 [133 S.Ct. 2586, 186 L.Ed.2d 697]
as applied to our case held that the remedy for imposing on Jane L. Marsh the "unconstitutional condition" of speaking probate or not speaking at all, is to set aside the appeal in G044938 and all subsequent opinions and orders grounded on it. The doctrine of unconstitutional condition may replace 1st Amendment in challenge to court opinions since

they are not statutes.

The following are quotes to support petitioners overbreadth challenge.

"It takes a person with a mission to succeed." ~ Clarence Thomas, Supreme Court Justice. "The liberties of none are safe unless the liberties of all are protected." ~ William O. Douglas, Supreme Court Justice. "I didn't fail the test, I just found 100 ways to do it wrong." ~ Benjamin Franklin. "...the Constitution will endure as a vital charter of human liberty as long as there are those with the courage to defend it, the vision to interpret it, and the fidelity to live by it." ~ William J. Brennan Jr., Supreme Court Justice.

The prior restraint orders are equal to badges of slavery, badges of infamy which may have been motivated by retaliation or intolerance to petitioners legal opinions by the Respondent or lower courts. They are like conservatorship orders blocking liberty of speech. Petitioner argument is to annul them-'tear down the wall Mr Gorbachof', as President Ronald Regan said.

"The Press was to serve the governed, not the governors." ~ Hugo Black, Supreme Court Justice. "The Press was protected so that it could bare the secrets of

the government and inform the people. Only a Free and Unrestrained Press can effectively expose deception in government. And paramount among the responsibilities of a Free Press is the duty to prevent any part of the government from deceiving the people." ~ Hugo Black, Supreme Court Justice. "Only a Free and Unrestrained Press can effectively expose deception in government." ~ Hugo Black, Supreme Court Justice. "Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress." ~ Martin Luther King. "...debate on public issues should be uninhibited, robust, and wide-open and it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." ~ William J. Brennan Jr., Supreme Court Justice. "The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth." ~ Anthony Kennedy, Supreme Court Justice. "Whenever I hear anyone arguing for slavery, I feel a strong impulse to see it tried on him personally." ~ Abraham Lincoln. "I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts." ~ Abraham Lincoln.

C. NO FULL FAITH AND CREDIT CAN BE GIVEN
TO APPELLATE OPINION IN GO58123 BY THIS COURT

Thompson v. Whitman (1873) 85 U.S. 457 [21 L.Ed. 897] held that under the U. S. Constitution Full Faith and

Credit Clause judgments are "mere evidence" of "rights" (Id. p. 462-3). Under the common-law and international law existing when the constitution was created, every person had the right to impeach a judgment by showing want of fundamental jurisdiction (Id. p. 468). In our case the Court of Appeals deprived the appellants of same by ruling its opinions imparted absolute verity permanently and for all times and especially ever since its 6th opinion and so the U.S. Constitution Full Faith and Credit Clause is applicable to declare such evidence insufficient in this federal court today. Jane L. Marsh's interest in undisputed community accumulations were shown in her accounting appendix facts and figures which were a part of the judgment roll in G044938, and thereafter incorporated by reference in all future ROA's, as they were part of Jane L. Marsh's pleadings and pleadings are part of the judgment roll under Probate Code 1050.

Bond v. U.S. (2011) 564 U.S. 211, 222 [131 S.Ct. 2355, 180 L.Ed.2d 269] held that a person has standing to complain of a separation of powers violation just as he has the right to complain of a violation of the U.S. Constitution 10th amendment state powers if he suffers an injury caused by a State Actor action taken in excess of its authority. Petitioner cross-complaint re the probate final distribution petition so complained against Monroe Marsh's co-executors who had received substantial state actor assistance under Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565]. In our case the injury is to the U.S. Constitutional rights, privileges and immunities, as well as the possession and title interest in the Irvine condo. There was another \$820,000 cash loss regarding community accumulations that Monroe gave away to his co-executor and members of their family and others during his life

without Jane's prior written consent. The injury is redressable by vacating and annulling all or selective opinions of the trial and Appeals Court. Although Steven Marsh, one of the 2 co-executors of Monroe died before the final distribution proceeding, his attorney contended as the RT reveals and Commissioner Hall agreed, that the proceeding was a mere formality an that the other co-executor need not appear either althouh Monroe's will required two. Marsh's wife is the personal representative of his estate appointed by the courts in Utah 4th District case number 193500027 and a creditor's – property claim was filed and served upon her attorney in Utah but no substitute co-executor has entered any appearance yet. The co-executors briefs in G052082 and G052208 at footnote 1 admitted and conceded that the \$640,000 cash was Jane L. Marsh's separate property and formed their own opinion as to its forfeiture into Monroe's estate. See RT of 8-2-17 at

15:21 through 16:4. Their attorney Magro received some \$530,000 out of Jane L. Marsh's separate property for attorney's fees. Attorney Steven Magro's joinder in the distribution petitions expressly stated he was joining as party to the co-executors Petitions by self admission (Id. p. 20-21).

CONCLUSION

Certiorari is respectfully requested to show overbreadth of California's vexatious litigant statutory scheme including Code of Civ. Proc. 391.7 whether or not petitioner is himself a vexatious litigant. Petitioner will in preparing for presenting the opening brief, oral argument, and ROA, separate the gold from the garbage and not library everything for sake of mere inclusion. Petitioner has cited over 10,000 U.S. Supreme Court cases in his papers in the lower courts and developed invaluable ideas therewith. The ROA in the courts below may consist of over 80,000 pages.

They are all electronically preserved by Petitioner.

Petitioner will in oral presentation not identify by name any judge or justice in order to prevent disparagement on television network by the cable carriers.

"Behind every argument is someone's ignorance." ~ Louis Brandeis, Supreme Court Justice. "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." ~ Sandra Day O'Connor, Supreme Court Justice. "Justice denied anywhere diminishes justice everywhere." ~ Martin Luther King, Jr. "Either write something worth reading or do something worth writing." ~ Benjamin Franklin.

History repeats itself and as current Justice Roberts recently commented we have a new dynamic in speech-3 minute speech clips. Petitioner believes he can inspire our country during his brief oral argument presentation and share his knowledge to educate our citizens so they do not have to repeat the 10 year nightmare the court of appeals imposed on petitioner. Petitioner wishes to participate, not in a Irish parade as in this Courts Hurley Case; but, in the

structured judicial process and waive the banner of free speech not only for petitioner; but, as a private attorney general for the benefit of persons in the United States of America.

"Public sentiment is everything. With public sentiment nothing can fail; without it nothing can succeed. He who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes or decisions possible or impossible to execute." ~ Abraham Lincoln.

Certiorari should be granted to consider whether Full Faith and Credit can be given to the appellate opinion in G058123 and other of its specified opinions therein, because under Cal. Constitution Art. 1 Sec. 2(a), Art. 6 Sec. 4, Art. 6 Sec. 3, Art 6 Sec 11(a), the rights and duties thereunder are made mandatory and prohibitory under Art 1 Sec. 26, thus precluding its Judiciary from exercising its jurisdiction and rendering valid adjudications. Certiorari should be granted to consider whether California has exceeded the power reserved to it under the 10th

Amendment because under Cal. Constitution Art. 1 Sec. 2(a), Art. 6 Sec. 4, Art. 6 Sec. 3, Art 6 Sec 11(a), the rights and duties thereunder are made mandatory and prohibitory under Art 1 Sec. 26, thus precluding its Legislature from enacting inconsistent statutes. Certiorari should be granted to determine whether the Due Process (substantive and procedural components), Association, Equal Protection, Excessive Punishment, and Search and Seizure have been violated as applied to the facts of this case. Certiorari should be granted to consider whether declaring the grant deed to the Yi's is void because the Irvine condo belongs to Jane L. Marsh and now her Estates and is necessary to remedy the above alleged violations. Petitioner has no adequate remedy at law left in the California state courts and has no other source to seek relief from to prevent a \$1.3 million dollar miscarriage of justice nor uphold U.S. Constitutional rights privileges and

immunities. God save us. God bless United States of America.

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