No.

IN THE
Supreme Court of the United States

PAUL E. NUNU, PETITIONER

v.

NANCY NUNU RISK, CHARLES L. NUNU AND THE HONORABLE KEN PAXTON, TEXAS ATTORNEY GENERAL,

PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Petitioner herein invokes the First Amendment Petition clause, the unfettered Court access right.

In 1997 the Texas Legislature enacted the Texas Vexatious Litigant Statutes, Texas Civil Practice & Remedies Code Chapter 11, §§11.001 through § 11.104, through which they intended to restrict unfettered access to Texas Courts.

The statutes, as applied, provide that a Court may declare a citizen a "Vexatious Litigant" for filing one (1) offending instrument, as the Harris County Texas Probate Court (1) so applied to Petitioner, which the 14th Texas Appellate Court affirmed, and over which the Texas Supreme Court denied review.

Once declared a "Vexatious Litigant," the statutes prohibit all *pro se* access to Texas Courts, without first obtaining pre-filing approval and posting mandatory security.

An offended Court after such declaration may punish through contempt a *pro se* petitioner, who fails to obtain pre-filing Court approval and may also impose a security bond posting.

1. Whether the Texas Vexatious Litigant Statutes, ***as applied,*** abridged Petitioner's First Amendment unfettered core right to petition and to access Texas Courts;

2. Whether the Texas Vexatious Litigant Statutes constitute as a Court might misapply an unlawful fettering prior restraint on core First Amendment Right similar to those this Court declared facially invalid under *Citizens United v. FEC*;

STATEMENT OF RELATED CASES

None

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Paul E. Nunu, a United States and Texas citizen, respectfully petitions for a writ of *certiorari* to reverse and vacate the Texas Courts' Orders and Judgments.

OPINIONS BELOW

Harris County, Texas Probate Court One (1) entered its 30 January 2018[1] Order declaring Petitioner a "vexatious litigant," because Petitioner filed one offending instrument.[2]

During the 4 January 2018 vexatious litigant hearing Respondents offered and the trial Court admitted no evidence.[3]

The Vexatious Litigant Order[4] contained a pre-filing injunction requiring Petitioner post $15,000USD surety bond or Court case dismissal.

Petitioner posted surety bond and appealed Vexatious Litigant Order with its pre-filing injunction.[5]

Texas 14th Appellate Court affirmed in 15 January 2019 published opinion.[6]

Texas 14th Court of Appeals denied rehearing.[7]

JURISDICTION

Petitioner timely filed Petition for Review with the Texas Supreme Court, who entered 12 July 2019[8] review and 30 August 2019 rehearing denials.[9]

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[1](App.18a)
[2](App.1a)
[3](App.14a)
[4](App.18a)
[5](App.1a)
[6](App.1a)
[7](App.23a)
[8](App.25a)

Petitioner herein filed within ninety (90) days of Texas Supreme Court's 30 August 2019 rehearing denial.

28 U.S.C.§ 1257(a) establishes this Court's jurisdiction.

RELEVANT PROVISIONS INVOLVED(see appendix)

STATEMENT

This case confronts this Court again with the responsibility our system imposes to say where individual freedom ends, and State power begins.

Despite United States and Texas Constitutional mandates for individual unfettered Texas Court access right for grievance redress, dispute or claim resolution, 1997 Texas Legislation enacted Texas Vexatious Litigant Statutes,[10] creating fettered prior restraint over previous unfettered Texas Court access.

"Congress shall make no law" and "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" constitutes constitutional mandate upon Texas.

Texas violated constitutional mandates when enacting Vexatious Litigant Statutes and when Texas Courts unconstitutionally applied these Statutes.

These Statutes resulted in no fewer than one hundred-nineteen (119) published Texas Appellate cases,[11] none of which addressed First Amendment unfettered access Court right abridgment, as this Court interprets.

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[9](App.26a)

[10] Tex. Civ. Prac. & Rem Chapter 11, §§11.001 through § 11.104.

[11]Casemaker Texas search "**vexatious litigant 11.054**".

The Texas Supreme Court in this case and minimally thirty-nine (39) other times since 2005 refused facial and as applied constitutional challenge review of Statutes.[12]

Unfettered Court access right has been fundamental human right since Athenian Democracy, more than 2300 years ago .

Statement of Facts

Petitioner adopts herein Texas 14th Appellate Court's statement of facts.[13]

Petitioner emphasizes these facts:

Petitioner is a responsible and ethical thirty-eight year Texas Attorney and Certified Public Accountant, who enjoyed membership in this Court's Bar since 1994 and Texas State Bar since 1982, with no disciplinary or criminal history.

Petitioner over seven and one-half years has attempted to obtain accounting and his inheritance from mother's debtless estate, which efforts Harris County Texas Probate Courts have thwarted.

Petitioner filed sole 27 October 2017 instrument, which sought Mothers' probated Will forfeiture provision's enforcement, upon post non-suit probated will violations without relitigating prior non-suited claims, contrary to Texas 14th Appellate Court findings,[14] which Court neither addressed nor adjudicated purportedly offensive instrument's true substance, Application to Enforce Forfeiture Provision

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[12] Casemaker Texas search **"vexatious litigant 11.054 petition for review is denied."**

[13](App.1a)

[14](App.1a)

of Will, as well as, for Fraud and Breach of Contract claims.

Instead, 14th Court affirming trial Court refused to address and apply the forfeiture provision claim merits, instead misinterpreting Petitioner's "background facts," mis-declaring Petitioner relitigated previously non-suited claims.[15]

Petitioner never engaged in five (5) litigations, as the Vexatious Litigant Statutes require.[16]

No Criteria listed in Tex. Civ. Prac. & Rem. Code § 11.054[17] are applicable to Petitioner or what he has herein done.

REASONS FOR GRANTING THE PETITION

Summary of the Argument--Reasons to Grant Certiorari

This Court has declared the First Amendment unfettered Court access right cognate, equal in dignity to speech right,[18] and as conservative of all other federally constitutionally protected rights.[19]

All state and federal Courts share express common duty to "preserve, protect and defend" the United States Constitution, however Texas Courts' herein refused to preserve, protect and defend First Amendment unfettered Court access right, especially

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[15](App.5a)
[16](App.1a)
[17](App.31a)
[18]*Borough of Duryea, Pennsylvania V. Guarnieri*, 564 U.S. 379, 388 (2011) "This Court has said that the right to speak and the right to petition are cognate rights."
[19]*Chambers v. Baltimore and Ohio Railroad Company* 207 U.S. 142, 148 (1907).

regarding Texas Vexatious Litigant Statutes.

Arizona, California, Florida, Hawaii, Nevada, New Hampshire, Ohio and Texas's vexatious litigant statute enforcement has denied countless more United States citizens this same constitutional right.

Freedom is not free and without every citizen's unfettered Court access right for enforcing guaranteed freedoms, there can be no freedom nor free society.

Argument

State action, whether through statute, as applied or judicial decree, abridging any First Amendment right violates all constitutional freedoms.

Petitioner is a United States citizen.

The United States Constitution protects his free exercise of conduct the Texas 14th Appellate Court found prohibited through Texas Vexatious Litigant Statutes' misapplication, i.e. Petitioner's filing of one purportedly offending instrument.

The First Amendment unfettered Court access right expressly protects his conduct.

Petitioner has committed no crime and broken no law, yet he has less rights to access the Texas Courts in a civil case than an incarcerated criminal.[20]

Petitioner has only exercised his First Amendment unfettered Court access right, as the First Amendment guarantees, as this Supreme Court interprets.

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[20]*Bounds v. Smith*, 430 U.S. 817, (1977), *Jackson v. Procunier*, 789 F.2d 307 (5th Cir. 1986) "Recognition of the constitutional right of access to the courts, however, long precedes *Bounds, and* has from its inception been applied to civil as well as constitutional claims."

Just as the First Amendment guarantees speech, press, religion, and assembly rights, it equally guarantees Court access right, as Natural Rights guaranteed every United States citizen.

Texas Vexatious Litigant Statutes as applied herein Petitioner's case directly and completely abridge cognate First Amendment Court Access Right.

The statutes as applied also abridge the Fourteenth Amendment guarantee: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**"**. (Emphasis Added.)

The Texas Supreme Court's constitutional challenge review refusal herein also abridges the Fourteenth Amendment prohibition that no state "deny to any person within its jurisdiction the equal protection of the laws".

When the Texas Supreme Court sits silently, in this case, together with thirty-nine (39) other times, such deportment demonstrates a pattern of repeatedly ignoring constitutional rights, denies equal protection of the law and constitutes denial to Petitioner any hearing opportunity.[21]

Fourteenth Amendment prohibits such state sponsored judicial due process denial.

Texas Supreme Court's constitutional challenge

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[21]*Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, (1982): This "requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."; concluding that " upon their claimed rights restriction on litigants' use of established adjudicatory procedures denies due process when such restriction is "the equivalent of denying them an opportunity to be heard "...A cause of action is a species of property protected by the due process clause of the 14th Amendment. (Emphasis Added.)

review refusal is acquiescence allowing Texas Courts to "brand" permanently a United States citizen a "vexatious litigant" through denial of state and federal protected rights.

Such state action totally nullifies Petitioner's First Amendment unfettered Court access right and constitutes Fourteenth Amendment prohibited unconstitutional state discrimination against this US citizen.

The Vexatious Litigant Statutes, Tex. Civ. Prac. & Rem. Code §11.054[22] as applied in this case constitutes an abridgement of Petitioner's federal and Texas constitutional Court access right.

After Court declaration that a citizen is a "vexatious litigant" Tex. Civ. Prac. & Rem. Code §11.101[23], authorizes a pre-filing permanent injunction restricting Texas Court access punishable by contempt.[24]

Additionally, Tex. Civ. Prac. & Rem. Code §11.102[25] prohibits all *pro se* access to Texas Courts without pre-filing governmental permission:

This statute also requires notice to all named adverse parties, and a prefiling determination of the validity of the claim. There is no appeal right if Court denies permission:[26]

These statutory restrictions are unreconcilable with the First Amendment unfettered Court access right.

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[22](App.31a)
[23](App.32a)
[24](App.32a)
[25](App.33a).
[26] *Id.*

History of the Right to Petition and for unfettered Court Access Peaceful Dispute Resolution

The unfettered Court access right is the promise for the Rule of Law, without which promise there is absolutely no Rule of Law.

The *Magna Carta*, the Declaration of Independence and the First Amendment established as a bedrock legal principle the unfettered Court access right as a fundamental human right.

Civilized societies from their earliest origins sought substantive Rule of Law and established structured procedure for their human members' ability for peaceful resolution of disputes and claims,[27] in order to eliminate and eradicate all resorts to illogical and oftentimes deadly violence.

The objective historical literature repeatedly identifies, as the essential root of Rule of Law the unfettered established tribunal access, now our Courts, for the peaceful, logical and reasonable member disputes and claims resolution.[28]

The Honorable James Madison, whose constituents tasked to compose the United States Constitution also then became dubbed as responsible for the drafting a Bill of Rights, to constitute the first ten Constitutional amendments.[29]

The basic element at the subjective heart of that

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[27]"Greeks and Romans Bearing Gifts", Carl J. Richards, Rowan & Littlefield Publishers, Inc. 2008.

[28] "The Founders and the Classics", Carl J. Richard, Harvard University Press, 1994; and, "*De Res Publica and De Legibus*", Marcus Tullius Cicero, 54, Loeb Classical Library 1928, trans Clinton W. Keyes, 1928.

[29] "More Than a Plea for a Declaration of Rights', John R. Vile, the Lawbook Exchange, Talbot Press 2019.

constitutional ten Bill of Rights was and remains to be the unfettered tribunal access for the peaceful, logical and reasonable member dispute resolution.

The First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Amendments, as well as, later the Fourteenth Amendment to the United States Constitution encapsulates the unfettered Court access right.

That unfettered Court access right as the Rule of Law, emanates from natural law, historical, written recollection and painful experience.[30]

Unfettered Court access right resonates throughout those eleven Amendments, not to mention the core provisions of the Constitution.

Without unfettered Court access right there would not be *Magna Carta* and constitutional mandate for *Habeas Corpus* right.

From beginning of societal time through to present, tradition, precedent and early Rule of Law firmly established our Rule of Law, and our American Constitutional basis for the unfettered Court access right.[31]

Athenian and Roman constitutions established in those jurisdictions' universal jurisprudence for unfettered tribunal access over 2300 years ago.[32]

In Rome, absolute right of unfettered tribunal access survived the Julian Revolution, twelve Caesars,

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[30] "Greece, Rome and the Bill of Rights", Susan Ford Wilshire, University Press, 1976.

[31] Footnotes herein #27, 28, 29, 30.

[32] ***Id.***: "Marcus Tullius Cicero on Government", Penguin Classics, trans. Michael Grant, 1993; "Aristotle Politics, 2nd Ed.", Trans. Carnes Lord, 1984.

the destruction of the Roman Republic and the Roman Empire.[33]

Some scholars suggest that the earliest expressions of unfettered Court access right, as well as, as the bedrock basis of the Rule of Law, in the English Common Law tradition, occurred during the reign of Henry II, late Twelfth Century, by his institution of systems of writs that enabled litigants of all classes to avail themselves of King's Bench.

It is more popularly thought, however, that under Henry's son, King John, the abuses in the application of the "king's justice" prompted the united barons to rebel and thus compel King John to sign the 15 June 1215 *Magna Carta*, which became original source for British constitutionalism.

What *Magna Carta* represented then and now is a social commitment to Rule of Law, as a promise that even the King was not above the law.[34]

As Blackstone stated, "It is the function of the common law to protect the weak from the insults of the stronger."[35]

Current historians summarize the meaning of *Magna Carta*:

> "Magna Carta in its final form clearly embodied the principle that the King was bound by law in the exercise of his power, and that the same law in turn bound the barons in the exercise of theirs, and so gave protection, not just to the few, but to all 'free men'."

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[33] Footnote 32, ***infra.***

[34] "The Roots of the Bill of Rights" Richard Schwartz, Chelsea House Publishers, 1980.

[35] 3 Blackstone *Commentaries* 3.

The essence of Magna Carta's achievement can be seen in famous clause, where King John promised:

> 'No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgement of his peers or by the law of the land. **To no one will we sell, to no one will we deny or delay right or justice** . . ."[36] (Emphasis Added.)

In the more than five hundred (500) years following *Magna Carta* at Runnymede, common law courts resolved disputes, created precedents, and law.

Judges and scholars probed and discussed the meaning of *Magna Carta*.

Sir Edward Coke and William Blackstone's commentaries were the written explanations as to the foundations for, and understanding of Common Law in England, and subsequently in what became the United States.

Sir Edward Coke and William Blackstone's commentaries became the corpus of American jurisprudence.

Those who wrote our constitutions, both federal and state, were aware of the jurisprudential concepts, and indeed the language, of *Magna Carta* and the Common Law.[37]

The English in the course of several civil wars came to continue to define their natural law Right, unfettered Court access right.

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[36] "*Magna Carta*" Daphne I. Stroud (London 1980).

[37] *Id.*

There were several documentary instruments that emanated from these efforts, i.e. the 1628 Petition of Right, the 1649 Agreement of the People, the 1656 Healing Question and the 1689 Bill of Rights.[38]

The 1689 English Bill of Rights provided:

> **"That it is the right of the subjects to petition the king**, and **all commitments and prosecutions for such petitioning are illega**l." (Emphasis Added.)

The 1689 English Bill of Rights thus explicitly ordained unfettered Court access right.[39]

The evolution of the unfettered Court access right continued in several of the thirteen colonies, i.e. 1606 First Charter of Virginia, 1639 Fundamental Orders of Connecticut, 1635-1645 Massachusetts Body of Liberties, 1663 Charter of Rhode Island, 1669 Fundamental Constitutions of Carolinas, 1677 Concessions and Agreements of West New Jersey, and 1682 Pennsylvania Frame of Government.[40]

For the United States Constitution's drafters, no right was as fundamental to a free society as the unfettered access to the legal system, i.e., to be the beneficiary of a Rule of Law that protects one's rights against the most powerful.

Inherent from the beginning was the idea that a right requires a capability of securing a remedy, which legal or equitable remedy must necessarily be found in the Court system.

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[38] Footnote 34, *Infra.*
[39] *Id.*
[40] *Id.*

If the Court system is inaccessible, all other natural rights are unable to exist and have meaning.

If the Court system fails to provide a fair and just hearing, as well as, result, there is absolutely no Rule of Law.

All of "rights" law allows for governmental existence, of justice, and of access to it through access to the Courts, as well as, prohibits and eliminates chaos.

Jurists, scholars and Courts themselves have referred to the core idea of "access to justice" in terms such as "access to the Courts" and/or "the right to a remedy"; and/or a basic "common law right."

Whatever the language used is, in thirty-nine of our state constitutions, including the Constitution of the State of Texas, there is some form of the following language:[41]

> "All courts shall be open; every person for injury done to his goods, lands, or person shall have remedy by due process or course of law; and right and justice shall be administered without self denial or delay."

These remedy clauses are directly traceable to *Magna Carta*, and frequently appeared in the legal documents of the Colonies, even before the Revolution.

People assumed these fundamental rights were fundamental natural rights, although neither the Constitution nor the Bill of Rights explicitly state them.

In Virginia, it was taken for granted as so basic a doctrine of the Common Law and Natural Law, that specification was unnecessary. However, when the

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[41] *Id.*

preparation of the Bill of Rights occurred, it was modeled upon Virginia's Declaration of Rights of 1776, and thus the usual "access to justice" clauses were not included.

One of the purposes for the Ninth Amendment was to be certain that this doctrine, which was so self evident that it was omitted and thus not enumerated, clearly had to be defined as part of our fundamental constitutional heritage.

Thus, the Ninth Amendment's intent was to include these undeniably basic, common law values by a specific Constitutional clause, protecting unstated individual rights.[42]

In reviewing constitutional law, from the earliest days of this Republic, the values and principles of access to justice are present.

Early precedent consistently defines that right as fundamental, although headnote description often defines access to Courts as “due process of law”, sometimes classifying it as a “privilege and immunity” or terming its denial as a “violation of equal protection of the law”.

Otherwise jurists and scholars categorize the natural right of access to the Courts itself as a portion of the natural right to petition the government for a redress of grievances.[43]

The Revolution and Declaration of Independence expanded concepts of right and broadened the inclusion of society's access to the protection of government.

The Declaration of Independence spoke of all men being created equal and possessing rights that were inalienable.

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[42] Footnote 29, *supra*.
[43] Footnote #34, *supra*.

But as Justice John Marshall reminded us in *Marbury v. Madison*,[44] the sole real justification of and for a government is if the consent of the governed grants its powers.

When the framers wrote the United States Constitution, they insisted upon separation and limitation of powers.

The framers further recognized that some values were so fundamental that the individual requires protection from the executive, the legislature, and even the Courts; certainly, from a transient majority. The founders created a written constitution with a bill of rights and a recognition that some rights were fundamental. The framers believed that there had to be limitation of the powerful whether by royalty, wealth or privilege. These were values of such permanence, entitled to such respect, that the public interest was to have priority over any claims of privilege. Thus, Justice Marshall construed the Constitution and what it meant.[45]

John Marshall stands virtually alone in our constitutional history, in establishing the meaning of judicial power and judicial review. It defined what the original constitutional intent was and gave shape and power to rule of law under a constitutional system.

Justice Marshall reviewed the common law background, largely English precedents, and scholarship -- principally Blackstone; the Federalist papers, and the language of the Constitution itself. After initially determining that *Marbury*, the petitioner, had a *right* to a writ of mandate, to compel

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[44] *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803),

[45] *Id.*

Secretary of State *Madison* to issue his commission as a justice of the peace in the District of Columbia, he reached his second inquiry, which was: "if he has a right, and that right has been violated, do the laws of his country afford him a remedy?"[46]

Justice Marshall's answer was as follows:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain, the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court."[47] (Emphasis Added.)

Citing Blackstone, Justice Marshall stated:

> "…It is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and that every injury its proper redress. The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." (Emphasis Added.)

In 1776, the Declaration of Independence cited King George's perceived failure to redress the grievances listed in colonial petitions, such as the 1775 Olive Branch Petition, as a justification to declare

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[46] ***Id.***
[47] ***Id.***

independence:

> "…In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.[48]

These are the principles of "justice for all" that the First Amendment freedom to petition was designed to protect.

The First Amendment Right of Access to Courts

The First Amendment Right of Access to Courts as this Court interprets is the supreme law of the land and so binds Texas Courts under the Supremacy Clause.[49] [50]

The Supremacy Clause states: "This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."[51]

There are no Supreme Court cases permitting restriction of the First Amendment freedom to petition.

In *Thomas v. Collins*[52] this Court struck down restrictions and declared that clear public interest must

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[48]Quote from the *Declaration of Independence.*

[49]*Armstrong, v. Exceptional Child Center, Inc., Et Al*, 135 S.Ct. 1378, (2015).

[50]*DirectTV, Inc., v. Amy Imburgia* 136 S.Ct. 463, (2015).

[51]U.S. Const., Art.VI

[52]*Thomas v. Collins*, 323 U.S. 516, 530 (1945).

justify any attempt to restrict First Amendment liberties, where clear and present danger threatens, not doubtfully or remotely.

The Vexatious Litigant Statutes do not state what public interest if any, is threatened, nor do they describe any clear and present danger justifying their enactment.

In no less than eight (8) civil cases over the last hundred and twelve (112) years this Supreme Court has repeatedly protected and enforced the First Amendment unfettered Court access right.

The cases of *Chambers v. Baltimore*[53], *Thomas v. Collins*,[54] *Mine Workers v. Illinois Bar Assn*,[55] *California Motor Transport v. Trucking Unlimited*,[56] *Bill Johnson's Restaurants, Inc. v. NLRB*,[57] *McDonald v. Smith*[58], *BE&K Construction Company v. NLRB*,[59] and *Borough of Duryea, Pennsylvania v. Guarnieri*,[60] define the history of this Court's interpretation of the petition clause and are discussed below, along with relevant 5th Circuit Court of Appeals cases in chronological order.

This Court in 1907 said in *Chambers v. Baltimore*[61]*:*

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[53]*Chambers v. Baltimore and Ohio Railroad Company* 207 U.S. 142, (1907).
[54]*Thomas v. Collins*, supra;
[55]*Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, (US 1967).
[56]*California Motor Transport v. Trucking Unlimited,* 404 U.S. 508 (1972).
[57]*Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, (1983).
[58]*McDonald v. Smith* 472 U.S. 479, (1985)
[59] *BE&K Construction Company v. NLRB*, 536 U.S. 516, (2002).
[60] *Borough of Duryea, Pennsylvania v. Guarnieri*, 564 U.S. 379, (2011).
[61] *Chambers v. Baltimore supra.*

> "In the decision of the merits of the case there are some fundamental principles which are of controlling effect. The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the federal Constitution."

In 1945 in *Thomas v. Collins*[62]*:*

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now, as always, delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable, democratic freedoms secured by the First Amendment.[63] That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard

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[62] *Thomas v. Collins*, supra;
[63] *Schneider v. State*,308 U.S. 147; *Cantwell v. Connecticut*, 310 U.S. 296; *Prince v. Massachusetts*, 321 U.S. 158.

governs the choice.[64] For these reasons, any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which, in other contexts, might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights,[65] and therefore are united in the First Article's assurance."

In 1967 in *Mine Workers v. Illinois Bar Assn.*[66]*:*

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[64] *Compare United States v. Carolene Products Co.*, 304 U.S. 144, 152-153.
[65] *De Jones v. Oregon*, 299 U.S. 353, 364
[66] *Mine Workers* supra.

> " … The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do, in fact, provide a helpful means of dealing with such an evil.[67]

In 1972 in *California Motor Transport*[68] this Court clarified that "The right of petition is one of the freedoms protected by the Bill of Rights ... The right of access to the courts is indeed but one aspect of the right of petition."[69]

In 1983 in *Ryland v. Shapiro*[70] the 5th Circuit recognized that:

> "The Substantive Right of Access to Courts: The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. . .. 'It is by now well established that access to the courts is

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[67]Schneider v. State, 308 U.S. 147 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1940).
[68]*California Motor Transport supra.*
[69]*Johnson v. Avery*, 393 U.S. 483, 485; *Ex parte Hull*, 312 U.S. 546, 549.
[70]*Ryland v. Shapiro* 708 F.2d 967, 971 (5th Cir. 1983).

> protected by the First Amendment right to petition for redress of grievances.' . . . A number of other courts have also recognized that this right of access is encompassed by the first amendment right to petition. . .. A third constitutional basis for the right of access to the courts is found in the due process clause.. . .. In conclusion, it is clear that, under our Constitution, the right of access to the courts is guaranteed and protected from unlawful interference and deprivations by the state, and only compelling state interests will justify such intrusions." (Emphasis Added.)

In 1983 in *Bill Johnson's Restaurants, Inc. v. NLRB*,[71] this Court said that the First Amendment protected a citizen's right to file an unmeritorious lawsuit:

> "There are weighty countervailing considerations, however, that militate against allowing the Board to condemn the filing of a suit as an unfair labor practice and to enjoin its prosecution. In *California Motor Transport Co. v. Trucking Unlimited*,[72] we recognized that the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances…..[73] As the Board itself has recognized, 'going to a judicial body for redress of alleged wrongs ...

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[71]*Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983).
[72]*California Motor Transport supra.*
[73]*Id.* at 511, 92 S.Ct., at 612.

> stands apart from other forms of action directed at the alleged wrongdoer. The right of access to a court is too important to be called an unfair labor practice solely on the ground that what is sought in court is to enjoin employees from exercising a protected right. In *Linn, supra,* we held that an employer can properly recover damages in a tort action arising out of a labor dispute if it can prove malice and actual injury. . . . . The filing and prosecution of a well-founded lawsuit may not be enjoined as an unfair labor practice, even if it would not have been commenced but for the plaintiff's desire to retaliate against the defendant for exercising rights protected by the Act."

And again in 1985 in *McDonald v. Smith*[74]*:*

> "The First Amendment guarantees "the right of the people. . . to petition the Government for a redress of grievances." The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression. In *United States v. Cruikshank*,[75] the Court declared that this right is implicit in '[t]he very idea of government, republican in form.'[76]. . . . To accept Petitioner's claim of absolute immunity would elevate the Petition Clause to special First Amendment status. The Petition Clause, however, was inspired by the same ideals of

[74]*McDonald v. Smith* 472 U.S. 479, 482 (1985)
[75] *United States v. Cruikshank*, 92 U.S. 542 (1876)
[76] *Id.* at 552

> liberty and democracy that gave us the freedoms to speak, publish, and assemble.[77] These First Amendment rights are inseparable."[78]

In 1986 in *Jackson v. Procunier*[79] the 5th Circuit expressly recognized that the denial of a litigant's Court access right to pursue a civil appeal, as the Administrative Order[80] did herein, constitutes the deprivation of substantive constitutional freedom First Amendment protects and constitutes potential deprivation of substantive and procedural due process:

> "A substantive right of access to the courts has long been recognized. *In Ryland v. Shapiro*, we characterized that right as 'one of the fundamental rights protected by the Constitution.' *In Wilson v. Thompson*, we stated, 'it is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances.' That right has also been found in the fourteenth amendment guarantees of procedural and substantive due process. Consequently, interference with access to the courts may constitute the deprivation of a substantive constitutional right, as well as a potential deprivation of property without due process, .. Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation. . . . Recognition of

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[77]*See Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967).
[78]*Thomas v. Collins*, 323 U.S. 516, 530 (1945).
[79]*Jackson v. Procunier*, 789 F.2d 307, 310 (5th Cir. 1986)
[80](App.21a).

> the constitutional right of access to the courts, however, long precedes *Bounds, and* has from its inception been applied to civil as well as constitutional claims. . . .If Jackson has alleged a deliberate denial of his right of access to the courts to pursue his civil appeal, he has alleged the deprivation of a substantive constitutional right found in the first amendment, as well as a potential deprivation of substantive and procedural due process." (Emphasis Added.)

In 1989 in *Crowder v. Sinyard,*[81] the 5th Circuit declared "As we have pointed out, however, our cases also stand for the proposition that [a] mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be 'adequate, effective, and meaningful."

In 2002 in *BE&K Construction Company v. NLRB,*[82] this Court held that the First Amendment right of access to Courts protects a citizen's right to file baseless lawsuits:

> "The First Amendment provides, in relevant part, that 'Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.' We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights,'[83], and have explained that the right is implied by '[t]he

[81] *Crowder v. Sinyard,* 884 F.2d 804, 811 (5th Cir. 1989).
[82] *BE&K Construction Company v NLRB,* supra.
[83] *Mine Workers supra.*

> very idea of a government, republican in form.'[84] . . . '[85] the class of baseless litigation is c*ompletely* unprotected: … it indicates such litigation should be unprotected 'just as' false statements are. And while false statements may be unprotected for their own sake, '[t]he First Amendment requires that we protect some falsehood in order to protect speech that matters.'[86] An example of such 'breathing space' protection is the requirement that a public official seeking compensatory damages for defamation prove by clear and convincing evidence that false statements were made with knowledge or reckless disregard of their falsity.[87] . . . It is at least consistent with these 'breathing space' principles that we have never held that the entire class of objectively baseless litigation may be enjoined or declared unlawful even though such suits may advance no First Amendment interests of their own. Instead, in cases like *Bill Johnson's* and *Professional Real Estate Investors***,** our holdings limited regulation to suits that were both objectively baseless *and* subjectively motivated by an unlawful purpose

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[84]*United States v. Cruikshank*, 92 U.S. 542, 552 (US 1876).

[85]*Ibid.* (citations omitted).

[86]*Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (emphasis added); *id.*, at 342 (noting the need to protect some falsehoods to ensure that 'the freedoms of speech and press [receive] that 'breathing space' essential to their fruitful exercise' (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963))).

[87]See *New York Times Co. v. Sullivan*, 376 U.S. 254, 279– 280, 285 (1964).

First, even though all the lawsuits in this class are unsuccessful, the class nevertheless includes a substantial proportion of all suits involving genuine grievances because the genuineness of a grievance does not turn on whether it succeeds. Indeed, this is reflected by our prior cases which have protected petitioning whenever it is genuine, not simply when it triumphs.[88] Nor does the text of the First Amendment speak in terms of successful petitioning—it speaks simply of 'the right of the people . . . to petition the Government for a redress of grievances.' Second, even unsuccessful but reasonably based suits advance some First Amendment interests. Like successful suits, unsuccessful suits allow the 'public airing of disputed facts,'[89] and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around. Moreover, the ability to lawfully prosecute even unsuccessful suits adds legitimacy to the court system as a designated alternative to force.[90] Finally, while baseless suits can be seen as analogous to false statements, that analogy does not directly

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[88]See, *e.g.*, *Professional Real Estate Investors*, 508 U.S., at 58–61 (protecting suits from antitrust liability whenever they are objectively or subjectively genuine); *Pennington*, 381 U.S., at 670 (shielding from antitrust immunity any "concerted effort to influence public officials").

[89]*Bill Johnson's*, *supra*, at 743.

[90]See Andrews, A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right, 60 Ohio St. L. J. 557, 656 (1999) (noting the potential for avoiding violence by the filing of unsuccessful claims).

> extend to suits that are unsuccessful but reasonably based. For even if a suit could be seen as a kind of provable statement, the fact that it loses does not mean it is false. At most it means the plaintiff did not meet its burden of proving its truth. That does not mean the defendant has proved—or could prove—the contrary." (Our Emphasis.)

In *Borough of Duryea, Pennsylvania v. Guarnieri*,[91]: this Court stated:

> "This Court has said that the right to speak and the right to petition are cognate rights.". . ."This Court's precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." . . . "The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government."[92]

The Texas Vexatious Litigant statutes are unconstitutional as applied because they chill unfettered rights, thus repugnant to the First and Fourteenth Amendments.

They also violate express rights guaranteed under the Texas Constitution Art. I, §§ 13, 19, 27, and 29.

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[91] *Borough of Duryea, supra.*

[92] *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-897, (1984); see also *BE& K Constr. Co. v. NLRB*, 536 U.S. 516, 525, (2002); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741, (1983); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513, (1972).

There are no stated conditions or limitations upon the peaceable exercise of unfettered open Court access right under either the Texas or United States Constitutions.

This Court has declared the First Amendment unfettered Court access right is cognate to the right of speech, yet Texas through enactment of such statutes have declared forfeited these federally protected constitutional rights.[93]

All of the Texas Courts of Appeals referenced herein that have addressed the constitutionality of the statutes have determined—with virtually no reasoning—that the statutes are not unconstitutional on their face; that the statutes do not authorize courts to act arbitrarily; that it only permits courts to restrict a citizens' access to the courts after making specific findings of vexatiousness; and that the restrictions are

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[93]*Leonard v. Abbott*, 171 S.W.3d 451, 456-58 (Tex. App. Dist. 3—Austin 2005, pet. denied) (holding that the statute is not unconstitutional because it strikes a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit); *Cooper v. McNulty*, 2016 Tex. App. LEXIS 11333, *11, 2016 WL 6093999 (Tex. App. Dist. 5—Dallas 2016, no pet.); Retzlaff v. GoAmerica Communs. Corp., 356 S.W.3d 689, 702 (Tex. App. Dist. 8—El Paso 2011, no pet.); Sweed v. Nye, 319 S.W.3d 791, 793 (Tex. App. Dist.8—El Paso 2010, pet. denied); *Dolenz v. Boundy*, No. 05-08-01052-CV, 2009 LEXIS 9196, *9, 2009 WL 4283106 (Tex. App. Dist. 5—Dallas 2009, no pet.); *In re Potts*, 357 S.W.3d 766, 769 (Tex. App. Dist. 14—Houston 2011, orig. proceeding); *Johnson v. Sloan*, 320 S.W.3d 388, 389-90 (Tex. App. Dist. 8 —El Paso 2010, pet. denied); *Clifton v. Walters*, 308 S.W.3d 94, 101-02 (Tex. App. Dist. 2—Fort Worth 2010, pet. denied); *In re Johnson*, No. 07-07-0245-CV, 2008 Tex. App. LEXIS 5110, 2008 WL 2681314, at *2 (Tex. App. Dist. 7—Amarillo 2008) (orig. proceeding).

not unreasonable or arbitrary when balanced against the purpose and basis of the statute.[94]

However, the Texas Courts of Appeals' collective and nearly identical reasoning does not address the First Amendment constitutional mandate that "Congress shall make no law . . . abridging. . . the right of the people . . . to petition the Government for a redress of grievances" or the Fourteenth Amendment constitutional mandate that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States".

Nor do they address the specific freedoms guaranteed under the Texas Constitution Art. I, § 27:

> "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance."

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[94]The Texas appellate courts, which recite nearly identical and conclusory reasoning as to why the statute is *not* unconstitutional, do not explain, for example, how the criteria of five losses in seven years satisfies the prior restraint on a citizen's access to the Courts. Civ. Prac. & Rem. Code 11.054. Nor do the Texas Courts of Appeal attempt to reconcile any other criterion with a *pro se* litigant's right to petition and the open courts' provisions. *Leonard v. Abbott*, 171 S.W.3d at 457 ("To establish an open courts violation, it must be shown that the litigant has a cognizable common law cause of action being restricted by a statute, and that the restriction is unreasonable or arbitrary when balanced against the purpose of the statute."). While the Third Court of Appeals recites a proper standard in *Leonard*, it does not fulfill its requirement with articulated reasoning.

The statutes also violate the Texas Constitutional guarantees to open courts, with remedy by due course of law. Tex. Const. Art. 1 § 13:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

The statutes disfranchise Petitioner and other U.S. citizens of privileges and immunities expressly prohibited under Tex. Const. Art 1. § 19:

> "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

In this case the due course of the law of the land is the First and Fourteenth Amendments to the United States Constitution and the Texas Constitution Article 1. §§ 13,19, 27 and 29.

The First Amendment mandates "Congress shall make no law" and the Texas Constitution Article I, § 29 declares all laws contrary to this "Bill of Rights", shall be void:

> "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary

> thereto, or to the following provisions, shall be void."

Likewise, 14th Amendment provides:

> "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."

Under these express constitutional mandates, the Texas statutes should be declared void because they place onerous restrictions on constitutional freedoms.

The Texas Supreme Court and all Texas Courts of Appeals have never enforced these constitutional mandates in any case challenging the Texas Vexatious Litigant Statutes.

The Supremacy Clause places an affirmative duty on all Texas Courts to preserve, protect and defend these First and Fourteenth Amendment freedoms, which as this Supreme Court interprets is the supreme law of the land.[95]

The Supremacy Clause so binds Texas Courts with affirmative duty to review when constitutionality challenged these statutes, which Texas Courts refused to do.

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[95] *See Armstrong, v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1383-84 (2015) (supremacy clause requires courts to invalidate state laws that conflict with federal laws).

No state or federal case permits state laws to supersede First Amendment rights or the Texas Constitution's Bill of Rights.

This Court should declare that the statutes violate both the United States and Texas Constitutions and are therefore void *ab initio*.

The Vexatious Litigant Statutes, arbitrarily limit the freedom to petition to five (5) unsuccessful lawsuits within seven (7) years, then allows for the imposition of a permanent injunction prohibiting *pro se* litigation, requiring pre-filing governmental approval to access the Courts, punishable by contempt.[96]

The statutes also provide that if the plaintiff relitigates or attempts to relitigate, *pro se*, any of the issues of fact or law, as allegedly happened in this case, he or she is subject to being declared a vexatious litigant for filing one pleading, and all constitutional rights to petition are forfeited.

The statutes do not prohibit the same behavior if represented by counsel.

Hence, the statutes permit what should be a collateral estoppel defensive argument to be transformed into a judicial declaration forfeiting all First Amendment rights to petition and access Texas courts.

These statutes chill United States and Texas Constitutional guarantees because they impose multiple onerous limitations on a citizen's constitutional unmentioned right to access Courts..[97]

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[96](App.31a).

[97]*See* Tex. Const. art. I, § 29 (rights shall remain inviolate).

The statutes are a prior restraint on First Amendment right to access Courts and are presumptively unconstitutional.[98] [99]

This Court held in 2010 in *Citizens United v. FEC*[100] that prior restraint on the freedom of speech is facially unconstitutional:

> "The regulatory scheme at issue may not be a prior restraint in the strict sense. … The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. . . .Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."

The Texas Supreme Court echoed this principle in *Davenport v. Garcia*[101]:

> The presumption in all cases under section eight (freedom of speech) is that pre-speech sanctions

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[98] *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992). (holding that a prior restraint of First Amendment freedoms is presumptively unconstitutional under the Texas Constitution;

[99] *Citizens United v. FEC*, 558 U.S. 310, (US 2010);

[100] *Citizens United supra*); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563-64, (1976),

[101] *Davenport v. Garcia supra.*

or "prior restraints" are unconstitutional.[102] . . .This court previously indicated that a prior restraint would be permissible only when essential to the avoidance of an impending danger.[103]. . . Since the dimensions of our constitutionally guaranteed liberties are continually evolving, today we build on our prior decisions by affirming that a prior restraint on expression is presumptively unconstitutional. With this concept in mind, we adopt the following test: a gag order in civil judicial proceedings will withstand constitutional scrutiny only where there are specific findings supported by evidence that (1) an imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute, and (2) the judicial action represents the least restrictive means to prevent that harm. Assisting our analysis are federal cases that have addressed prior restraints. The standard enunciated in *Nebraska Press Ass'n v. Stuart,*[104],

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[102]*Ex Parte Price*, 741 S.W.2d 366, 369 (Tex.1987) (Gonzalez, J., concurring) ("Prior restraints ... are subject to judicial scrutiny with a heavy presumption against their constitutional validity.")

[103]*Hajek v. Bill Mowbray Motors, Inc.*, 647 S.W.2d 253, 255 (Tex.1983) (striking down an injunction because the language at issue "evoked no threat of danger to anyone and, therefore, may not be subject to the prior restraint of a temporary injunction."). See also *Dallas General Drivers, Warehousemen and Helpers v. Wamix, Inc. of Dallas*, 156 Tex. 408, 295 S.W.2d 873, 879 (1956); *Ex Parte Tucker*, 220 S.W. at 76 (speech is properly restrained only when involving an actionable and immediate threat); *Pirmantgen v. Feminelli*, 745 S.W.2d 576, 579 (Tex.App.--Corpus Christi 1988, no writ) (restriction against disseminating an allegedly libelous letter was an unconstitutional prior restraint).

[104]*Nebraska Press*, *supra*.

> does not, however, sufficiently protect the rights of free expression that we believe that the fundamental law of our state secures. Today we adopt a test recognizing that article one, section eight of the Texas Constitution provides greater rights of free expression than its federal equivalent. . . .We are fully aware that a prior restraint will withstand scrutiny under this test only under the most extraordinary circumstances. That result is consistent with the mandate of our constitution recognizing our broad right to freedom of expression in Texas. An individual's rights under the state constitution do not end at the courthouse door; rather, the courthouse is properly the fortress of those rights."

It might be helpful to hypothetically apply the cognate rights of speech and petition to a fictional Texas statute that forbids prospective speech after a trial court finds that a citizen has made five (5) slanderous public statements within seven (7) years, and in so finding, enjoins the citizen from speaking, without first getting court approval and posting security—and, if the citizen speaks without first getting court approval and posting security, he or she is subject to contempt.[105]

Any such statute, which is arguably 100% analogous to the Texas Vexatious Litigant Statutes, would be struck down at its first instance as a prior restraint on freedom of speech.

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[105] *See* Tex. Civ. Prac. & Rem. Code § 11.101(b)(App.32a).

Nonetheless Texas courts have refused to preserve, protect, and defend First Amendment unfettered Court access right due to these statutes.

The Vexatious Litigant Statutes are contrary to established constitutional principles and constitute a prior restraint of constitutional unfettered rights, thus repugnant to First and Fourteenth Amendments.[106]

Also indicative of the statute's unconstitutionality, is that neither the Texas Courts of Appeals nor the statute itself identifies any public interest threatened, or any clear and present danger posed by allowing citizens to appear *pro se* in civil matters.

The statute is unconstitutional precisely for this reason.

This Court has required that any attempt to restrict First Amendment liberties must be justified by clear public interest, threatened by clear and present danger.

The statute is silent on these elements, and the Texas Courts of Appeals cases upholding its constitutionality are uniformly silent on these constitutional requirements.[107]

Indeed, all Texas Courts of Appeal construing the statute and finding the provisions valid, do not identify any clear and present danger, nor do they address the vexatious litigant statute's chilling effect on First Amendment unfettered Court access right *pro se*.

Further, the bare-bones reasoning of the Texas Courts of Appeals is arbitrary and capricious and violates Petitioner's Fourteenth Amendment right to

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[106]*See Citizens United v. FEC supra.*

[107]See fn.94 *supra*.

equal protection of First Amendment privileges and immunities.

Federal statute establishes *pro se* litigant unfettered access to federal Courts.[108]

Texas Rule of Civil Procedure 7 similarly provides: "Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court."

Statute and rule reestablish these fundamental unfettered rights, which then statutory misapplication is able to so extinguish.

The vexatious Litigant Statute fetters with extremely onerous conditions the otherwise unfettered Court access right, which in many cases, completely terminates unfettered Texas Court access right.[109]

The case of *Mine Workers* further supports review of the statute. In it, this Court opined that, regarding a state law that limited speech, assembly and petition, "[w]e have … repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's

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[108]28 U.S.C §1654 (2012) ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.").

[109]*See e.g., Bill Johnson's Rests. v. NLRB*, 461 U.S. at 741 (the First Amendment protects a citizen's right to file a lawsuit and lose); *BE&K Construction Company v. NLRB*, 536 U.S. 516, 524 (2002) (the First Amendment protects a citizen's right to file unsuccessful lawsuits because the genuineness of a grievance does not turn on whether it succeeds); *In Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967) ("The First Amendment would … be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such.").

legislative competence, or even because the laws do, in fact, provide a helpful means of dealing with such an evil."

In applying this controlling precedent, the State of Texas may not curtail only *pro se* litigation, especially arbitrarily, as it has with the vexatious litigant statutes.

The statutes do not accommodate the foregoing constitutional protections, and none of the Texas cases finding it valid, expound on the "danger" of *pro se* litigation or why that "danger" should be restricted.

Similarly, no "rational connection between the remedy provided and the evil to be curbed" is explained in any of the court of appeals' decisions or within the statute.[110]

CONCLUSION

The Texas Vexatious Litigant Statutes as applied to Petitioner completely fettered Petitioner and excluded him from any access to the Rule of Law.

"Equal Justice Under Law" is not just a saying. It is the supreme law of the land. These words are the bedrock of the American legal system.

This case represents a "conspiracy of silence" within Texas Courts, to fetter precious constitutional unfettered rights through these statutes' misapplication.

Petitioner prays that the Court grant *certiorari*.

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[110] *See Mine Workers*, 389 U.S. at 222 (statutory limitations on First Amendment rights "must have clear support in public danger, actual or impending" and "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation").

Respectfully submitted,

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