Case No. 24-146

IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND H. PIERSON, III, as an INDIVIDUAL,
AND dba RAYMOND H. PIERSON, III, M.D.
Petitioner/Appellant,
v.
NORTHERN CALIFORNIA COLLECTION SERVICE, INC.; GERALD & BETTY MCINTYRE and COLLIERS INTERNATIONAL REAL ESTATE MANAGEMENT SERVICES, INC.
Plaintiff and Respondent

On Petition for Writ of Certiorari to the Supreme Court of the State of California in Case # S282177

PETITION FOR WRIT OF CERTIORARI

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Pro Se Petitioner/Appellant

QUESTIONS PRESENTED

The right to a remedy in the courts for wrongful injury holds a revered place in our civil justice system. Lord Coke traced this tight to Chapter 29 of the Magna Carta, which guaranteed: *"Every subject may take his remedy by course of the Law, and have justice, and right for injury done to him..."* 1 Edward Coke, the Second Part of the Institutes of the laws of England 55 (London, E. & R. Brooke 797). Chief Justice Marshall restated that principle for Americans:

> 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.

Marbury v. Madison, 5 U. s. (1 Cranch) 137, 163 (1803).

Thus, our Fifth Amendment guarantee of due process is an "affirmation of Magna Carta according to Coke." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1, 29 (1991) (Scalia, J., concurring).

This Court has left no doubt that "[t]he Right to sue and defend in the courts is the alternative to force. In an organized society it is the Right conservative of all rights and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio, R.R.,* 207 U. S. 142, 148 (1907). This fundamental right is grounded in multiple constitutional guarantees. *Christopher v. Harbury*, 536 U. S. 403, 415 n. 12 (2002).

1. Litigiousness or Numerosity of Litigations Alone is Insufficient to Support the Determination that a Self-Represented Party is a Vexatious Litigant. The California Legislature's Mandate to the Courts at CCP § 391(b)(1) to Require that the Courts Make Such a Determination Absent Other Qualifying Criteria Usurps the Court's Core Inherent Authority and Independence to Make Judicial Decisions *"To Do Justice"* which Violates the Separation of Powers Doctrine. Isn't it true that the California Legislature's unconstitutional usurpation of judicial power to impose under

statute strict sanctioning criteria restricting a litigant's right of petition and access to the Courts based on numerosity of litigation criteria alone especially where the cases considered include those adjudicated in the federal district and circuit courts an unconstitutional violation of fundamental rights protected by the U. S. Constitution?

2. The Multiple Federal Appellate Circuits Have Established Uniformity in the Precedential Case Law Decisions Concerning the Sanctioning of Access to the Courts for Pro Se Litigants which has Found that Such Sanctioning Represents the *"Exception to the General Rule of Free Access to the Courts"* which, If Instituted Must be *"Narrowly Tailored"*. Isn't it true that the California Vexatious Litigant Statute's Abject Failure to Follow the Cautious and Conservative Approach Directed by those Federal Appellate Case Precedents which have Served to Create a

Requisite Minimum Federal Standard an Unconstitutional Violation Under the Fourteenth Amendment due to the Statutes Permissive and Broad Infringement upon the Fundamental U. S. Constitutional Right of Petition and Access to the Courts?

3. The *Separation of Powers Doctrine* Found in the California Constitution at Article III, Section 3 Defines a System of Three Branches Legislative, Executive and Judicial which are to be *"Kept Largely Separate"*. Isn't it True that the California Vexatious Litigant Statute CCP 391-391.8 in which the Legislature has Arrogated Critically Important Core Functions of the California Judicial Branch so as to Undermine the Independence and Essential Powers of those Courts an Unconstitutional Violation of the *Separation of Powers Doctrine* Due to the Multiple Provisions Contained Within the Statute Which have Rigidly Imposed Strict Definitions of Vexatious Conduct and Experience

Upon the Court which Fully Undermine the Critical Core Functions and Disregard the Independent judgment of the California Judiciary which permits it Core Function *"To Do Justice"*?

4. The Fourteenth Amendment to the U.S. Constitution Prohibits the Deprivation by the Many States of Life, Liberty or Property Without Due Process of Law. The Evidence Presented in this Case Provided Irrefutable Confirmation that the California Vexatious Litigant Statute (CCP § 391-391.8 Infringes Upon the U.S. Constitution's First Amendment Right of Petition which Imposes a Minimum Standard that the California Statutes and California Courts Must Maintain. Furthermore, the California Statute Deprives Self-Represented Litigants of the More Expansive Right of Petition Provided Under the California Constitution as Recognized to Exist by the Supreme Court of California in *Robins* and Further Confirmed to Exist by this U. S. Supreme Court in *Pruneyard Shopping Center*. Isn't it true in this Case at Issue that the Amador

Superior Court's Acting Under the Strict Instructions Contained within the California Statute to Designate Dr. Pierson a Vexatious Litigant along with that Court's subsequent denial of Dr. Pierson's Due Process and *"Fair Hearing"* Rights at the Hearing for Dr. Pierson's Amended Motion for Reconsideration (App. Tab 65, pg. 1743, Tab 83, pg. 1949, Tab 90, p. 1908, Tab 92, 2014-2043) Evidence of Severe Deprivations of Dr. Pierson's U. S. Constitutionally Protected Right of Petition and Right to Access the Courts Further Accentuated by a *Per Se* Deprivation of Due Process at the Hearing for the Motion for Reconsideration?

5. It is a Fact that the California Vexatious Litigant Statute (CCP 391- 391.8) Has Resulted in a Disproportionately High Designation of Self-Represented Non-Attorney Litigants as Vexatious Litigants that have been Sanctioned by the Courts as Compared to the Quite Rare Occurrence of a Represented Party and/or Their

Attorneys being so designated. This evidence exists not only in the California Superior Courts but also in the Federal District Courts when those Courts Must Act Under the Direction of California law. These True Facts Provide Irrefutable Evidence that the Vexatious Litigant Statute Has Created an Unconstitutional Double Standard as to a Litigant's Ability to Access Fundamental U. S. Constitutionally Protected Rights which in most cases involving self-represented parties is based upon the financial means of that litigant. Isn't it true that a Statute Such as the California Vexatious Litigant Statute which Allocates Access to Essential Federal Constitutional Rights Based upon the Specific Financial Wherewithal of the litigant when analyzed from the perspective of Strict Scrutiny, Irrefutably Facially Unconstitutional?

6. An Original Defendant Called Unwillingly into Court by the Pleadings of an Original Plaintiff has Historically Been Designated Under the Long Recognized *Eastin-Ritter Doctrine* the Privilege

and Full Immunity Protections of Being Permitted to Proceed with a Vigorous Defense with No Risk of Exposure to a Charge of Providing a Malicious Defense. The 1971 Revision of the California Statutes at CCP 428.80 Abolished Counterclaims and the Opportunity for Defendants to File Additional Dependent Causes of Action Under the Plaintiff's Original Complaint. Those 1971 California Statutory Changes Also Mandated that Any and All Counterclaims Must be Exclusively Advanced as Causes of Action in the Form of a Cross-Complaint which Requires Original Defendants to Become Unwilling Plaintiffs. Isn't it True that this Taking of an Original Defendant's Right to an unrestricted and vigorous defense, an opportunity which Still Exists Under Federal Law (see FRCP 13), representative of an Unconstitutional and Impermissible Violation of the Fourteenth Amendment?

7. In the Amador Superior Court's March 27, 2019

"Order After Hearing" (7-APP-1791-3) which found Dr. Pierson to be a vexatious litigant, the Court proceeded to assign an unprecedented and prohibitive security bond requirement ($140,743.42) (7-APP-1793) which exceeded by 4.7 times the amount originally sought by the Appellees/Movants in their original Vexatious Litigant Motions ($30,000) (3-APP-707, 5-APP-1440). That security bond assignment by the Court represented a blatant and intentional attempt to construct an overwhelming and unassailable financial barrier to deprive Dr. Pierson, the original defendant in this litigation, access to the Amador Court to defend himself against the fraudulent charges advanced by those Original Plaintiff/Vexatious Litigant Motion movants. That action was taken by the Court with no regard or expression of judicial concern for the fact that the assignment of such a excessive security bond amount would effectively construct a prohibitive financial barrier which would obstruct with likely absolute certainty Dr.

Pierson's ability to ransom back his most fundamental of civil liberties which was the opportunity to seek redress for his injuries in a court of law. Isn't it true that such a prohibitive and truly unprecedented security bond imposition was qualifying as an excessive fine as well as cruel and unusual punishment under the prohibitions of the 8th Amendment of the U.S. Constitution and Article 1, Section 17 of the California Constitution?

PARTIES TO THE PROCEEDINGS

Petitioner/Appellant/Original Defendant/Cross-complaint Plaintiff

Raymond H. Pierson, III, MD, a physician and orthopedic surgeon.

v.

Respondent/Appellee/Original Plaintiff/Crossclaim Defendant

Northern California Collection Service, Inc (NCCS)

And

Respondents/Appellees/Crossclaim Defendants

Gerald McIntyre (McIntyres et al.)
Betty McIntyre
Colliers International

STATEMENT OF RELATED CASES

Case# 1

1. Raymond H. Pierson, III v. Phyliss M. Rushing No. 18-CVC-10813. Case Dismissal on August 9, 2022, because Dr. Pierson, a self-represented party, was absent from the trial due to an acute cardiac event requiring emergency admission to the Stanford University Medical Center for cardiac angioplasty and stent placement.
2. Raymond H. Pierson III v. Phyliss M. Rushing No. 18-CVC-10813. The *Judgment after Trial* was filed on August 24, 2022.
3. Raymond H. Pierson III v. Phyliss M. Rushing No. 18-CVC-10813. An appeal was timely filed on October 28, 2022, for review by the California Third

Appellate District (Case#- C0972290). The appeal remains pending before that court with all briefs filed and the scheduling of oral argument currently pending.

Case#2

1. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 – August 16, 2019
   Judgment of Dismissal following the May 10, 2019 granting of the Demurrer without leave to amend on the CSAA et al. request to be removed from the entirety of the case.

2. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - October 17, 2019, Date of timely filing of the appeal to the California Third District Court of Appeals.

3. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - June 30, 2023
   Decision by the Third District Appellate panel to affirm the decision by the Amador Superior Court to remove the Insurer, CSAA, et al., from the trial court proceedings.

4. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - August 15, 2023, Date of filing of the *Petition for Review* by the Supreme Court of California (Case# S281367).

5. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-1081- September 20, 2023, Date of the decision by the Supreme Court of California to deny the *Petition for Review* (Case# 281367).

6. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - December 12, 2023, Date of the granting of a requested sixty-day (60) time extension for filing the Petition for Writ of Certiorari by U. S. Supreme Court Justice Kagan.

7. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - February 17, 2024,Date of receipt by the Clerk of Court of the Petition for Writ of Certiorari.

8. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 - February 23, 2024, Notice from the Clerk of the Court of the U. S. Supreme Court that the initial Petition required correction with provision of a 60-day period for resubmission.

9. Raymond H. Pierson III v. CSAA et al. No. 18-CVC-10813 – May 1, 2024, Docketing of the corrected Petition for Writ of Certiorari (Case# 23-1165) submitted on April 23, 2024. The Petition currently remains under consideration before the Court.

CERTIFICATE OF INTERESTED PARTIES

Rob Bonta, J.D., California
Attorney General
Raymond H. Pierson, III, MD
Andre LeLievre, J.D., NCCS Counsel
Steven D. Cribb, J.D., NCCS Counsel
Stephen Mackay, J.D., McIntyre & Collier's Counsel
Michael Myers, J.D., McIntyre & Collier's Counsel
Lawrence H. Cassidy, NCCS
The Honorable Renee C. Day
The Honorable JS Hermanson
Gerald McIntyre
Betty McIntyre
Bruce E. Leonard, J.D., Phyliss Rushing Counsel
Maria S. Quintero, J.D., CSAA et al. Appellate Counsel
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Lawrence Iglesias, J.D., Cross-Defendant NCCS Counsel
Gordon W. Bowley, J.D., McIntyre & Collier's Counsel

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TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

This appeal now advanced from the Supreme Court of California (Case# S282177) for the purpose of requesting that this Court which has jurisdiction under Federal Statute 28 USC § 1257 for review of the multiple and novel constitutional challenges advanced to the California Vexatious litigant Statute (CCP § 391-391.8) which deprive self-represented litigants of their U.S. Constitutional right of access to the courts to petition for redress of their injuries and grievances while also depriving those litigants of their due process rights while exposing them to unconscionable and prohibitive security bond requirements to ransom those fundamental rights delegated to all citizens by the U. S. Constitution in violation of the Eight Amendment. It is critical to point out that the multiple federal circuits have established a body of case law which has strongly emphasized the need to proceed cautiously and conservatively in a court's consideration of the sanctioning of a litigant's access to the courts. Those multiple federal circuits have uniformly emphasized that such sanctioned access must be "narrowly tailored

and rarely used." The case law precedents of the federal reviewing courts have effectively created a minimum federal standard applicable to the issue of sanctioning the rights of litigants to access the courts which the many states are required to maintain under the prohibitions placed upon them under Section 1 of the Fourteenth Amendment. The California Legislature in imposing the Vexatious Litigant Statute upon the Courts has not only greatly failed to maintain those requisite minimum federal standards but has also violated the separation of powers doctrine in usurping an essential power of the California judiciary in doing so. The resulting effect has been to impair the essential function and ability of the California courts to achieve their constitutional duty "to do justice".

At the outset of this requested review, Dr. Pierson must inform the Court that after having to live for over four years under the black cloud and persistent defamation of being named a vexatious litigant with the resulting severe professional, personal and financial compromise he was successful before the California Third Appellate

District in having the vexatious litigant determination reversed with remand of the dismissed cross complaint.

This effort to now seek this Court's review of these multiple constitutional challenges to the California Vexatious litigant statute is being advanced in the public interests to attempt to prevent other self-represented litigants from having to endure the years of torment, persistent defamation, and financial injury that results from this unconstitutional California statute.

OPINIONS BELOW

May 7, 2019	Date of the Judgments of Dismissal of Dr. Pierson's Second Amended Cross-Complaint. Those Dismissals followed the Amador Superior Court's March 27, 2019, granting the separate motions to designate Dr. Pierson a vexatious litigant with imposition of requirements for a security bond and prefiling order.

July 5, 2019	Date of timely filing of the appeal (Case# C089972).
August 30, 2023	Decision by the Third District Appellate panel (APP-004) which reversed the decision by the Amador Superior Court but did not consider the other issues raised on appeal: *"...we need not and do not consider any of the other issues raised on appeal"*
December 13, 2023	Denial by the Supreme Court of California of the *Petition for Review* (APP-001).

JURISDICTION

Jurisdiction properly exists for this esteemed Court under 28 USC § 1257 to the review these collateral constitutional challenges that have been advanced in this appeal which are *"distinct and severable"* from the cross-complaint that has been remanded to the Superior

Court of Amador County.

CONSTITUTIONAL AND STATUTORY PROVISION

First Amendment

Fifth Amendment

Eighth Amendment

Fourteenth Amendment

Collateral Order Doctrine - U.S. Supreme Court

Doctrine advanced in *Cohen v. Beneficial Indus. Loan Corp.,* 337 U.S. 541, 546 (1949)

California Code of Civil Procedure – CCP § 428.80 - This 1971 revision abolished counterclaims.

STATEMENT OF THE CASE

A. Introduction – Review of the Facts

The litigation in this case arose from a motor vehicle collision with a side structural wall of Dr. Pierson's medical office suite at 813 Court Street in Jackson,

California on October 10, 2016, resulting in initial instability of the structure necessitating the abrupt and persistent closure of the practice.

The referenced motor vehicle accident caused significant structural damage. The property managers, under direction of the owner/lessors negligently hired an unqualified local handyman service to perform the repairs. Due to the involvement of the structural side wall of the office suite and the resultant potential for instability of the structure, Dr. Pierson and his staff were initially prohibited from entry. It became fully apparent at the time of re-entry that the unqualified construction team had made no effort to isolate the demolition and construction zones from the areas within the office that were initially uninvolved. As a result, the areas of demolition and reconstruction remained insufficiently isolated and effectively open to the remaining clinic areas making the entirety of the space unsafe and unusable. The financial strain of the extended office closure soon became overwhelming requiring closure of the practice.

At that point in time Dr. Pierson's lease of the office suite was on a month-to-month basis with thirty (30) days' notice prior to termination of occupancy. A critical point in this regard concerns the fact that the international contract law inclusive of the Uniform Commercial Code as well as the Second Restatement of Contracts § 261 (Am. Law Inst. 1981) clearly state that when a contract (such as a lease) is rendered *"impracticable without fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, the duty to render that performance is discharged . . ."*.

Within five (5) days of Dr. Pierson having been forced to vacate the structure, the property owner/lessor(s)initiated collection efforts. Northern California Collection Service, Inc. (hereinafter NCCS) then initiated litigation in the Superior Court of Amador County, California with the advancement of multiple fraudulent claims under the alleged authority of an invalid and expired lease on May 19, 2017 (case #17-10112).

The Court granted the initial NCCS *demurrers* with leave to amend. Dr. Pierson subsequently filed a *Second Amended Cross-complaint* which included fourteen (14) causes of action on October 18, 2018. NCCS then proceeded with their Motion to name Dr. Pierson a vexatious litigant which was later followed by a similar motion by the owners/lessors (the McIntyres) and the property manager (Collier's International).

The Hearing on the two vexatious litigant motions was held on March 1, 2019. In the Court's subsequent *Order After Hearing* ruling of March 27, 2019, the Court made the improper determination that Dr. Pierson was a vexatious litigant under the specific criteria established at CCP 391(b)(1). In that decision, the Court also imposed a prefiling order and an exceptional and prohibitive security bond requirement of $140,743.42 to be provided within thirty (30) days of that Order. Dr. Pierson was subsequently able to produce only a partial security amount of just over thirty thousand dollars ($30,743.43) by the deadline, which was refused by the

Clerk. Two time Extension by Dr. Pierson to permit mobilization of assets to raise the bond were denied A *Proposed Judgment of Dismissal* was entered by the Court on April 30, 2019

Judgments of Dismissal were then requested and soon issued by the Court on May 7, 2019).

A timely filed Notice of Appeal was filed on July 5, 2019 (7-APP-2008-2013). The Third District Appellate Court decision was filed on August 30, 2023. That decision found that the Amador Trial Court had *"committed reversible error when it determined that he [Dr. Pierson] was a vexatious litigant..."* The Appellate Court decision resulted in the reversal of the judgments of dismissal with elimination of the prefiling order and security bond requirements. The Appellate panel did not review nor address any of the multiple constitutional challenges advanced by Dr. Pierson: *"Given the conclusions we have reached in this opinion, we need not and do not consider any of the issues raised on appeal".*

Under the *Collateral Order Rule* Dr. Pierson unsuccessfully advanced those critical issues in the public interest to the Supreme Court of California (Case# S282177).

B. Proceedings Below

March 27, 2019	Date of filing of the *Order After Hearing* by the Amador Superior Court which falsely designated Dr. Pierson a vexatious litigant with imposition of a prefiling order under CCP 391.7 (a) and a Security Bond requirement in the amount of $140,743.42 within (30) days.
April 30, 2019	Date of the Order titled: Failure to Timely Furnish Security; Proposed Judgment of Dismissal; Vacating Pending Civil Discovery Motions. This order terminated Dr. Pierson's cross-complaint.

May 7, 2019	Date of filing of the Judgments of Dismissal for NCCS and the McIntyres et al.
July 5, 2019	Date of timely filing of the appeal (Case# C089972).
April 30, 2023	Date of filing of the Third District Appellate Court Decision.
October 10, 2023	Date of filing of the Petition for Review in the Supreme Court of California.
December 13, 2023	Date of the denial of the Petition for Review.
March 11, 2024	Date of correspondence from the U. S. Supreme Court with notice of Justice Kagan's approval of the sixty day (60) time extension request (Case# 23A834)- new due date 5-11-24.

May 10, 2024	Date of mailing by Dr. Pierson via Express Mail of the Petition for Writ of Certiorari.
June 5, 2024	Date of correspondence from the U. S. Supreme Court citing deficiencies with the Petition - allowing sixty days to revise - under SCOTUS Rule 30 (1) the new due date became 8-5-24.

REASONS FOR GRANTING THE PETITION

From the perspectives and insights that Dr. Pierson has been provided by being forced to go through this exceptionally burdensome and abusive legal process to clear his good name, he has come to realize that the California Vexatious Litigant Statute CCP § 391-391.8 represents a legislative overreach and true violation of the separation of powers doctrine to deprive the California courts of their independent judicial judgment to apply their knowledge and long experience "to do justice" when considering the sanctioning of a citizens most basic and fundamental California and even more

importantly U. S. Constitutional right of access to the courts. By comparison, the federal reviewing courts have consistently advised proceeding much more cautiously and conservatively when considering the sanctioning and deprivation of the fundamental rights of self-represented citizen civil litigants. Those Federal Reviewing Courts have consistently advised that such sanctioning should be *"rarely applied"* and *"narrowly tailored"*. In approaching this area in the law so cautiously and conservatively, the federal reviewing courts as well as this U. S. Supreme Court have effectively established a minimum federal standard of access to the courts as well as with regard to the preservation of fundamental rights that must be maintained by the many states under the constitutional prohibitions of Section 1 of the Fourteenth Amendment. In the argument sections provided below Dr. Pierson will advance and review the legal and case law basis for his belief that the California Vexatious Litigant Statute is facially unconstitutional from multiple perspectives. This Petition is advanced in the public interest with the intent to protect the California residents, who remain

the good citizens of this Nation, from the exceptional injustices and deprivations of their fundamental rights which they may be subjected to under the California vexatious litigant statute.

Question #1

Litigiousness or Numerosity of Litigations Alone is Insufficient to Support the Determination that a Self-Represented Party is a Vexatious Litigant. The California Legislature's Mandate to the Courts at CCP § 391(b)(1) to Require that the Courts Make Such a Determination Absent Other Qualifying Criteria Usurps the Court's Core Inherent Authority and Independence to Make Judicial Decisions *"To Do Justice"* which Violates the Separation of Powers Doctrine. Isn't it true that the California Legislature's unconstitutional usurpation of judicial power to impose under statute strict sanctioning criteria to restrict a litigant's right of petition and access to the Courts based on numerosity of litigation criteria alone especially where the cases considered include those adjudicated in the federal district and circuit courts

represents an unconstitutional violation of the fundamental right of access to the courts protected by First Amendment of the U. S. Constitution?

A panel of the California Court of Appeal for the Third District in 1997 [*Wolfgram v. Wells Fargo* 53 Cal. App. 4th, 43, 58 (1997)] emphasized the fact that losing five cases as a self-represented party in a period of seven years is *"insufficient"* on an isolated basis to designate a party to a suit a vexatious litigant.

More recently a panel of the California Court of Appeal for the Sixth District [*Morton v. Wagner,* 156 Cal. App. 6th 963, 969 (2007)] has placed similar emphasis on the fact that "*evidence that a litigant is a frequent plaintiff or defendant alone is insufficient to support a vexatious litigant designation*".

The Federal Appellate Circuits have also fully recognized the insufficiency of case counts alone in

making a determination that a litigant is vexatious and requires sanctioning. The First Appellate Circuit [*Pavilonis v. King, 626 F.2d, 1075, 1079]* opined that *"litigiousness alone"* will not support sanctioning a litigant for being vexatious and further emphasized that the application of such measures against a pro se plaintiff must be approached with particular caution because it goes against the fundamental and constitutional principle of "*free access to the courts*".

Within the Ninth Federal Appellate Circuit the U.S. District Court in Northern California in a 2006 case [*Wilson v. Pier 1 Imports,* 411 F. Supp 2d 1196, 1201] has emphasized that "*mere litigiousness is insufficient*" [citing *DeLong v. Hennessey,* 912 F.2d 1144, 1147 (9th Cir. 1990)]. That Court emphasized the fact that there is a requirement placed upon a court which requires that it *"must examine the content of the filings"* to arrive at a proper determination on the issue. More recently, the

Ninth Circuit has also again emphasized this point [See *Molski v. Evergreen Dynasty Corp.,* 500 F.3d, 1047, 1061 (9th Cir. 2007)]:

> "In summary, we reemphasize that the simple fact that a plaintiff has filed a large number of complaints, standing alone, is not a basis for designating a litigant as "vexatious" *De Long*, 912 F.2d at 1147; *In re Oliver*, 682 F.2d 443, 446 (3rd Cir. 1982)."

From these multiple perspectives provided by the California and Federal Appellate courts it can be stated that the California Legislature's institution of a specific measure of case number as a determinant for designating that a litigant is vexatious which then limits access to the courts based exclusively on numerosity criteria alone (5 cases lost in the preceding 7 years) unconstitutionally fails completely to meet the required minimum federal standard for preservation of court access established by the

multiple federal circuits when considering the sanctioning of a citizen's right of petition to access the courts which is protected by the First amendment of the U. S. Constitution.

Question #2

The Multiple Federal Appellate Circuits Have Established Uniformity in the Precedential Case Law Decisions Concerning the Sanctioning of Access to the Courts for Pro Se Litigants which has Found that Such Sanctioning Represents the *"Exception to the General Rule of Free Access to the Courts"* and which, if Instituted Must be *"Narrowly Tailored"*. Isn't it true that the California Vexatious Litigant Statute's Abject Failure to Follow the Cautious and Conservative Approach Directed by the Multiple Federal Appellate Case Precedents Provides clear Confirmation that it does not Protect the Requisite Minimum Federal Standard for access to the courts and thus is Unconstitutional Under the Fourteenth Amendment due to the Statutes Permissive and Broad Infringement upon the Fundamental U. S. Constitutional Right of

Petition and Access to the Courts?

The First Appellate Circuit in *Pavlionis v. King*, 626 F.2d 1075, 1079 (1980) provided one of the earlier federal Appellate decisions which emphasized that any sanctions which restricted a pro se litigant's access to the Courts must be approached with great caution. In that decision the Court emphasized that *litigiousness alone* was not a sufficient condition to warrant such an action.

In the subsequent decision by the U.S. First Circuit [*Sires v. Gabriel,* 748 F.2d 49, 51 (1984)] the Court emphasized that sanctioning a litigant's access to the courts must be *narrowly tailored".*

In the First Circuit's decision in *Castro v. U.S.,* 775 F.2d 399, 408 (1985) the Court emphasized that such sanctioned limitation of access to the courts should occur only under *extreme circumstances.*

Though the Ninth Circuit in *DeLong v. Hennessey,* 912 F.2d 1144, 1147 (1990) acknowledged that *"there is a strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances:* [*Tripati v. Beaman,* 878 F.2d 351, 352, (10th Cir. 1989)] that Court emphasized that prefiling orders should "*rarely be filed*". [*In re Oliver,* 682 F.2d 443, 445 (3rd Cir. 1982) *Id.,* at p. 1147)]. The *DeLong* Court further emphasized that a district court must not issue such a sanction based only upon a showing of mere "*litigiousness*" (*Id.* at p. 1148).

The *DeLong* Court also emphasized the importance that any such sanction which restricts access to the courts must be *narrowly tailored.*

In a more recent Ninth Circuit opinion concerning the sanctioning of access to the Courts, the Court

has again emphasized the fact that *"litigiousness alone"* provides an insufficient basis for such an action especially when the case numbers are low on comparison with other cases where sanctions have been assigned. [See *Ringgold-Lockhart v. County of L.A.,* 761 F.3d 1057, 1064 (2014)]:

> Here, the district court found the Ringgolds vexatious primarily on the basis of the current case and an earlier federal case. As an initial matter, two cases are far fewer than what other courts have found "inordinate."

The *Ringgold-Lockhart* Court emphasized that to proceed with decisions to sanctioning access to the Court that specific procedural requirements must be followed (*Id.* at p. 1062):

> When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and "an opportunity to oppose the order before it [is] entered"; (2) compile an adequate record for appellate review, including "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed";

(3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as "to closely fit the specific vice encountered."

Conclusion

This review of the multiple Federal Appellate precedents concerning the sanctioning of pro se litigants is provided with the purpose of demonstrating that there is a critical minimum level of Federal constitutional protection that does exist under the requirements of the Fourteenth Amendment which must be maintained by the many states. The California Vexatious litigant statute unconstitutionally fails abjectly to meet that standard as it is too broadly applied (extending to all California courts and all defendants), requires a relative minimum of cases (5) and offers no protections whatsoever against the prejudices of a particular trial court judge.

Question #3

The *Separation of Powers Doctrine* Found in the California Constitution at Article III, Section 3 Defines a System of Three Branches Legislative, Executive and Judicial which are to be *"Kept Largely Separate"*. Isn't it True that the California Vexatious Litigant Statute CCP 391-391.8 in which the Legislature has Arrogated Critically Important Core Functions of the California Judicial Branch so as to Undermine the Independence and Essential Powers of those Courts an Unconstitutional Violation of the *Separation of Powers Doctrine* Due to the Multiple Provisions Contained Within the Statute Which have Rigidly Imposed Strict and Inflexible Definitions on Vexatious Conduct which Fully Undermine a Critical Core Function of the Courts while Disregarding the Independent Judgment of the Judiciary *"To Do Justice"*?

I. Introduction

The California Constitution at Article III, Section 3 implements a system of government divided in three branches which is largely modeled after the

Separations of Powers found in the U.S. Constitution.

The California Supreme Court has interpreted the practical application of that division of powers as follows:

> *Although article III, section 3 of the California Constitution "defines a system of government in which the powers of the three branches are to be kept largely separate. . . . Its mandate is 'to protect any one branch against the overreaching of any other branch. [Citations.]' [Citations.]" (Hustedt v. Workers' Comp. Appeals Bd., supra, 30 Cal. 3d 329, 338.)*

II. A Limited Review of the Historical Background which Contributed to the *Separation of Powers Doctrine* Advanced in the U.S. Constitution Along with an Analysis of the Application of that Doctrine in the Subsequent Precedential Decisions of the U.S. Supreme Court.

At the time of the founding of this American Republic, James Madison, who has been long

considered the father of the U.S. Constitution, appreciated the benefits and applicability of this division of government power as a system of checks and balances that would help prevent the occurrence of an excessive concentration of power in the hands of one person or one group thus protecting citizens from governmental abuse and tyranny. In his writings within ***Federalist Paper #48*** Mr. Madison clearly expressed this concern:

> *"The accumulation of all powers, legislative, executive and judiciary in the same hands, whether of one, a few or many . . . may justly be pronounced the very definition of tyranny."*

In his later writings in ***Federalist Paper #78***, Alexander Hamilton fully acknowledged that the Judicial Branch would be the least powerful of the three branches and thus would require vigilant care to defend its position in government.

It is clearly communicated through his writings that Mr. Hamilton envisioned the judiciary to be the protector of the general liberties and rights of *"the people"*.

In an early U. S. Supreme Court decision authored by former President and later Chief Justice Taft in which he referenced this doctrine he emphasized that it would represent an unconstitutional breach of the fundamental doctrine of Separations of Powers for the legislature to transfer its lawmaking power to the executive or judiciary. He also stated that it would be a breach for the legislature to invest itself with executive or judicial power [*J. W. Hampton & Co. v. U.S.,* 276, U.S. 394 (1928)].

III. A Review of the U.S. Supreme Court's position on the fundamental powers of the judiciary in our National government and the limits that can be imposed upon the Court system by the legislative branch.

In the *National Mut. Ins. Co. v. Tidewater Transfer Co.,* 337 U.S. 582, 590 (1949) the Court emphasized that *"there are limits to the nature of duties which Congress may impose on the constitutional courts vested with judicial power."*

More recently in *Cheney v. U.S. Dist. Court,* 542 U.S. 367, 384 (2004) the Court has reemphasized that the primary duty of the Federal courts is to *"do justice"*. It also emphasized that another branch's effort to impair Court function is *"impermissible"*.

Certainly, the reasonable position that one comes away with from these U.S. Supreme Court opinions is that it is the constitutional duty of the Courts in civil litigation cases to never become impaired from performing the Court's critical duty "*to do justice*".

IV. A Brief Review of the Case Law Precedents on the Issue of Separation of Powers Provided by the Ninth Circuit Appellate Court.

In the Ninth Circuit decision in *Chandha v. Immigration and Naturalization Service,* 634 F.2d 408, 421 (9th Cir 1980) Justice Kennedy emphasized the point that actions which breach the doctrine of *Separation of Powers* principles are unconstitutional (*Id.,* at p. 420). The Court stated that a legislative intrusion on executive or judicial branch powers was unconstitutional.

It is this very type of intrusion by the California Legislature into an area of unquestioned and essential judicial power that Appellant holds has occurred in the Legislature's imposition of the California Vexatious Litigant Statute (CCP § 391-391.8) upon the Courts. That statute mandates outcomes based upon rigid criteria that in large measure disregard and ignore the importance of the inherent authority and considered legal expertise of the Courts to judicially review and consider the specific facts of each case before the Court.

In the *Pacemaker* decision [*Pacemaker Diagnostic Clinic, Inc. v. Instromedics, Inc.*, 725 F.2d 537, 544 (9th 1984)] the Ninth Circuit emphasized that the designated constitutional role of the Article III Courts requires not only the appearance, but also the reality of control by the *"Article III Judges over the interpretation, declaration and application of the federal law"*.

It is that very *"reality of control"* that has been so exceptionally usurped by the California Legislature in the vexatious litigant statute. Important insight as to this point can be found in *Seattle Audubon Society v. Robertson*, 914 F.2d 1311, a case in which the Ninth Circuit has emphasized that Congress clearly violates the Separations of Powers when it *dictates* how the court should decide an *issue of fact* especially under threat that the Court would otherwise be deprived of jurisdiction in the case.

From these perspectives provided by the Ninth Circuit in *Pacemaker* and *Seattle Audubon Society*

there can be no question that the California Legislature's design of the vexatious litigant statute, especially subsection CCP 391(b)(1) which requires rigid determinations based on specific case numbers has resulted in just such an imposition of rigid mandates which dictate to the Courts how to decide issues of fact irrespective of the circumstances of a case.

Those rigidly imposed conditions of the statute indisputably intrude into areas of core inherent judicial authority and power and as a result deprive the California Judiciary of the opportunity to express the Court's independent and judicially considered judgment.

V. A Review of the Constitutional Powers and Jurisdiction of the California Superior Courts.

In regard to the issue of judicial power it is important to emphasize that the California

Supreme Court has long held the position that it is a violation of the *Separation of Powers Doctrine* when the court's independence and power to proceed in the ***interests of justice*** (*"to do justice"*) is compromised by legislative or executive action. [*People v. Superior Court,* 11 Cal. 3d 59, 65 (1974)].

The Supreme Court of California has repeatedly emphasized that there is a *separation of powers* violation when the actions by an alternate branch of government *"defeat or materially impair the inherent functions of another branch"* [*In re Prather,* 50 Cal. 4th 238, 254 (2010)].

Along those lines, more recently in *Briggs (supra* p. 854) the Court has emphasized the fact that for *"over 80 years California courts have held that statutes may not be given mandatory effect, despite mandatory phrasing, when strict enforcement would create constitutional problems".* The vexatious litigant statute does result in this very

type of constitutional conflict even despite acceptance by the courts.

V. The Supreme Court of California has a Long-Established Position that the Judiciary has the *Inherent Power* to Regulate the Practice of Law. It is Thus a Logical Extension of that Long-Recognized Oversight to Conclude that this Same *Inherent Power* Must Extend to the Judiciary's Authority to Regulate Self-Represented Parties Proceeding in Litigation *In Propria Persona.*

The Court in the case *In Re Attorney Discipline*, 19 Cal. 4th 582, 595 1998) interpreted the constitutional role of the courts under the powers designated to it by the *Separation of Powers Doctrine* to fully support the determination that the Supreme Court has the *"inherent authority over the regulation of the practice of law . . .".* In support of that position the Court has referenced the fact that *"Sister-state courts considering the question uniformly have concluded that the inherent power of the judiciary to regulate the practice of law*

includes the authority to impose fees necessary to carry out the court's responsibilities in this area" (*Id.,* at p. 594). In that same decision the Court has also emphasized the fact that it is the court which is the *"final policymaker"* with respect to establishing standards for the practice of law and not the legislature (*Id.,* at p. 602).

In the more recent case [*Obrien v. Jones,* 23 Cal. 4th 40, 48 (2000)] the Court has emphasized the repeatedly stated position held by the Court that it has the primary *inherent power* to discipline attorneys actively practicing law in the state.

Thus, the Legislature's usurpation of the inherent power and independent judgment of the courts through the enactment of the vexatious litigant statute (CCP 391-391.8) to rigidly and over-broadly regulate the sanctioning of the conduct of self-represented parties proceeding in propria persona truly represents a clear violation of the Separation of Powers Doctrine which has fully disregarded the

independent judgment of the Judiciary in an area where the Judiciary has vowed to remain the *"final policymaker"*.

In conclusion, the California Legislature in enacting the California Vexatious Litigant statute (CCP 391-391.8) has truly usurped a core judicial function while almost completely disregarding the independent judgment and experience of the Courts. In so doing the statute must be found to represent an unconstitutional violation of the separation of powers doctrine even despite the fact that it has been permitted to exist as a statute for over sixty (60) years.

Argument #4

The Fourteenth Amendment to the U.S. Constitution Prohibits the Deprivation by the Many States of Life, Liberty or Property Without Due Process of Law. The Evidence Presented in this Case Provides Irrefutable

Confirmation that the California Vexatious Litigant Statute (CCP § 391-391.8 Infringes Upon the U.S. Constitution's First Amendment Right of Petition which Imposes a Minimum Standard that the California Statutes and California Courts Must Maintain. Furthermore, the California Statute Deprives Self-Represented Litigants of the More Expansive Right of Petition Provided Under the California Constitution as Recognized to Exist by the Supreme Court of California in *Robins* and Further Confirmed to Exist by this U. S. Supreme Court in *Pruneyard Shopping Center.* Isn't it true in this Case at Issue that the Amador Superior Court's Acting Under the Strict Instructions Contained within the California Statute to Designate Dr. Pierson a Vexatious Litigant along with that Court's subsequent denial of Dr. Pierson's Due Process and *"Fair*

Hearing" Rights at the Hearing for Dr. Pierson's Amended Motion for Reconsideration provide clear Confirmation of the Severe Deprivation of Dr. Pierson's U. S. Constitutionally Protected Right of Petition and Right to Access the Courts Further exacerbated by the _Per Se_ Deprivation of Due Process at the Hearing on the Motion for Reconsideration?

The U.S. Supreme Court in the immediate post-Civil War era emphasized that the 14th Amendment prevented the multiple States from depriving *"any person"* of any property interest without due process of law [*U.S. v. Cruikshank,* 92 U.S. 542, 544 (S. Ct. 1876)]:

> The *fourteenth amendment* prohibits a State from depriving any person of life, liberty, or property, without due process of law; . . . it secures "the individual from the arbitrary exercise of the powers of government,

> unrestrained by the established principles of private rights and distributive justice."

The First Amendment to the U.S. Constitution at the point of origin had been intended to apply solely to the prevention by the National Government and the Congress from the infringement upon the fundamental rights of peaceful assembly and petitioning for redress of injury. As fully evident in the passage referenced above, the U.S. Supreme Court in *Cruikshank* recognized that the Fourteenth Amendment extended all such U. S. Constitutional protections from encroachment by state governments as well as to severely limit the power of the many states to infringe upon those fundamental rights assigned to all citizens under the U. S. Constitution (*Id.,* at p. 552).

The *Cruikshank* Court proceeded to emphasize that the very idea of government in this republic must provide the right to all citizens to *"meet peaceably*

for consultation in respect to public affairs and to petition for redress of grievances" (*Id.* at p. 552).

Thus, it is indisputable that the right of petition is a federally designated right which cannot be denied or infringed upon by the states without due process of law. Furthermore, the states are not permitted to reduce the level of protection which exists for these basic and fundamental rights delegated to all citizens under the U. S. Constitution nor below the minimum established federal standards recognized to exist by the Federal Courts. The California Supreme Court in *Robins v. Pruneyard Shopping Center,* 23 Cal. 3d 899, 909 (1979) has fully recognized that the state must protect those rights which have been extended to all citizens under the U.S. Constitution:

> *"Federal principles are relevant but not conclusive as long as Federal rights are protected."*

With the *Robins* decision (*Id.,* at p. 910) the Supreme Court of California not only recognized that a federally designated right may not be infringed by the States, but also concluded that there was no federal restriction which existed that prohibited the state from providing a more expansive level of First Amendment protections than offered by the Federal Constitution.

In considering just how expansive the concept of a property interest is, the U.S. Supreme Court has reviewed this concept in *Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 431 (1982) and found:

> The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except "for cause.". . . Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact."

The *Zimmerman* Court also concluded that a *Cause of Action* in litigation also represents a property interest protected by the Fourteenth Amendment (*Id.,* at p. 42). The Zimmerman Court also quite pointedly stated that litigants also held a property interest which must be provided due process.

As to the procedural due process requirements necessary prior to the deprivation of a litigation related property interest the *Logan* Court emphasized that the *"minimum (procedural) requirements"* of federal law must be provided irrespective of any specified state procedures (*Id.,* at p. 432).

An important last consideration in this discussion is to address from the U.S. Supreme Court's perspective just what these procedural requirements are which meet the Federal Constitutional requirements of due process. The position of the Court on this issue was directly

considered in *Pruneyard Shopping Center v. Robins,* 447 U.S. 74, 85 (1980):

> ". . . [The] guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the objective sought to be attained." *Id., at 523, 525.* [citing *Nebbin v. New York,* 291 U.S. 502 (1934)]

At this juncture it is important to mention that it has been well recognized by the California reviewing courts that a *per se* exception to these due process requirements which must result in reversal has been recognized to exist where a party has been prejudiced by the denial of a *"fair hearing"* in the lower Court [*Bravo v. Ismaj,* 99 Cal. App. 4th 21, 225-226].

As observed by the U.S. Supreme Court, a U.S. citizen *shall* not be deprived of a property right

without due process of law. It is Dr. Pierson's firm position well supported by the facts of this case at issue that he has been denied *due process* and *fair hearing* by the Amador Superior Court in all proceedings before that Court which followed the Court's docketing of the Court's Order titled *"Order After Hearing"* on March 27, 2019 (7-APP-1791-93). Document length restrictions eliminate the ability to review the evidence of those limitations here.

Conclusion

It is from this perspective of the minimum established protections under Federal Constitutional Law that the overly broad and truly arbitrary taking of the access to the courts and the taking of a self-represented party's lawful right to petition in the Courts for redress of grievances that the constitutionality of the California Vexatious Litigant Statute (CCP §§ 391-391.8) must be analyzed. A full and correct analysis provides indisputable confirmation that the statute not only

fails to maintain the requisite minimum Federal Constitutional First Amendment *right of petition* as defined in the case precedents of the multiple federal circuits, but also fails to protect the even more expansive right of petition that is delegated to all citizens of California by Article 2, Sections 2 and 3 of the Constitution of the State of California as interpreted to exist by the Supreme Court of California in the *Robins* decision which this U. S. Supreme Court upheld in the *Pruneyard Shopping Center* decision.

Question #5

It is a Fact that the California Vexatious Litigant Statute (CCP 391- 391.8) Has Resulted in a Disproportionately High Designation of Self-Represented Non-Attorney Litigants as Vexatious Litigants that have been Sanctioned by the Courts as Compared to the Quite Rare Occurrence of a Represented Party and/or Their Attorneys

being so designated. This evidence exists not only in the California Superior Courts but also in the Federal District Courts when those Courts Must Act Under the Direction of California law. These True Facts Provide Irrefutable Evidence that the Vexatious Litigant Statute Has Created an Unconstitutional Double Standard as to a Litigant's Ability to Access Fundamental U. S. Constitutionally Protected Rights which in most cases involving self-represented parties is based upon the financial means of that litigant. Isn't it true that a Statute Such as the California Vexatious Litigant Statute which Allocates Access to Essential Federal Constitutional Rights Based upon the Specific Financial Wherewithal of the litigant when analyzed from the perspective of Strict Scrutiny Irrefutably Facially Unconstitutional?

The California vexatious litigant statute at CCP § 391(b)(1)-(4) defines a vexatious litigant to be a *"person"* who proceeds in litigation *"in propria persona"*. This designation thus unconstitutionally for all intents and purposes isolates a party represented by counsel from even the remotest risk of being sanctioned as a vexatious litigant. It also serves to essentially isolate those represented parties from the risk of having to post any security bond amount let alone to be exposed to prohibitive and unattainable security bond assignment as occurred in this case involving Dr. Pierson. Lastly, being represented by counsel also eliminates the requirement of having to seek a pre-filing order from essentially all state courts as required with a vexatious litigant determination under the statute. Likewise, being represented also permits a litigant to proceed in litigation against any defendant on any issue; whereas, the designation as a vexatious

litigant under the California statute requires the need to seek a prefiling to proceed against any defendant in any California Court. Furthermore, that statutory segmentation of litigants as evidenced in the California case law also provides confirmation that except for the rare exception, attorneys who represent any party almost never are designated to be vexatious litigants. In considering this double standard which exists in California for non-represented parties as opposed to those represented by counsel it is critical to start with a review concerning the interpretation of the California vexatious litigant statute from the perspective of the Federal Courts which in California cases must consider such issues through the lens of that California statute due to the requirements placed by the Rule of Decision (28 USC § 1652).

The Ninth Circuit in *Weisman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir., 1999) observed that

"only one district court in this circuit" has *"adopted a vexatious litigant rule"* which has permitted the courts in that district to *"proceed by reference to the vexatious litigant statute of the State of California, Cal. Code Civ. Proc. § 391-391.7"* (See Central District of California Local Rule 27 A.4). Furthermore, even despite that acknowledgement the Ninth Circuit in *Weisman* fully admitted that no court in the circuit had ever *"imposed a vexatious litigant order on an attorney"*. The *Weisman* Court even went so far as to conclude that the statute as designed had no applicability whatsoever to attorneys representing clients nor to any litigant who is represented by counsel.

As to this latter issue of the statute being truly inapplicable to attorneys, it is important to emphasize the fact that because of the fundamental design of the California statute at CCP 391-391.8, it has also essentially remained the practice of the California state courts to almost exclusively apply

the statutory designation of a litigant being vexatious to only non-attorney self-represented litigants. In fact, there has been only the rare exception to this extreme unwillingness on the part of the California courts to designate attorneys to be vexatious litigants. In practice those rare exceptions typically involve an attorney who has been acting merely as the *"puppet"* of the litigant in the propagation of abusive litigation. Consistent with that observation, the California Second Appellate District in *In Re Kinney* 201 Cal. App. 4th 951, 958 (Cal. 2nd Dist. 2011) on review of the entire California case law database was able to identify only two such cases in which an attorney had been found to be vexatious under the statute.

It is important to further emphasize that even regarding the potential sanctioning of an attorney for any such abusive or vexatious conduct under any authority, the Ninth Circuit in the *Weisman* decision (*Id.* at p. 1199-1200) fully acknowledged

that significant protections existed for attorneys in that Northern California District's own local rules. Those rules not only required formal notice of the grounds for applying any such sanction as well as to go even further by containing the provision that any hearing concerning the matter of sanctioning an attorney had to be heard before a different judge *"other than the complaining judge"* to insure the absence of prejudice. There is not even a vestige of any such provision for protection of the self-represented litigant from judicial bias contained within the California vexatious litigant statute. In fact, by design when a pre-filing order is implemented under the statute at CCP 391.7 the designated vexatious self-represented party is required to petition the same state court judge who had designated the litigant vexatious.

Conclusion

This discriminatory double standard and discriminatory targeting of self-represented non-

attorney litigants proceeding in propria persona as vexatious under the California Vexatious Litigant Statute (CCP § 391-397.8) as well as the failure of that statute to provide any protections to those litigants from the imposed prejudices of the Court while at the same time offering an umbrella of essentially complete protection to all represented parties and their attorneys truly defines a facially unconstitutional construction which callously disregards the fundamental rights of self-represented litigants delegated under the First, Fifth and Eighth and Fourteenth Amendments of the U.S. Constitution as well as the prohibitions to the abridgment of the "privileges" and "property" rights of citizens "without due process of law".

Question #6

An Original Defendant Called Unwillingly into Court by the Pleadings of an Original Plaintiff has Historically Been Designated Under the Long Recognized *Eastin-Ritter*

Doctrine the Privilege and Full Immunity Protections of Being Permitted to Proceed with a Vigorous Defense with No Risk of Exposure to a Charge of Providing a Malicious Defense. The 1971 Revision of the California Statutes at CCP 428.80 Abolished Counterclaims and the Opportunity for Defendants to File Additional Dependent Causes of Action Under the Plaintiff's Original Complaint. Those 1971 California Statutory Changes Also Mandated that Any and All Counterclaims Must be Exclusively Advanced as Causes of Action in the Form of a Cross-Complaint which Requires Original Defendants to Become Unwilling Plaintiffs. Isn't it True that this Taking of the Original Defendant's Right to an unrestricted and vigorous defense with counterclaims advanced under the original complaint, an opportunity which Still Exists Under Federal

Law (see FRCP 13), representative of an Unconstitutional and Impermissible Violation of the Fourteenth Amendment?

Dr. Pierson, the original defendant in this case was required by the revised California statute CCP § 428.80 to advance his counterclaims under a cross-complaint as an unwilling crossclaim plaintiff which exposed him to the risk of and ultimate determination of being falsely designated a vexatious litigant under CCP § 391(b) (1). Thus, that requirement to have to proceed with the counterclaims in the form of a cross-complaint resulted in Dr. Pierson being unlawfully denied the long-standing Eastin-Ritter Doctrine protections to be able to proceed with a vigorous defense with no risk of being charged with providing a malicious defense or being designated a vexatious litigant. The Eastin-Ritter Doctrine had its origin in California in a ruling by the Supreme Court of

California over one hundred twenty-five years ago and was later further expanded . That defendant right has been for all practical purposes lost in California with the 1971 revisions of the California Statutes at CCP § 428.80 which abolished the opportunity to advance counterclaims under the original plaintiff complaint, a right that is still maintained under Federal law as evidenced at Federal Rules of Civil Procedure FRCP Rule 13.

Remarkably, that doctrine had its origin in a case before the Supreme Court of California in 1884 (*Eastin v. Bank of Stockton* (1884) 66 Cal. 123, 127). In that case the Court's decision was based fundamentally on the fact that it is the plaintiff who is the initiator of any such court action, and it is the disadvantaged defendant who has the *privilege* to respond:

> The defendant has the privilege of calling upon him to prove it to the satisfaction of the

> judge or jury, and he is guilty of *no wrong* in exercising this privilege.

The essence of that *Eastin* Court's decision is that a defendant cannot be found guilty of any wrong irrespective of the nature of the defendant response which is provided. In the subsequent case (1943) the Supreme Court of Illinois [*Ritter v Ritter* (1943) 381 Ill. 549, 555-556)] expanded the doctrine even further by explaining that defendants could not be found guilty of any wrongdoing even in the presence of *"wrongful conduct"* in defending themselves.

As an original defendant Dr. Pierson was entitled to the Eastin-Ritter protections as long as he remained a defendant.

The question then arises as to whether there is sufficient support in the California case law to support Dr. Pierson's argument that he has a legal and constitutional right when unwillingly sued to

remain the defendant in a single litigation as was possible during that earlier era of the California statutes when it was fully permissible for a defendant to advance such actions as counterclaim(s). In that regard, the Supreme Court of California provided clarification with the understanding that it was only the *"new matter"* which was entirely *"separate and distinct from the issues raised upon the original complaint and answer"* (*Pacific Finance Corp. v. Superior Court of Los Angeles County* (1933) 219 Cal. 179, 182) that was appropriately advanced in a cross-complaint. Alternatively, if the *"matter"* was related to and dependent upon the issues advanced in the original complaint the appropriate approach would be to advance that matter in the form of a counterclaim.

The Court in *Case v. Kadota Fig* (*Case v. Kadota Fig Assoc. of Producers* (1950) 35 Cal.2d 596, 603) emphasized the fact that the degree of separation

between a counterclaim and cross-complaint was not black and white, but rather a continuum between those causes of action which are completely dependent upon the original complaint and those that are fully independent (*Id* at p. 604).

It is important to point out the fact that the California Supreme Court in *Bertero v. National Gen'l Corp.* (1974) 13 Cal.3d 43, 51 not long after the 1971 statutory revisions which abolished counterclaims clearly recognized that some aspects of the cross-complaint may be integral to and dependent upon the cause(s) advanced within the original complaint; whereas other legitimate causes of action advanced may be completely independent of those causes of action contained within the plaintiff's original complaint. That divergence is further indirectly referenced in *Bertero (Id* at p. 60) where the Court acknowledges that in apportioning damages, those damages attributable to an original defendant's aggressive defense (i.e., those

dependent claims) warranted (Eastin-Ritter) immunity; whereas those damages related to independent crossclaims did not warrant such immunity.

In conclusion, it is appellant's position that the 1971 statutory revisions by the California Legislature which abolished counterclaims represented a deprivation to all citizens of California of a fundamental Federal right as original defendants called unwillingly into court to be permitted the opportunity to respond within the boundaries of the original complaint with valid counterclaims.

Question #7

In the Amador Superior Court's March 27, 2019 *"Order After Hearing"* (7-APP-1791-3) which found Dr. Pierson to be a vexatious litigant, the Court proceeded to assign an unprecedented and prohibitive security bond requirement

($140,743.42) (7-APP-1793) which exceeded by 4.7 times the amount originally sought by the Appellees/Movants in their original Vexatious Litigant Motions ($30,000) (3-APP-707, 5-APP-1440). That security bond assignment by the Court represented a blatant and intentional attempt to construct an overwhelming and unassailable financial barrier to deprive Dr. Pierson, the original defendant in this litigation, access to the Amador Court to defend himself against the fraudulent charges advanced by those Original Plaintiff/Vexatious Litigant Motion movants. That action was taken by the Court with no regard or expression of judicial concern for the fact that the assignment of such a excessive security bond amount would effectively construct a prohibitive financial barrier which would obstruct with likely absolute certainty Dr. Pierson's ability to ransom back his most fundamental of civil

liberties which was the opportunity to seek redress for his injuries in a court of law. Isn't it true that such a prohibitive and truly unprecedented security bond imposition was qualifying as an excessive fine as well as cruel and unusual punishment under the prohibitions of the 8th Amendment of the U.S. Constitution and Article 1, Section 17 of the California Constitution?

A review of the multiple intentional acts of the Amador Superior Court to conspire to deprive Dr. Pierson of access to his fundamental and essential constitutional rights.

- The Vexatious Litigant Motion Movants requested within their original motions a total bond amount of $30,000.
- On 3-1-2019, in the Court's Tentative Ruling no consideration was given to the security bond amounts requested in the original vexatious

litigant motions. Rather, the Court requested new estimates by the adverse parties.

- 3-27-2019 Order After Hearing by Judge Day (Service mailed 3-28-19)
    - This Court order specified that the *security bond* assigned ($140, 743.42) was required to be produced within 30 days of service. In this regard, the Court on citing *McColm v. Westwood Park Assn* (1998) 62 Cal. App 4th 1211, 1216 (actually found at p. 1219) callously made the observation without a trace of any apparent constitutional concern that the prohibitive security bond amount would restrict Dr. Pierson's right of access to petition for relief in the Courts: *"The indigence or pro per status of a vexatious litigant is not a factor in ordering security or setting the amounts of security"* (7-APP-1793).

- A 4-19-2019 Ex Parte Application by Dr. Pierson for a 60-90 Day Time Extension to enable Dr. Pierson the opportunity to mobilize illiquid assets to be able to produce the security bond (7-APP-1806) was denied on improper grounds on 4-22-2019 (CCP § 391.6) (7-APP-1842) as was a second timely Ex Parte time extension request.
- On 4-30-2019 Dr. Pierson produced an incomplete bond amount in the form of a Cashier's Check drawn on Bank of America in the amount of $30,743.42 (7-APP-1874). The Clerk of the Amador Court rejected that partial bond payment

Discussion

The entirety of the evidence presented above demonstrates conclusively that following the Amador Court's unlawful and incorrect designation of Dr. Pierson to be a vexatious litigant, the Court then proceeded with clear and manifest intent to erect an impenetrable financial and time-imposed

barrier in the form of a prohibitive security bond amount to deprive Dr. Pierson of his fundamental U. S. Constitutional First amendment right to petition in the courts to seek redress for the professional, financial and personal injuries inflicted upon him by the original plaintiffs/crossclaim defendants. There can be no question but that these concerted efforts by the Amador Court had the indisputable intent to deny to Dr. Pierson access to his most basic of civil liberties inclusive of his right of petitioning and access to the courts Those intentional efforts by the Amador Court to create an excessive and impenetrable financial barrier to prevent Dr. Pierson from accessing the courts to defend himself against the false charges advanced indisputably violated the Eighth Amendment of the U.S. Constitution as well as Article 1, Section 17 of the California Constitution.

These many adverse decisions by the Amador Superior Court , certainly provide confirmation that the court held a high level of underlying prejudice and bias directed toward Dr. Pierson.

CONCLUSION

The California Court of Appeals for the Fifth Appellate District in a recent decision [*Nuno v. California State University, Bakersfield,* 47 Cal. App. 5th 799, 810-811 (2020)] has emphasized that access to justice as well as access to the courts is *"a fundamental and essential right"* in our democracy.

That Fifth District Court of Appeals further emphasized that the right of access to the courts is *"guaranteed to all persons by the federal and state constitutions*" (Id. at p. 811). The Court further emphasized that the California Rules of Court, Rule 10.960(b) was developed in the recognition that the right of access to the courts by self-represented litigants must be protected:

> "Providing access to justice for self-represented litigants is a priority for California Courts."

As has been well demonstrated in the facts advanced above, the California vexatious litigant statute has exceptionally and unconstitutionally failed to respect these necessary protections of fundamental rights including by permitting the imposition of prohibitive security bond amounts that are unattainable for the vast majority of citizens and in direct violation of the Eight Amendment and Article 1, Section 17 of the California Constitution.

CONCLUSION

For all the reasons expressed above Dr. Pierson, a self-represented party in this litigation, prays for the mercy of this esteemed Court to grant this Petition.

Respectfully submitted,

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