DISTRICT COURT OF THE UNITED STATES [1]
(FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION)

David Schied and Cornell Squires
Sui Juris Grievants/Private Attorney Generals
and Next Friend to Others Similarly "*Enjoined*" as
Crime Victims / Common Law Grievants / Claimants,
v.
In their Individual Capacities:
Karen Khalil, Cathleen Dunn, Joseph Bommarito; James Turner; David Holt,; Jonathan Strong; "*Police Officer*" Butler,; John Schipani; Tracey Schultz-Kobylarz and Redford Township Police Department; Redford Township 17th District Court; Charter Township of Redford; Charter County of Wayne Michigan; Municipal Risk Management Authority ("MMRMA"); The Insurance Company of the State of Pennsylvania ("ICSOP"); American International Group, Inc. ("AIG"); DOES 1-10;
Defendants /

Case No. 2:15-cv-11840
Judge: Avern Cohn

GRIEVANTS / PRIVATE ATTORNEY GENERALS / NEXT FRIENDS DAVID SCHIED'S AND CORNELL SQUIRES' *"MEMORANDUM OF LAW* IN SUPPORT OF *"JOINDER"* CLAIMS OF CONSTITUTIONAL & COMMON LAW TORTS BASED ON THE *FIRST AMENDMENT PETITION CLAUSE* AND EVIDENCE OF *DOMESTIC TERRORISM*

[1] "The term 'District Courts of the United States,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States." *Mookini v. United States*, 303 U.S. 201 (1938) citing from *Reynolds v. United States*, 98 U.S. 145 , 154; *The City of Panama*, 101 U.S. 453 , 460; *In re Mills*, 135 U.S. 263, 268 , 10 S.Ct. 762; *McAllister v. United States*, 141 U.S. 174, 182 , 183 S., 11 S.Ct. 949; *Stephens v. Cherokee Nation*, 174 U.S. 445, 476 , 477 S., 19 S.Ct. 722; *Summers v. United States*, 231 U.S. 92, 101 , 102 S., 34 S.Ct. 38; *United States v. Burroughs*, 289 U.S. 159, 163 , 53 S. Ct. 574.

Sui Juris Grievants / Next Friends and
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Cathleen Dunn
John Schipani
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James Turner
David Holt
Jonathan Strong
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David Schied and Cornell Squires (hereinafter "*PGA Schied*"), being each **of the People**[2], and having established this case as a *suit of the sovereign*[3], acting in

[2] PEOPLE. "*People are supreme, not the state*." [*Waring vs. the Mayor of Savannah*, 60 Georgia at 93]; "*The state cannot diminish rights of the people*." [*Hertado v. California*, 100 US 516]; Preamble to the US and Michigan Constitutions – "*We the people ... do ordain and establish this Constitution...*;"

their own capacity, herein accept for value the oaths[4] and bonds of all the officers of this court, including attorneys. Having already presented the initial causes of action to this Article III District Court of the United States as a *court of record*[5],

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"...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves..." [*Chisholm v. Georgia* (US) 2 Dall 419, 454, 1 L Ed 440, 455, 2 Dall (1793) pp471-472]: "*The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative*." [*Lansing v. Smith*, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7]. See also, *Dred Scott v. Sandford*, 60 U.S. 393 (1856) which states: "*The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people', and every citizen is one of this people, and a constituent member of this sovereignty*."

[3] *McCullock v. Maryland*, 4 Wheat 316, 404, 405, states "*In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution*," and *Colten v. Kentucky* (1972) 407 U.S. 104, 122, 92 S. Ct. 1953 states; "*The constitutional theory is that we the people are the sovereigns, the state and federal officials only our agents*." See also, *First Trust Co. v. Smith*, 134 Neb.; 277 SW 762, which states in pertinent part, "*The theory of the American political system is that the ultimate sovereignty is in the people, from whom all legitimate authority springs, and the people collectively, acting through the medium of constitutions, create such governmental agencies, endow them with such powers, and subject them to such limitations as in their wisdom will best promote the common good*."

[4] OATHS. Article VI: "*This Constitution, and the laws of the United States... shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding... All executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution*."

[5] "*A Court of Record is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to*

PGA Schied and *PGA Squires* hereby proceed according to the course of Common Law[6].

This court and the opposing parties should all take notice **WE DO NOT CONSENT to the reference of parties named as "*grievants*" and/or as Private Attorney Generals as otherwise being corporate fictions in ALL CAPS of lettering as "*plaintiff*"** (e.g., "DAVID SCHIED, plaintiff"). **Note that all "*summons*" were issued with notice to all co-Defendants that Grievant David Schied is "*sui juris*."**

WE DO NOT CONSENT to the assignment of this case, otherwise attempted to be "*filed*" in Ann Arbor and ultimately filed in Flint, being subsequently sent to Detroit, in the heart of Wayne County, situated in a building believed to be leased by Defendant Charter County of Wayne to the United States

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hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial". [*Jones v. Jones*, 188 Mo.App. 220, 175 S.W. 227, 229; *Ex parte Gladhill*, 8 Metc. Mass., 171, per Shaw, C.J. See also, *Ledwith v. Rosalsky*, 244 N.Y. 406, 155 N.E. 688, 689].

6 COMMON LAW. – According to *Black's Law Dictionary* (Abridged Sixth Edition, 1991): *"As distinguished from law created by the enactment of legislatures [admiralty], the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs*." *"[I]n this sense, particularly the ancient unwritten law of England*." [1 Kent, Comm. 492. *State v. Buchanan*, 5 Har. & J. (Md.) 3G5, 9 Am. Dec. 534; *Lux v. Ilaggin*, G9 Cal. 255, 10 Pac. G74; *Western Union Tel. Co. v. Call Pub. Co*., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; *Barry v. Port Jervis*, 72 N.Y.S. 104, 64 App. Div. 268; *U. S. v. Miller*, D.C. Wash., 236 F. 798, 800.]

District Court with a proven proclivity toward contributing to the *domestic terrorism* being carried out, hand-in-hand with state and county government imposters, as usurpers of *The People's* power and authority.

"*Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . .*" ***U.S. v. Tweel*, 550 F.2d 297, 299. See also *U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmine v. Bowen*, 64 A. 932**

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CONCISE STATEMENT OF ISSUE PRESENTED

The organic Constitution created and ordained by and for the People of the united States of America is the Supreme Law of the Land, and the First Amendment *Petition Clause* guarantees the People the right to redress. The U.S. Supreme Court has determined that such a right is *fundamental*, "*important*," and thus, inviolable in an Article III Court of Record, such as in this instant ongoing case initially filed by *sui juris* Grievant David Schied.

The Supreme Court has also recognized that certain conditions that concern the *public interest* warrant occasions where the filing and litigation of the public's interest by Private Attorney Generals is justified for proper "*standing*." In this case, numerous additional co-Grievants have established "*joinder*" claims against the co-Defendants listed in this case and, having been so enjoined, now speak through the collective advocacy of their fellow claimants as "*Private Attorney Generals*," being David Schied and Cornell Squires.

At issue in the claims, individually and collectively, is that agents of the co-Defendants – acting under *color of law, simulating legal process*, conducting *legal acts in illegal manners*, while unlawfully *usurping* their unconstitutional exercise of power and authority – are, by formal definition of their acts, *domestic terrorists*. Their claims all have in common First Amendment Petition Clause violations. All of these "*backward-looking access-to-court*" claims involve both *predicate* and *secondary* level offenses that have resulted from multi-tiered denials of due process by *judicial usurpers* and others who hold membership in a thoroughly corrupted State BAR of Michigan.

This instant filing presents the proper legal authorities and a thorough legal discussion in support of the basis for the enjoining of these additional people with similar claims against the co-Defendants' and their corporately contracted "*errors and omissions*" excess insurance policy and its accompanying $100 Billion "*domestic terrorism*" coverage.

I. **PREFACE IN SUMMARY OF THE BASIS FOR THIS *MEMORANDUM***

As prefaced in Grievant David Schied's "*conclusion*" section of his previous filing of "*Memorandum of Law*" accompanying his "*Writ of Mandamus for Interlocutory Appeal*" registered as "*filed*" on 11/18/15, which are altogether incorporated in their entirety as if written herein in its entirety:

> "Acts of individual judges and the "*patterns and practices*" documented by Grievant, as having emanated from the federal District Court, have presented reasonable questions about judicial legitimacy. Some of that documentation has prompted questions for abstract research analysis. Other of this documentation has led to rational questioning and speculation that can be appropriately attributed to a tortuous criminal spectrum of judicial and magistrate misconduct that ranges from malicious *abuse of discretion*, to routine *deprivations of rights under color of law*, to the commission of *treasonous acts of domestic terrorism*.....**"**

> "....[J]udges [then,] are required to apply [such] rules under context of those Statutes at Large at the federal level, while also acting under superseding state laws in the absence of Congressional legislation on the "*cases*" and "*controversies*" before the Court. To do otherwise is to transform the Court's Article III status and jurisdiction into that of an Article I "*legislative*" court. Similarly, the status of the judge transforms from "*judicial*" decision-making to "*legislative*" and/or "*administrative*" decision-making, resulting in the consequential waiver of "*judicial immunity*." When found as a **"*pattern and practice*,"** such violations of federal and state laws are deemed to force or "*coerce*" civilian populations, resulting also in an unconstitutional and unlawful coercion of constitutionally recognized governmental policy. This is precisely what the Constitution refers to by "*treason*," and what 18 U.S.C. §2331 legally defines "*domestic terrorism*."

As is being herein presented in numerous cases being now "*enjoined*" with the case Grievant Schied had filed nearly ten (10) months ago in May 2015, the civil claims and criminal allegations against the opposing parties include, in part, those descriptive of *usurpers of judicial power and authority* exhibiting behaviors that are found to be characteristic of *treason* and *domestic terrorism*. These acts are

themselves *constitutional torts*[7] as well as *common law torts*[8]; and they are being executed through certain *patterns and practices* by government functionaries who have otherwise publicly accepted the sworn fiduciary duties of state and federal

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[7] *See* Una A. Kim, "*Government Corruption and the Right of Access to Courts*" (Michigan Law Review, Vol.103, p.570), "*Awarding victims redress through constitutional tort actions serves to offset the damage the government wrongdoer may have caused. It accords the victim a renewed sense of legitimacy and encourages him to remain a productive member of the community. Imposing liability for constitutional violations also promotes social peace by urging people to continue to 'embrace their citizenship.' In addition, liability for these abuses does more than provide redress for the individual claimant. A constitutional violation affects more than any individual victim: 'A constitutional tort committed against one citizen can, and not infrequently does, give other citizens reason to fear that they too may become the direct victims of some deprivation of due recognition. Accordingly, government accountability for the violation serves to ameliorate the fear and disillusionment aroused in those sympathetic to the victim as well.' [quoting Dauenhauer & Wells]*"

Kim continues in footnotes, "*The theoretical focus on government's unique power to demoralize can also account for the allowance of nominal damages in constitutional tort actions. See Carey v. Piphus, 435 U.S. 247 (1978) (awarding nominal damages where plaintiffs demonstrated a violation of their constitutional rights even if they suffered no other harm). As Professor Whitman points out, the allowance of nominal damages, which is not allowed for common law torts, is rooted in the idea that constitutional torts are in part meant to address the dignitary harm caused by government abuse of power. Whitman, Emphasizing, at 669. Dauenhauer & Wells, at 917. In the same way that government regulations of property can involve demoralization costs, constitutional violations can also result in demoralization. Frank I. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of 'Just Compensation' Law, 80 Harv. L. Rev. 1165 (1967). See also Akhil Reed Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 790 n.l26, 807-08, 809 n.l88, discussing the ways in which Fifth Amendment takings claims are analogous to Fourth Amendment unlawful seizure claims, and Akhil Reed Amar, The Future of Constitutional Criminal Procedure, 33 Am. Crim. L. Rev. 1123 (1996), applying the demoralization concept to Fourth Amendment actions, for other areas to which the concept of demoralization has been applied*."

judges, as well as other "*officers*" – including *officers of the court* with the sworn duties to "*serve and protect*" and/or to objectively "*litigate the merits*" of cases so that the underlying "*Truth*" can be properly determined in the name of "*justice*."

One such pattern of unconstitutional behavior has been recognized as the thwarting and impeding of litigants' constitutionally-guaranteed "*Right to Redress*" through the incorporation, analysis, and dissemination of false information:

> ***The district court denied*** *Harbury's* ***claim because it read her claim to allege*** *a duty on the part of government officials to investigate her claim. Harbury v. Deutch, No. 96-00438 CKK, 1999 WL 33456919, at *10 (D.D.C. Mar. 23, 1999), rev'd, Harbury v. Deutch, 233 F.3d 596 (D.C. Cir. 2000), rev'd, Christopher v. Harbury, 536 U.S. 403 (2002). The D.C. Circuit, however,* ***reframed her complaint*** *as alleging a duty not actively to provide false information in hopes of thwarting her ability to seek redress in the courts. Harbury v. Deutch, 233 F.3d 596, 609 (D.C. Cir. 2000), rev'd, Christopher v. Harbury, 536 U.S. 403 (2002).* ***In doing so, it found a prima facie showing of a violation.*** *Id. Had the district court read correctly Harbury's allegation, it may have ruled differently. See Harbury v. Deutch, 1999 WL 33456919, at *10 (implying that,* ***had Harbury alleged an affirmative suppression or destruction of evidence, her claim may have stated a valid cause of action****).* [9]
>
> (Bold emphasis added)

Indeed, Grievant Schied has made amply clear his ongoing allegations of a *pattern and practice* of purported state and federal judges *aiding and abetting* in the persistent fraud being perpetuating upon the state and federal courts through intentionally deceptive rulings that enable the criminal perpetrators of the

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[8] It is emphasized throughout this "*Memorandum of Law*..." that the basic notions of duty, breach, causation, and damages of common law torts also apply to constitutional tort actions.

[9] Kim, *supra*. pp.555-6

underlying causes of actions to use these previous fraudulent written rulings in "*prima facie*" fashion against Grievant upon "*appeal*" and in subsequent actions where these *new* claims of tort are asserted.[10]

In fact, this is what was being asserted in Grievant's "*Interlocutory Appeal*" in response to federal Magistrate Michael Hluchaniuk having "*stricken*" four (4) of Grievant's substantive filings reinforcing "*backward-looking*" *prima facie* claims. Those recently-filed claims of Grievant were supported by a plethora of Evidence **showing that the previous state and federal rulings**, promulgated by the co-Defendants' various "*motion(s) to dismiss*" and/or "*motion(s) to strike*" Grievant Schied's claims and assertions, **were chock full of *errors and omissions,* which were blatantly obvious under the light of the empirical Evidence Grievant Schied had submitted to those previous state and federal judges, who then turned around and wrote those blatantly fraudulent *judgments, opinions, orders,* and other forms of *decisions* and *rulings* which otherwise lay outside of their jurisdiction, power and authority to construct and promulgate.**

The Sixth Circuit Court of Appeals clearly chose to abstain from addressing the above-referenced criminal pattern of *treason* and *domestic*

[10] *See* *Smith v. City of Fontana*, 818 F.2d 1411, 1415 (9th Cir. 1987), *overruled on other grounds by* *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) ("*[C]onstitutional violation is complete at the moment the action or deprivation occurs, rather than at the time the state fails to provide requisite procedural safeguards surrounding the action*.")

terrorism that they have been alleged to be fostering by evidence of their own *pattern and practice*. Such patterns consist of similarly *misstating* and *misinterpreting* the actual "*merits*" and arguments of Grievant's numerous prior cases while failing to respond in any way whatsoever in this case to the content of: a) Grievant's "*Interlocutory Appeal*" (filed 11/18/16 and forwarded to the 6th Circuit); b) to Grievant's "*'Response in Opposition' to Attorney James Mellon's Fraudulent 'Motion to Dismiss for Lack of Subject Matter Jurisdiction'....*"; c) to Grievant's "*Ex-Parte 'Writ of Error' Against 6th Circuit Clerk Deborah Hunt's and Case Manager Robin Baker's Gross Violation of Oaths & Bonds and FRAP 45 (a)(b) and (c)...*"; and, d) to Grievant's filing in a *private attorney general* and *state ex-rel* capacity of a separate "*'Quo Warranto' Demand for Proving 'Jurisdiction,' 'Article III 'Good Behavior' and Authentication of Oaths & Bonds in Light of Prima Facie Evidence Proving That 6th Circuit Court Judges are Fostering 'Domestic Terrorism,' or Alternately, for the 6th Circuit Judges to Comply With This Instant 'Mandamus for Bond and/or 'Risk Management' Insurance Surrender for Victims' Relief Under 18 U.S.C. § 3771 and 18 U.S.C. § 4; and for Other Declaratory Relief by Way of Errors and Omissions, Malfeasance, and Other Coverage Information*". **For these numerous reasons, other said "*victims*" offering similar claims as Grievant are being enjoined**

against the lower District Court "*co-Defendants*" and Sixth Circuit Court of Appeals "*co-Appellees*."

II. JUSTIFYING THE JOINDER OF OTHER SIMILAR "*BACKWARD-LOOKING RIGHT-OF-ACCESS*" CASES WITH *CONSTITUTIONAL TORT* CLAIMS THAT ARE NOT VULNERABLE OR SUBJECT TO DEFENSES PERTAINING TO *RES JUDICATA*, TO *COLLATERAL ESTOPPEL*, OR TO THE *ROOKER-FELDMAN DOCTRINE*

Accompanying this instant filing of "*Memorandum of Law in Support of Joinder Claims...*" are separate filings in joinder of numerous other similar cases against the co-Defendants named as the Charter County of Wayne ("CCofW") and the $100 Billion "*(domestic) terrorism*" coverage and "*errors and omissions*" insurance contract enjoined with co-Defendants Insurance Company for the State of Pennsylvania ("ICSOP") and American Insurance Group ("AIG"). Each of these joinder *complaints / claims* allege, *inter alia*, that through the co-defendants' affirmative acts of deception, these co-defendants foreclosed the efforts of these joinder complainants / claimants to seek judicial relief by constructively denying these people access to the courts.

These acts by the co-Defendants and their various *agents* constitute *constitutional* torts[11], which are valid causes of action against which no form of

[11] *See generally,* Christina Brooks Whitman, *Emphasizing the Constitutional in Constitutional Torts*, 72 Chi.-Kent L. Rev. 661, 664-67 (1997) [hereinafter Whitman, *Emphasizing]* (explaining how, before *Monroe v. Pape* [365 U.S. 167 (1961)], the class of litigants able to challenge government action in court was

immunity against liability can be afforded in backward-looking cases, particularly where the so-called "*government*" intentionally lied to prevent the filing of claims or to thwart the effective litigation of claims (as opposed to *accidental* or *negligent* acts leading to similar results that may result in *common law* tort claims).[12] Such instances occur when the conduct in question is shocking and egregious or lacks social utility, such as is alleged herein and in the numerous separate cases being enjoined herein.

The fact is Grievant has already presented enough Evidence to establish "*prima facie*" his claims of First Amendment "*denial of access*" claims, which Magistrate Michael Hluchaniuk subsequently "*struck*" from the U.S. District Court record. Nevertheless, the Article III "*Court of Record*" of this instant common law case is not subject to such *terrorist* tactics of deception, and can in fact be found widely accessible in public records as posted on the Internet at:

http://cases.michigan.constitutionalgov.us/david-schied/2015_SchiedvJudgeKarenKhaliletalinUSDCEDM/

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limited to those "*subject to continuing government control*" and not to those who had suffered harm in the past) See also, Christina Whitman, *Constitutional Torts*, 79 Mich. L. Rev. 5 (1980) [hereinafter Whitman, *Constitutional Torts]*.

[12] *See* Erin Chemerinsky, *Federal Jurisdiction* 537-40 (3d ed. 1999) [hereinafter Chemerinsky, *Federal Jurisdiction* (discussing the Supreme Court's aversion to finding constitutional violations for negligent acts).

Similarly, the joinder complainants / claimants have claims and Evidence reflecting "*over-the-line*" **conduct that imposes civil, as well as criminal liability**, by the fact that the ***pattern and practice*** of the alleged acts so clearly violate the most basic of constitutional norms.[13] (Bold emphasis added)

A. REMEDYING THIS PROBLEM REQUIRES THIS ARTICLE III COURT OF RECORD TO DEFINE AND ADDRESS GRIEVANT DAVID SCHIED'S AND THE "*JOINDER*" CLAIMANTS' "BACKWARD-LOOKING ACCESS" CLAIMS AS UNCONSTITUTIONAL INFRINGEMENTS UNDER THE FIRST AMENDMENT'S "*PETITION CLAUSE*" [14]

The federal circuit courts – particularly the 6th Circuit – need to cease adjudicating backward-looking access-to-court claims under vague notions of "*fundamental rights*" and/or by using the general rubric for "*due process*" claims.

As the U.S. Supreme Court has articulated in the past, where there is a

[13] *See* Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 GA. L. Rev. 845, 850-53 (2001).

[14] *See, e.g.,* Carol Rice Andrews, *Jones v. Clinton*: *A Study in Politically Motivated Suits, Rule 11, and the First Amendment*, 2001 BYU L. Rev. 1 (2001). *See generally*, Carol Rice Andrews, *A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right*, 60 Ohio Street L.J. 557, 597 (1999) [hereinafter Rice Andrews, *A Right of Access]* (arguing that the right of access to courts should be adjudicated under the First Amendment). *See also* James E. Pfander, *Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government*, 91 Nw. U. L. Rev. 899, 929-34 (1997), for the view that the First Amendment's Petition Clause was intended to allow citizens to sue the government for unlawful conduct.

specific constitutional right infringed, using due process to adjudicate claims can be considered redundant.[15] (Bold emphasis)

As explained more fully by Una A. Kim, "*Government Corruption and the Right of Access to Courts*" (Michigan Law Review, Vol.103, pp. 554-588),

> *"In explaining this idea, the Court has stated that courts may not look to more generalized rights to adjudicate claims that already receive protection under a specific textual source."* ***Applying this lex specialis principle to the context of backward-looking access claims, courts should look not to vague constitutional sources such as the Due Process or Privileges and Immunities Clauses to frame the access-to-courts doctrine, but should instead examine the history and purposes of the Petition Clause to define the basic parameters of the right, even if the right may be secondarily informed by due process principles.***"* (Bold emphasis added)

Moreover, in *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984), the Seventh Circuit refused to make any distinction between instances of cover-up before a claim was brought and those that occurred after. Again, as stated by Kim in the Michigan Law Review (*Id*. at p.578), the Seventh Circuit found...

> *"...that even those abuses that took place during the course of litigation contributed in denying the Bells adequate access to the courts.*[16] ***The court stated that even though the original claim had been litigated to completion, the denial-of-access claim was nonetheless valid because the conspiracy had "rendered hollow" the right to seek redress.*** [17]
> (Bold emphasis)

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[15] In *Graham v. Connor*, 490 U.S. 386 (1989), a plaintiff sued various police officers for using excessive force during his arrest in violation of his Fourteenth Amendment due process rights. *Id*. at 388-90. The Supreme Court refused to consider the claim under the Fourteenth Amendment, ruling instead that the claim should have been brought instead as a Fourth Amendment "*unreasonable seizure*" claim. *Id*. at 394-95.

[16] 746 F.2d 1205,1263 n.72 (7th Cir. 1984)

[17] *Bell*, 746 F.2d at 1261. The Second Circuit in *Barrett v. United States* also allowed a denial-of-access claim to proceed even though the underlying claim had

Indeed, the original "*right to petition*" in America developed to include a right to a fair hearing and a response, thus affording some procedural guarantees to petitioning activity.[18] As noted by Professor Steven Higginson, "***No petition could be summarily dismissed without abiding by at least these procedures**, and the **right to full judicial consideration** came to be one of the "inviolate" principles governing the right to petition in America*."[19] (Bold emphasis added)

Kim continues [20]:

> "*In viewing these principles together with the historical scope of the petitioning right, it becomes clear* ***that those protections that guarantee the right's freedom from government interference must properly be seen as extending to the entire course of litigation. If petitioning activity was protected against arbitrary government interference, and if petitioning activity historically included the right to a fair hearing as well as to a response, it follows that the entire process, rather than simply the filing of the claim, must be insulated from government intervention. To this end, analysis of backward-looking denial-of-access claims must include those conspiracies that take place after a claim has already been filed as well as those that occurred before the claim was brought.*"**

> *"This interpretation is also consistent with current jurisprudence governing the right of access to courts. The Supreme Court has made clear in the past that* ***a***

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been fully litigated and had resulted in a settlement. *Barrett v. United States*, 798 F.2d 565, 577-78 (2d Cir. 1986).

[18] Steven A. Higginson, *A Short History of the Right to Petition Government for the Redress of Grievances*, 96 Yale L.J. (at pp.147-149) (1986); Julie M. Spanbauer, *The First Amendment Right to Petition Government for a Redress of Grievances: Cut From a Different Cloth*, 21 Hastings Const. L.Q. (at pp.33-34) (1993).

[19] Higginson, *Id*. at p. 149

[20] *See* Una A. Kim, "*Government Corruption and the Right of Access to Courts*" (Michigan Law Review, Vol.103, p.579)

> ***mere "formal" right of access will not suffice to satisfy the right.***[21] *It has unequivocally expressed the view that* ***'[a]ccess to courts does not only protect one's right to physically enter the courthouse halls, but also insures that the access to courts will be 'adequate, effective and meaningful.'"***[22]
>
> (Bold emphasis added)

Herein, this case pertains to allegations, first by Grievant David Schied and subsequently by joinder co-Grievants in a developing class, which all claim to have been deprived of their First Amendment Petition Clause right-to-redress by state and federal judges operating within (and without) the territorial boundaries of the Defendant Charter County of Wayne. These allegations state that, **effectually, state and federal judges and their fellow BAR attorneys have been acting in concert with and in cover-up of predicate level local crimes of racketeering, corruption, and *domestic terrorism* instituted in *pattern-and-practice*.**

(Bold emphasis added)

Herein the allegations include those that are so egregious that they "*shock the conscience*" and/or constitute "*state created dangers*" with "*the accused*" being state "*actors*" who have *usurped* and destroyed their legitimate roles as judicial fiduciaries and as other government functionaries. These are people who have stepped outside of the scope of their discretion, outside the

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[21] *See* Boddie v. Connecticut, 401 U.S. 371, 380-81 (1971) (**concluding that a filing-fee requirement to obtain a divorce effectively foreclosed court access for indigents**). (Bold emphasis added)

[22] Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997).

scope of their delegated jurisdiction, their delineated power, and their demarcated authority, and who are *acting* tyrannically and outside of their authorized and ordained roles as "*officers of the court,*" and who are acting under mere "*color of law,*" while directing their forceful aggressions against David Schied and his "*joinder*" co-Grievants, for their own personal gain, and to undermine constitutional checks and balances. (Bold emphasis added)

The Second Circuit has stated that the right-of-access to courts protects all property rights, **including any "*vested right[s] of action*."**[23] Under this broad construction, the constitutional inquiry is straightforward: *"[u]nconstitutional deprivation of a cause of action occurs when government officials thwart vindication of a claim."*[24]

As again cited by Kim [25]:

> "*Analysis of Petition Clause history as well as analysis of current Supreme Court jurisprudence governing the right, however, demonstrates that* ***the right of access to courts protects more than simply fundamental rights.*** *In its inception, the right to petition itself was deemed one of only a handful of 'fundamental rights,'* [26] *and* ***in colonial America this right was not restricted***

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[23] *Barrett v. United States*, 798 F.2d 565,575 (2d Cir. 1986).
[24] *Id*. Likewise, the Seventh Circuit in *Harrell v. Cook* agreed to hear an appeal where the plaintiffs alleged that police **mishandling of evidence thwarted their ability to recover** money stolen from them by a third party. 169 F.3d 428, 430 (7th Cir. 1999). The court ultimately dismissed the claim, but **in an important clarification of the access right**, stated that **had the plaintiffs alleged that the police intentionally misplaced or destroyed the evidence, the claim would have survived.** *Id.* at pp.432-33. (Bold emphasis added)
[25] Una A. Kim, *supra*, p.582.
[26] 1 William Blackstone, *Commentaries* * 137. The other fundamental rights

> ***to protect only a narrow class of essential rights but was used to vindicate a broad range of private interests, fundamental or not.***[27] *Whether petitioning to resolve debt actions, estate distributions, divorce proceedings, or land disputes,* ***all were protected exercises of the right.***" [28]
>
> (Bold emphasis added)

B. BASIC NOTIONS OF DUTY, BREACH, CAUSATION AND DAMAGES OF COMMON LAW TORTS APPLY TO CONSTITUTIONAL ACTIONS; THEREFORE, THOSE ACTING IN THE CAPACITY OF GOVERNMENT OFFICIALS NEED TO BE PUNISHED – *CIVILLY* AND *CRIMINALLY* – IN ORDER TO DETER THE FURTHERING OF UNCONSTITUTIONAL BEHAVIORS THAT HAVE, IN THIS CASE, ESCALATED INTO "*DOMESTIC TERRORISM*" BY DEFINITION [29]

Once a cover-up has interfered with a claimant's underlying cause of action, a breach has occurred. The question at this point should become solely one of damages to be proved as a matter of fact.[30] This is because injuries in denial-of-access claims involve not only prejudice to the original cause of action but emotional and other harms that the claimants suffer as a result of the breach itself.

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were (1) Constitution, powers and privileges of Parliament, (2) limitations on the King's prerogatives, (3) a right to petition the King, or either House of Parliament, for redress of grievances, and (4) a right to have arms for self-defense. *Id.* at * 136-41.

[27] Higginson, *supra*, at pp.158-59. *See also* Pfander, *supra*, at p.940.

[28] Higginson, *supra*, at p.146.

[29] **As found at: https://www.fbi.gov/about-us/investigate/terrorism/terrorism-definition both the FBI and Congress have defined "*domestic terrorism*" as pertaining to the violation of basic human and natural rights of Americans, and the coercion of civilian populations as well as government policies and practices.**

[30] *See, e.g.*, *Ryland v. Shapiro*, 708 F.2d 967, 976 (5th Cir. 1983) (discussing calculation of damages once breach has been established).

This includes demoralization costs caused by the deceit, as well as emotional and mental suffering, humiliation[31] and/or reputational injury[32] engendered by the fraud, such as has long been repeatedly claimed by Grievant David Schied as a matter of this Article III Court of Record. Many of these injuries, particularly humiliation and loss of reputation, take place at the time of the actual violation and not simply when it is clear the original claim has been irretrievably harmed.

In the instant "*joinder*" cases of backward-looking access claims, as in the "*original*" case filed in this Article III Court of Record by Grievant David Schied, the injuries suffered by all these victims are twofold: a) the injuries inflicted by the underlying causes of harm; and, b) the injuries caused by the ensuing cover-up. Both types of acts implicate those compensable injuries, e.g., physical injury, emotional and mental suffering, generally addressed by common law torts.[33] The cover-up triggers the additional *moral* disenfranchisement that constitutional scholars agree constitutional torts are intended to protect against.[34] Because of the

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[31] See again, Chemerinsky, *Federal Jurisdiction*, *supra* at p.560.

[32] For example, in the case of *Bell*, the suggestion that Daniel Bell may have attacked police officers with a knife could very well have damaged his and his family's reputation. The same is true in *Ryland*, where the allegation that Lavonna Ryland committed suicide could have tarnished her and her family's reputation and caused grave emotional suffering for her family.

[33] *See* Kim, *supra* p.572, in reference to Kenneth S. Abraham, *The Forms and Functions of Tort Law* (2d ed. 2002) pp.207-8.

[34] *See again* Kim, *supra* p.573, in reference to John C. Jeffries, Jr., *Compensation for Constitutional Torts: Reflections on the Significance of Fault*, 88 Mich. L. Rev. 82, 93-95 (1989); Whitman, *Emphasizing*, *supra*, at 669.

unique type of harm inflicted in these backward-looking access claims, such claims tend to better reflect the policies of constitutional liability than other, more controversial, constitutional claims.[35] This analysis holds true for all backward-looking access cases involving intentional acts because all involve an original cause of action as well as injury caused by the intentional concealment of information pertaining to that original claim.[36]

Therefore, in precluding potential counterclaims and motions for sanctions based upon arguments of *res judicata*, *collateral estoppel*, and/or the *Rooker-Feldman* doctrines, it is inappropriate to look only at the prejudice to the underlying claim to determine if the plaintiff has stated a valid cause of action.[37] This is because constitutional torts caused by the deceit, conspiracies and abuses by usurpers of government power and authority can have devastating ramifications[38] in terms of the social harm and mistrust of government that these scandals leave in their wake.

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35 *See* Kim, *supra* p.573, in reference to *Davidson v. Cannon*, 474 U.S. 344 (1986) (declining to find liability where negligence resulted in the attack of a prisoner by another inmate); *Paul v. Davis*, 424 U.S. 693 (1976) (dismissing a section 1983 claim alleging defamation at hands of police officer)

36 *See* Kim, *supra* p.573, in reference to all three portrayed example cases (*supra*) of *Ryland*, *Bell*, and *Harbury*.

37 *See, e.g. Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984) (stating a clear case of constitutional injury even though the cover-up was eventually uncovered and the wrongful death suit was successfully litigated). See also,

38 *See* Kim, *supra* p.588, *"[T]he potential for official abuse is highest precisely when government power is at its peak and its actions, if left unchecked, could*

As pointed out by Kim in 2004's Michigan Law Review [39]:

> "*The distinct nature of this harm stems from the unusual nature of citizen-government interaction.*[40] *As articulated by professors Michael Wells and Thomas Eaton, citizens place a certain degree of trust in their government bodies and actors to implement rules and regulations, to provide services, create order, mete out justice, and in general to safeguard societal interests*.[41] **This trust is compelled in part by the government's monopoly on police power and rule-creation, which creates an unavoidable dependency of the public upon it. The resulting power imbalance creates a citizenry particularly vulnerable to government coercion. In all, these factors align to give government officials a unique ability not only to harm but to harm a greater number of people with greater ramifications**."[42]
>
> (Bold emphasis added)

Not only is the potential to harm in the context of government actors greater than in the realm of private law, but also the harm is itself unique in that these abuses inflict a "*moral*" injury that is not similarly implicated outside of the

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result in an inability of citizens to vindicate those rights they have an entitlement to pursue."

[39] Una A. Kim, *supra*, p.569.

[40] *See* Michael Wells & Thomas A. Eaton, *Substantive Due Process and the Scope of Constitutional Torts*, 18 Ga. L. Rev. p.229 (1984).

[41] *Id.;* See also, Saul B. Shapiro, Note, *Citizen Trust and Government Coverup: Refining the Doctrine of Fraudulent Concealment*, 95 Yale L.J. 1488, 1487-91 (1986) (discussing how the government's monopoly on information and its resulting ability to keep information secret exacerbates the possibility of abuse).

[42] Shapiro, *supra* (arguing that people tend to place a great deal of trust in government actors because of the inherent need to rely on government for basic goods, services, and information, among other things).

context of government action.[43] This injury is propagated by the unusual role the state plays in affording legitimacy to a person's membership in society.[44]

Una A. Kim explains [45]:

> *"[As] Professor Dauenhauer and Wells point out that to the extent citizens rely upon the state to create a properly functioning and ordered society, the state must also rely on the citizens to engage themselves as the state has created.* [46] ***Because of the inherent vulnerability of each participant to the whims of the government, every violation committed against him by the state in effect de-legitimates his membership in society, risks alienating his ongoing participation, and upsets the symbiotic balance of rights and obligations between the two.*** [47]" (Bold emphasis added)

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43 As referenced by Kim, *supra*, (p.569), Professors Bernard Dauenhauer and Michael Wells explain that injury caused by infringements on constitutional rights cannot necessarily be quantified in monetary terms. Bernard P. Dauenhauer & Michael L. Wells, *Corrective Justice and Constitutional Torts*, 35 Ga. L. Rev. 903, 911-16 (2001). The real concern that constitutional torts address is the "*moral*" injury suffered by victims of these violations and also the social harm engendered by the abuse. *Id*. *See also* Whitman, *Emphasizing*, *supra*, at p.669.

44 Dauenhauer & Wells, *supra*, at pp.911-16.

45 Kim, *supra*, (pp.569-570)

46 Dauenhauer & Wells, *supra* note 111, at pp.913-915.

47 *Id*. at 916. The community as a whole must take steps to ensure that the "*empowering function*" of the state prevails over its "*dominating, disempowering function*" if it is to prevent a collapse of social order. *Id*. at 915. Along these same lines, Wells and Eaton also argue that courts should limit constitutional torts to cases that implicate a threat to concern and respect for the individual by the government, since this is the interest that the Constitution intended to protect. Wells & Eaton, *supra*, at p.232

The theoretical focus on government's unique power to demoralize can also account for the allowance of nominal damages in constitutional tort actions. *See Carey v. Piphus*, 435 U.S. 247 (1978) (awarding nominal damages where plaintiffs demonstrated a violation of their constitutional rights even if they suffered no other harm). Kim stresses that Professor Whitman also points out, "*the allowance of nominal damages, which is not allowed for common law torts, is rooted in the idea that constitutional torts are in part meant to address the dignitary harm caused by government abuse of power*." Kim, supra (p.570), citing Whitman, *Emphasizing*, *supra*, at p.669.

> "*Awarding victims redress through constitutional tort actions serves to offset the damage the government wrongdoer may have caused.* [48] *It accords the victim a renewed sense of legitimacy and encourages him to remain a productive member of the community.* [49] *Imposing liability for constitutional violations also promotes social peace by urging people to continue to "embrace their citizenship.*[50]"
>
> *"In addition, liability for these abuses does more than provide redress for the individual claimant. A constitutional violation affects more than any individual victim: "A constitutional tort committed against one citizen can, and not infrequently does, give other citizens reason to fear that they too may become the direct victims of some deprivation of due recognition.*[51] *Accordingly, government accountability for the violation serves to ameliorate the fear and disillusionment aroused in those sympathetic to the victim as well.*[52]*"*

In this instant case, Grievant/Claimant David Schied's claims, as well as the claims of the "*joinder*" co-Grievants / Claimants, all involve intentional attempts on the part of judicial and/or other government usurpers who have defrauded them as civil litigants and/or crime victims – and defrauded the public – by means of concealing information that otherwise implicates precisely those backward-looking

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[48] Here Kim, *supra*, p.570) refers to Dauenhauer & Wells, *supra*, at p.917. In the same way that government regulations of property can involve demoralization costs, constitutional violations can also result in demoralization. Frank I. Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation Law"*, 80 Harv. L. Rev. 1165 (1967). *See also*, Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 790 n.l26, 807-08, 809 n.l88, discussing the ways in which Fifth Amendment takings claims are analogous to Fourth Amendment unlawful seizure claims, and Akhil Reed Amar, *The Future of Constitutional Criminal Procedure*, 33 Am. Crim. L. Rev. 1123 (1996), applying the demoralization concept to Fourth Amendment actions, for other areas to which the concept of demoralization has been applied.
[49] Kim, *supra*, p.570 cites Dauenhauer & Wells, *supra*, at p.917
[50] *Id.* at p.920.
[51] *Id.* at p.918.
[52] *Id.*

access-to-court injuries that common law torts (in the case of "*predicate*" offenses) and constitutional torts (in the case of "*secondary*" level conspiracies and cover-ups) are intended to address. [53] These types of backward-looking access-to-court claims, perhaps more than any other type of constitutional claim, justify compensatory remedies for those impacted by these rebellious and immoral offenses leading to a need for punitive and other damages[54] through these numerous personal and social indignities.[55]

Thus, scholars and courts uniformly recognize, harms inflicted upon victims through deliberate, intentional action tend to produce more deleterious results than

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[53] Kim, *supra* at p.571 cites as other examples *Barrett v. United States*, 798 F.2d 565 (2d Cir. 1986); *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984); Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 1983); *See also* John C. Jeffries, Jr., *Disaggregating Constitutional Torts*, 110 Yale L.J. 259, 278 (2000) [hereinafter Jeffries, *Disaggregating];* John C. Jeffries, Jr., *The Right-Remedy Gap in Constitutional Law*, 109 Yale L.J. 87, 90-91 (1999) [hereinafter Jeffries, *Right-Remedy]*.

[54] Id. at p.588, "*Awarding punitive damages furthers the general societal interest in punishing and deterring egregious behavior, see for example Smith v. Wade, 461 U.S. 30, 56 (1983), while allowing nominal damages affords some redress for the moral injury the violation itself may have caused*."

[55] *Id.* Kim asserts that Professors Wells and Eaton also argue that constitutional torts should be available where the defendants acted intentionally, recklessly, or in disproportion to the benefits conferred by legitimate goals of the state. *See* Wells & Eaton, *supra,* at pp.236-37. Kim adds, "'*Courts as well have never been concerned about imposing liability in cases involving blatant abuse, perceiving no danger in imposing liability on this type of conduct because it so clearly violates the most 'basic' constitutional norms*.' Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 Ga. L. Rev. 845,850-53 (2001)."

injuries that result from simple negligence or ignorance. While both types of acts might lead to similar quantifiable losses, injuries inflicted intentionally or maliciously carry the added demoralization that does not usually result from negligent actions. And **even those who advocate greater limitations on constitutional tort recovery do not advocate limiting recovery in cases of intentional and flagrant abuse, such as those demonstrated by *judicial usurpers*, as in the cases now being re-presented and enjoined by Private Attorney Generals (PAGs) David Schied and Cornell Squires.** (Bold emphasis added)

III. JUSTIFYING THE ENJOINING OF THESE CLAIMS BY GRIEVANT DAVID SCHIED, ALONG WITH CO-GRIEVANT CORNELL SQUIRES, IN THE CAPACITY OF PRIVATE ATTORNEY GENERALS

Historically, the formally-recognized role of the Private Attorney General ("PAG") has been as a "*special public advocate*"[56] to file suits to vindicate the public's well-established interest and/or constituency.[57] Hence, the name implied public patronage, but without accountability to either the government or to the electorate.[58]

[56] *See* Jeremy A. Rabkin, *The Secret Life of the Private Attorney General*, Law and Contemporary Problems. pp.179-203 (1998); p.180
[57] *Id*, p.182.
[58] *Id*, p.179.

The courts have long recognized that "*standing*"[59] of the PAG to sue is threefold: First, the standing of PAGs is recognized without question when they sue in their own private interest and having, themselves, an injury-in-fact.[60] Second, standing is recognized when PAGs sue on behalf of and in the private interest of others in a "*class*," such as can be the case with small claims and/or tort actions brought by the masses, each with private causes of action.[61] Thirdly, standing is recognized when the claims being brought are derivative of the government's standing, as an "*assignee of the government's interest*"[62], when suing to enforce some public right[63], often after which government has decided to abstain from such action itself.

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59 *See* William B. Rubenstein, "*On What a Private Attorney General Is – And Why It Matters*," 57 Vand. L. Rev. pp.2129-2173 (2004), "*Standing remains the distinction between those who represent the government directly and those who do so (supposedly) only incidentally to the pursuit of their own interests*."

60 Rabkin, *supra*, p.193. *See also* Rubenstein, *Id*., pp256-257. "*Where Congress has attempted to authorize private citizens to directly enforce public policies, the Supreme Court has resisted by insisting that a private citizen can only do so if she herself has an injury-in-fact sufficient to satisfy standing requirements*." Rubenstein cites another example of *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (stating that the "*irreducible constitutional minimum of standing" requires that the plaintiff suffer an "injury in fact*").

61 *See* again, Rubenstein, *supra*, pp.270-71,*"[L]aw and economics scholars are correct that there are private interests at stake in small-claims cases. But these private, compensatory features are not the only aspects of the small claims class action – such cases also serve the public function of deterring wrongdoing and thereby supplement governmental law enforcement*."

62 *Id*. p.2145.

63 Carl Cheng, "*Important Rights and the Private Attorney General Doctrine*," 73 Cal. L. Rev. pp.1929-1985 (1985); p.1931.

Correspondingly, the federal courts recognize that there are three requirements to be met under the private attorney general doctrine in order for PAGs to be properly awarded legal fees. First, the suing party must confer a *significant benefit* on the general public or a large class of persons by acting on behalf of the state (i.e., "*state ex-rel*") and in the capacity of the state attorney general.[64] Notably, "*significant benefit*" (as different from "*substantial benefit*") has been defined as, "*the benefits conferred on the public need be no more tangible than the knowledge that a public right has been vindicated, while the substantial benefit theory requires something more 'concrete*.'"[65]

Second, the suing party must show that there is a necessity for private enforcement. This requirement "'*essentially tests whether the public interest advanced by the litigation would have been represented without the plaintiff acting as a private attorney general.' If not, this requirement recognizes that since the burden borne by the party bringing suit is often disproportionate to that party's*

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[64] *Id.*; Cheng (p.1932)

[65] *Id.*; Here, Cheng (footnote, p.1932) cites McDermott & Rothschild, *The Supreme Court of California, 1976-1977, Foreword: The Private Attorney General Rule and Public Interest Litigation in California*, 66 Calif. L. Rev. 138, 155-60 (1978). *supra*, at 151 (footnote omitted). *See also Woodland Hills Residents Ass'n v. City Council*, 23 Cal. 3d 917, 939-40, 593 P.2d 200, 212, 154 Cal. Rptr. 503, 515 (1979) *("[T]he legislature contemplated that [in applying the private attorney general doctrine] a trial court would determine the significance of the benefits, as well as the size of the class receiving the benefits, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case*.").

individual stake in the matter, the award of attorneys' fees is necessary "to secure representation of interests that might otherwise remain unrepresented."[66]

Third, the suing party must show that the right vindicated is an "*important*"[67] right[68], and is one that public enforcers of rights have declined to prosecute.[69]

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[66] Cheng again cites (p.1932) McDermott & Rothschild, *supra***,** at p.149 (footnote omitted).

[67] *Id*.; Cheng (p.1936). "*Where rights are created by the legislature the courts may imply the existence of remedies necessary to their effective protection. [The courts] stand on less sure footing when [the courts] themselves attempt to arrange the priorities for public policy enforcement.... The problem posed by the importance requirement, then, is twofold. First, the term "important right" is so elusive as to escape easy definition. Second, the implementation of any definition requires the judiciary to set public policy priorities, a task at which it is not competent*."

[68] Here Cheng points out that to maintain Separation of Powers and so not to infringe upon the legislative functions otherwise reserved for Congress, the federal courts typically have abstained from awarding attorney fees in cases involving the litigation of *statutory* rights, as opposed to *constitutional* rights. However, **Cheng makes the argument (p.1937) that "*defining important rights as all statutory rights in effect eliminates the importance requirement altogether*;" and that *"[s]everal arguments have been advanced in favor of disregarding the importance requirement.*" Cheng maintains that both the federal Supreme Court and the California legislature [Cal. Civ. Proc. Code § 1021.5 (West 1985)] have made clear that attorney fees should be awarded in all cases where there is a "*private enforcement of 'any important right affecting public interest.*'" He goes on to state, *"[W]here the rights at issue are not environmental rights involving complex policy tradeoffs but rather are fundamental rights and rights of suspect classes, the judicial incompetence theory asserted by the Court does not apply. The special role courts traditionally have played in safeguarding fundamental rights and the rights of suspect classes gives courts special competence to determine whether those rights are 'important' in the context of the private attorney general doctrine*."**

[69] Importantly, Cheng points out that leaving the power to enforce rights exclusively in the hands of public enforcers, such as civil lawyers, criminal prosecutors and the state attorney generals, gives those public enforcer unauthorized powers that may abusively be used to nullify particular laws, or

A. **Allegations and Evidence of a "*Pattern and Practice*" of Felony *Misconduct*, Government *Usurpation*, *Racketeering*, *Treason*, and *Domestic Terrorism* Preclude Dismissal for Lack of Statutory Provisions for Punishment**

In this instance, all of the "*joinder*" Grievant/Claimants factually assert that they all have been deprived of *important* rights under the First Amendment. They all have private "*backward-looking access-to-courts*" ("BLAC") claims reporting various forms of deception by *usurpers* of government functions. They all assert some form of subsequent interference in the "*litigation of the merits*" of their rightful claims; and they all claim to be victims of *treasonous* activity and "*domestic terrorism*" as defined by the FBI's website and 18 U.S.C. § 2331.

These assertions include behaviors[70] that constitute, in serious degrees, prosecutorial abuses[71] and other types of, nonfeasance, misfeasance and

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particular applications of law simply by declining to prosecute violators (See Cheng, p.1939.) This can be seen when lawyers refuse to vindicate rights based upon fear of (judicial or other) retaliation or lack of financial incentives; or when prosecutors and/or state attorney generals refuse to apply criminal laws against the actions of their cronies or against their peer group of other lawyers and judges. This might be particularly true where the "*revolving door*" between branches enables government *actors* to circumvent constitutional *Checks and Balances* by literally *becoming* the complicit agent of another constitutional branch; or by oscillating between branches of government and the private sector as is found with judges that come from and return to the private practice of law.

[70] *See again* ruling by Michigan Court of Appeals in *People v. Waterstone* (Docket ##303268 and 303703) in which certain behaviors such as depicted in this instant case, under Michigan statutory law, constitute indictable felony offenses at common law.

[71] This is a statutory violation of MCL 750.369.

malfeasance of fiduciary duties[72]. Some claimants are the direct victims of unlawful prosecutions and others have been tortuously denied rightful relief as civil litigants and/or as reported crimes victims. Some of these denials have been by the malicious refusal of government officials to "*litigate the merits*" of civil cases, and/or to intentionally elicit similar results through outright fraud (including fraud upon the court) or other affirmative acts of that have consequentially deprived Grievants/Claimants of their substantive rights under "*color of law*,[73]" by "*simulating legal process*"[74], and/or by conducting "*legal acts in illegal manners*.[75]" Some, like Grievant David Schied, additionally claim the refusal of government officials to reasonably protect reported crime victims from "*the accused*."[76] Others, also like Grievant David Schied, have evidence of being barred

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[72] *See again* ruling by Michigan Court of Appeals in *People v. Waterstone* (Docket ##303268 and 303703) decided 4/10/12 citing, "*The offense of misconduct in office was an indictable offense at common law*." *People v. Coutu* (on remand) 235 Mich. App 695, 705; 599 NW2d 556 (1999). In *People v. Perkins*, 468 Mich. 448, 456; 662 NW2d 727 (2003), *"[O]ur Supreme Court observed: At common law, misconduct in office was defined as "corrupt behavior by an officer in the exercise of his duties or while acting under color of his office*." *People v. Coutu*, 459 Mich. 348, 354; 589 NW2d 458 (1999), quoting *Perkins & Boyce*, Criminal Law (3d ed), p.543. "*An officer could be convicted of misconduct in office: 1) for committing any act which is itself wrongful, malfeasance; 2) for committing a lawful act in a wrongful manner, misfeasance; or, 3) for failing to perform any act that the duties of the office require of the officer, nonfeasance*." *Perkins*, p.540....

[73] This is a statutory violation of MCL 37.2204 ("*Elliott Larson Civil Rights Act*") and of United States Codes (i.e., see 18 U.S.C. §§ 241 and 242).

[74] This is a statutory violation of MCL 750.368.

[75] This is a statutory violation of MCL 750.157a.

[76] *See* Michigan Constitution of 1963, Art. I § 24.

from access to state and federal grand juries otherwise charged with the "*duty*" of inquiring about crimes in the local community and the federal district.[77]

As is shown by the *People v. Waterstone* case, a case against "*judge*" Mary Waterstone as the criminally "*accused*" that originated with a *conspiracy* to perjury that took place within the territorial boundaries of Defendant Charter County of Wayne, the standard of review for determining "*probable cause*" to believe a crime has been committed was laid out as follows by the Michigan Court of Appeals:

> "*The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime was committed and whether there is probable cause to believe that the defendant committed it.* ***The prosecution need not establish guilt beyond a reasonable doubt, but must present evidence sufficient to make a person of ordinary caution and prudence conscientiously entertain a reasonable belief of the defendant's guilt. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support the bind over of the defendant if such evidence establishes probable cause.*** *If probable cause exists to believe that a felony was committed and that the defendant committed it, the district court must bind the defendant over for trial....*"

The court also defined an "*abuse of (judicial) discretion*" as follows:

> "***A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes***. *People v. Yost, 278 Mich. App 341, 353; 749 NW2d 753 (2008).* ***A trial court necessarily abuses its discretion when it makes an error of law.*** *People v. Giovannini, 271 Mich. App 409, 417; 722 NW2d 237 (2006)."*

In continuing the above analysis while considering any relevant difference between "*corrupt behavior*" and "*willful neglect*," the Michigan Court of Appeals determined there was no difference "*in the context of nonfeasance in relationship*

[77] *See* e.g., 18 U.S.C. § 3332.

to a legal duty or obligation concerning nondiscretionary or ministerial acts."

They went on to state:

> "*We find further support for this proposition in the following passages from Perkins & Boyce, Criminal Law (3d ed), p 541–542, 546–547, which is a treatise that was cited in Perkins, 468 Mich. at 456, and Coutu, 235 Mich.App at 705–706: '[T]here should be no conviction of [misconduct in office]* ***if the absence of any element of corruption has been clearly established, unless the prosecution is under a statute substantially different from the common law in this respect.***"
>
> "*It is possible, of course, for legislation to go beyond the common law and to include within the area of punishability certain acts which were not previously criminal.* ***If the statute provides that an intentional violation of its provisions constitutes guilt, no more is required, but this is not truly an enlargement of the offense because it is corrupt for an officer purposely to violate the duties of his office.'"***
>
> "***Any intentional and deliberate refusal by an officer to do what is unconditionally required of him by the obligations of his office is corrupt as the word is used in this connection because he is not permitted to set up his own judgment in opposition to the positive requirement of the law.*** *Since this is corrupt misbehavior by an officer in the exercise of the duties of his office there is no reason to require more for conviction. On the other hand, when the officer has discretion in regard to a certain matter, his intentional and deliberate refusal to act indicates no more, on its face, than that this represents his judgment as to what will best serve the public interest.* ***Even in such a case the officer will be guilty of misconduct in office if his forbearance results from corruption rather than from the exercise of official discretion, but it will always be necessary to show something more than the intentional and deliberate forbearance to do a discretionary act.***"

With regard to defining the types of (judicial) behaviors that constitute judicial "*misconduct*," the court determined the following:

> "*In Perkins, 468 Mich. at 456, quoting People v. Coutu, 459 Mich. 348, 354; 589 NW2d 458 (1999), the Court first indicated that misconduct in office, in general, encompassed 'corrupt behavior,' but it then proceeded to make the following statement, which has been the bane of the parties' analysis:* ***[C]ommitting nonfeasance or acts of malfeasance or misfeasance are not enough to constitute misconduct in office. In the case of malfeasance and misfeasance, the offender also must act with a corrupt intent, i.e., with a***

> ***"sense of depravity, perversion or taint." In the case of nonfeasance, an offender must willfully neglect to perform the duties of his office.*** *Perkins [& Boyce], p 547. [Id. (citations omitted).]*"
>
> *"Confusion at this point has led to the occasional suggestion that the mental element required for the crime of misconduct in office is 'wilfulness' if the act is one of omission and 'corruption' if it is an act of commission [misfeasance or malfeasance].* ***'Wilfulness,' as so used, is intended to mean deliberate forbearance, and to repeat a previous suggestion: what should be said is that the wilful refusal of an officer to perform a ministerial act required by law constitutes corruption. [Emphasis added.]"***
>
> *"**This proposition is entirely consistent** with our discussion of the Michigan authorities set forth earlier, and it results in an interpretation of Perkins, 468 Mich. 448, that is consistent **with the mass of cases that include a corruption element with respect to all aspects of misconduct in office, including misconduct by nonfeasance. There is no need to engage in a dicta analysis. Willful neglect of duty and corrupt nonfeasance are effectively one and the same for our purposes. If a public officer willfully neglects to perform a legal duty, he or she engaged in corruption or corrupt behavior.**"*

The above analysis is *important*, and relevant to this case in that – given that felony *misconduct*, government *usurpation*, *treason*, and *domestic terrorism* are all being brought up herein as civil claims and criminal allegations justifying backward-looking denial-of-access claims and causes of action based upon the First Amendment Petition Clause – it is clear that, nothing further is needed beyond the "*joinder*" Grievants/Claimants establishing "*probable cause*" to believe that claimants, through state-created impediments, were deprived of their rights to receive fair opportunities to be heard in court[78]; and that there is sufficient proof of

[78] *See* Una A. Kim, supra, p.567 with footnote clarifying that Kim's analysis does not presume that states may never prevent litigants from filing suit, but "*only argues that if a litigant has an apparent right to pursue a particular cause of action, a state official may not take steps to deny that right*."

an *intent* to impede or thwart these Claimants' previous causes of action through various schemes of *corruption, racketeering* and *domestic terrorism*.

Thus, as the *Waterstone* court reaffirms what Grievant David Schied's "*Writ of Mandamus for Interlocutory Appeal*" and accompanying *Memorandum of Law*" previously asserted in this instant federal case, "*If [such] probable cause exists to believe that a felony was committed and that the defendant committed it, the district court must bind the defendant over for trial....*"

By application of the above then, Grievant/Claimants/PAGs David Schied and Cornell Squires refer to the Michigan Penal Code's cursory definition of "*pattern of racketeering*" which is articulated as follows from MCL 750.159f:

> ***"Pattern of racketeering activity" means not less than 2 incidents of racketeering to which all of the following characteristics apply: (i)*** *The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts;* ***(ii)*** *The incidents amount to or pose a threat of continued criminal activity;* ***(iii)*** *At least 1 of the incidents occurred within this state...*"

Notably, MCL 750.159g provides the complimentary definition of "*racketeering*" as follows in relevant part:

> "*[R]acketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the following:*
> *(o) A violation of section 117, 118, 119, 120, 121, or 124, concerning* ***bribery****;*
> *(p) A violation of section 120a, concerning* ***jury tampering****;*
> *(v) A violation of section 213, concerning* ***extortion****;*
> *(w) A felony violation of section 218, concerning* ***false pretenses****;*

(x) A felony violation of section 223(2), 224(1)(a), (b), or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a, concerning ***firearms or dangerous weapons****;*
(y) A felony violation of chapter XLI, concerning ***forgery and counterfeiting****;*
(ee) A violation of section 349, 349a, or 350, concerning ***kidnapping****;*
(hh) A violation of section 422, 423, 424, or 425, concerning ***perjury or subornation of perjury****;*
(jj) A violation of chapter LXVIIA, concerning ***human trafficking****;*
(ll) A felony violation of section 535 or 535a, concerning ***stolen****, embezzled,* ***or converted property****;*
(mm) A violation of chapter LXXXIII-A, concerning ***terrorism****;*
(oo) A felony violation of the ***identity theft*** *protection act, 2004 PA 452, MCL 445.61 to 445.77;*
(pp) ***An offense committed within this state or another state that constitutes racketeering activity as defined in 18 USC 1961(1)****.*

Of particular note, the federal RICO Act defines an "*enterprise*" as "*any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity*." 18 U.S.C. §1961(4). Significantly, a "*legal entity*" type of enterprise is generally self-explanatory and may include, besides corporations and partnerships, sole proprietorships, labor unions and their benefit plans, **and governmental entities**. See, e.g., *United States v. Parise*, 159 F.3d 790, 795 (3d Cir. 1998); *United States v. McDade*, 28 F.3d 283, 295-96 (3d Cir. 1994). (Bold emphasis added)

Moreover, in *United States v. Irizarry*, the Third Circuit quoted its precedent in stating, *"[t]o establish a §1962(c) RICO violation, the government must prove the following four elements: '(1) existence of an enterprise affecting interstate commerce; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, either directly or indirectly, in the*

conduct or the affairs of the enterprise; and (4) that he or she participated through a pattern of racketeering activity."' United States v. Irizarry, 341 F.3d 273, 285 (3d Cir. 2003), quoting *United States v. Console*, 13 F.3d 641, 652-53 (3d Cir. 1993), and *United States v. Riccobene*, 709 F.2d 214, 222 (3d Cir. 1983), overruled on other grounds by *Griffin v. United States*, 502 U.S. 46, 112 (1991). Also see, e.g., *United States v. Parise*, 159 F.3d 790, 794 (3d Cir. 1998).

Although the Third Circuit cases listed above do not discuss a "*knowingly*" state of mind as any of these elements, other model instructions include it. [For the definition of "*knowingly*", *see* Instruction 5.02 (Knowingly)].[79] For instance, the U.S. Attorney's Criminal Resource Manual, § 1510 ("*Culpable States of Mind*") states the following: (Bold emphasis added)

> "***There are three different terms used in 18 U.S.C. § 1028 to connote the culpable state of mind requirement for an offense. They are: (A) "knowingly"; (B) "knowing"; and (C) "with the intent."*** *The first two are, for all practicable purposes, the same.*"
>
> *A. Knowingly: The first five subsections of section 1028(a) start with this term. A knowing state of mind with respect to an element of the offense is (1) an awareness of the nature of one's conduct, and (2) an awareness of or a firm belief in the existence of a relevant circumstance, such as the "stolen," the "produced without lawful authority," or "false" nature of the identification document.* ***The knowing state of mind requirement may be satisfied by proof that the actor was aware of a high probability of the existence of the circumstance*** *(e.g., stolen or false nature of the document), although a defense should succeed if it is proven that the actor actually believed that the circumstance did not exist after taking reasonable steps to ensure that such belief was warranted.* ***Section 1028 follows the approach of the Model Penal Code [§ 2.02(7)] in dealing with what has been called "willful blindness," the situation where the actor, aware of the probable existence***

[79] See, e.g., Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, 1A *Federal Jury Practice and Instructions* (5th ed. 2000) [hereinafter O'Malley et al] § 56.03;

of a material fact, does not take steps to ascertain that it does not exist. Willful blindness would require an awareness of a high probability of the existence of the circumstance. *United States v. Jewell, 532 F.2d 697, 700 n. 7 (9th Cir.), cert. denied, 426 U.S. 951 (1976).*

B. *Knowing -- This term appears in sections 1028(a)(2) and (a)(6). As such, it applies to a knowledge of a relevant circumstance (e.g.,* ***the character of the document as*** *"stolen" or* ***"produced without lawful authority"****). The above discussion of "knowingly" is equally applicable to "knowing."*

C. *With the Intent -- This term, which appears in sections 1028(a)(3), (a)(4), and (a)(5), is intended to mean the same culpable state of mind as that described by the term "purpose" in the Model Penal Code (§ 2.02).* ***The distinction between "with the intent" (i.e., "purpose") and a "knowing state of mind" was restated by Justice Rehnquist:***

> *As we pointed out in United States v. United States Gypsum Co., 438 U.S. 422, 445 (1978),* ***a person who causes a particular result is said to act purposefully if `he consciously desires that result, whatever the likelihood of that result happening from his conduct,' while he is said to act knowingly if he is aware `that the result is practically certain to follow from his conduct, whatever his desire may be as to that result****.*
> United States v. Bailey, 444 U.S. 394, 404 (1980). [cited in USAM 9-64.400]

Consequently, in light of all the above, it is clear that the likelihood is high that, with increasing numbers of "*joinder*" Grievants/Claimants being added in this case, each with their own Evidence and Allegations about "*patterns and practices*" against the *agents* of Defendant Charter County of Wayne. With such added claims of being witnesses to *treason* and victims of *domestic terrorism*, comes the higher level of *prima facie* likelihood that the "*probable cause*" criteria will be met for binding "*the accused*" over for criminal trials as these civil proceedings continue against these co-Defendants/Appellees. As such, there are plenty of statutory references for

issuance of just punishments and no wiggle room for there being any cause for dismissal "*for lack of statutory provisions for punishments*."

B. Allegations and Evidence of a "*Pattern and Practice*" of Unconstitutional Discrimination and Regulation Against State Citizens with Claims in Commerce Against the Surety of State Employees and the Performance Guarantees of the Oaths of Office of Those Public Functionaries

MCL 168.80 of Michigan's election law stipulates that "*[e]very person elected to the office of secretary of state or attorney general, before entering upon the duties of his office, shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution**, and shall give bond** in the amount and manner prescribed by law*;" yet the facts show that when solicited by Grievant/PAG under the *Freedom of Information Act* ("FOIA"), these state agencies report that **no such bonds can be found**.

Similarly, MCL 15.36 stipulates that "*the lieutenant governor, deputy secretary of state, and deputy treasurer, shall each... take and subscribe the oath of office prescribed in the state constitution of 1963, and deposit the oath of office, with his or her bond....with the secretary of state, who **shall file and preserve the oath of office and bond in his or her office***;" yet again, the facts show that when solicited by Grievant/PAG under the *Freedom of Information Act* ("FOIA"), the Secretary of State reports that **such bonds cannot be found**.

With regard to other state employees, MCL 15.91 states, *"[W]hen any civil officer appointed by the governor, or senate, or by the governor with the advice and consent of the senate of this state, is* ***required by law to give bond and to file the same*** *with any other officer than the secretary of state, he shall procure the certificate of such officer that such bond has been duly filed with him, and file the same with the secretary of state*." Yet consistently with what has been asserted above, when solicited by Grievant/PAG under the *Freedom of Information Act* ("FOIA"), the Secretary of State reports that **such bonds cannot be found**.

MCL 201.3(7) of Michigan's *Revised Statutes of 1846* nevertheless maintains that, "***Every office shall become vacant****, on the happening of any of the following events, before the expiration of the term of such office: (7)* ***His refusal or neglect to take his oath of office, or to give, or renew any official bond, or to deposit such oath, or bond,*** *in the manner and within the time prescribed by law*."

Meanwhile, MCL 168.422 holds that, "***The office of circuit judge shall become vacant upon*** *the happening of...any offense involving the violation of his oath of office...or* ***his neglect or refusal to take and subscribe to the constitutional oath of office and deposit the same in the manner and within the time prescribed by law***."

Yet, when Grievant/PAG and others had repeatedly notified the Michigan Governor and Attorney General of the *fact* that **the imposter sitting as the 3rd**

Circuit Court "*chief judge*," Virgil Smith, had no Oath of Office on record with the Secretary of State, was otherwise committing numerous statutory crimes and constitutional violations against citizens under a *usurped* authority, and had additionally committed felony election fraud by listing himself by a fraudulently sworn petition in 2012 as being the "*incumbent judge*" when, in fact, he was no judge at all, neither the Governor (Rick Snyder) nor the Attorney General (Bill Schuette) bothered to even respond.

The above factual actions, as supported in Evidence, took place in spite that MCL 201.7 ("*Removals from Off*ice") and MCL 21.47 ("*Uniform system of accounting*") together make it incumbent upon the state Governor and Attorney General to "*conduct an inquiry into the charges made...*", to obtain "*the endorsement of witnesses on the charges...as is required in criminal cases...*," and to "*institute criminal proceedings...in any court of competent jurisdiction for the recovery of any public money....*" In fact, as cited by MCL 21.47, "***refusal or neglect to comply with "the[se] requirements...on the part of the attorney general...is sufficient cause for his or her removal from office by the governor***."

Any plausible deniability that may be presented by the state Governor and Attorney General, such as by reference to MCL 15.1 [80], MCL 15.2 [81], and/or MCL 15.5 [82], and MCL 45.381 [83] presents additional problems that can also be proven as matters of *fact* related to the barring of public liability claims against the

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[80] MCL 15.1 states in relevant part: *"Notwithstanding the provisions of any other law, officers and employees of all state departments and agencies that are required by statute or in the discretion of the director of the department covered, or otherwise to furnish bonds conditioned for their honesty or faithful discharge of their duties shall be covered by a blanket bond or bonds as a departmental group or as a state group by corporate surety companies as approved by the director of the department of administration.*"

[81] MCL 15.2 states, *"Notwithstanding the provisions of any other law, officers and employees of all state departments and agencies that are required by statute or in the discretion of the director of the department covered, or otherwise to furnish bonds conditioned for their honesty or faithful discharge of their duties shall be covered by a blanket bond or bonds as a departmental group or as a state group by corporate surety companies as approved by the director of the department of administration."*

[82] MCL 15.5 states, "*This act supersedes all statutes, or parts of statutes, relating to amounts, terms and conditions, execution, approval and filing of surety bonds required of officers and employees of state departments and agencies, which are inconsistent with this act*."

[83] MCL 45.381 states, "*(1) Each officer or employee of a county that is required by statute to furnish a bond conditioned on the officer's or employee's honesty or faithful discharge of the officer's or employee's duties shall be covered by a blanket bond by a surety company approved by the county board of commissioners or by an individual bond by a surety company approved by the county board of commissioners for the officer or employee. (2) The county board of commissioners shall determine whether a single bond for all officers and employees or individual bonds for all officers or employees or a combination of a blanket bond and individual bonds best serves the county. (3) In determining adequate coverage, the county board of commissioners may obtain bond coverage with provisions relative to problems of a unique nature, including loss deductible or coinsurance provisions.*

sureties of the fiduciaries operating in state and county public offices, and against citizen claims of "*tort*" and/or "*errors and omissions*" by public functionaries and usurpers of such offices.

The aforementioned case of Krystal Price exemplifies the above point by the *fact* that after she had exhausted all of her judicial remedies – with the results otherwise being the obtainment of a plethora of Evidence of backward-looking First Amendment Petition Clause violations by domestic terrorists (i.e., private usurpers of public office masquerading as state and federal "actors") – Ms. Price filed her claim with co-Defendants Insurance Company for the State of Pennsylvania ("ICSOP") and American Insurance Group ("AIG") only to be assigned a "*claim number*," but denied her claim and told she needed to again seek her legal remedies back in the very same "*courts*" against which she had the accumulation of evidence, showing that those judicial institutions had been overrun and were being operated by those very same *domestic terrorists* she was making "*errors and omissions*" insurance claims against.

INTERFERING WITH THE CLAIMS AGAINST QUASI-GOVERNMENT CONTRACTS OF INTERSTATE COMMERCE, CLAIMS AGAINST PUBLIC OFFICIAL LIABILITIES, AND CLAIMS AGAINST STATUTORILY ORDERED SURETIES AND GUARANTEES BY CONSTITUTIONAL OATHS, ARE CONSTITUTIONAL VIOLATIONS, AS WELL AS MATTERS OF "*IMPORTANT*" PUBLIC INTEREST

Governments tend to do essentially two things: (1) govern by law, and (2) do business by money, contracts, loans, etc. The Supreme Court has come to call the second category, in many circumstances, "*market participation,*" and in those spheres the law often treats the government more as a private than public actor.[84] As such, though public officials of the state can subscribe to the goods or services in the same way as its citizens, when it does so as a market regulator, it "*violate[s] the Dormant Commerce Clause*" [85], the *Privileges and Immunities Clause* [86], and the Michigan Antitrust Reform Act.[87]

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[84] *See* William B. Rubenstein, *supra,* p.2141, "*The phrase arises most often in Commerce Clause jurisprudence, where the Court has held that if a state is acting as a market participant, not as sovereign, it may prefer the goods or services of its citizens, even though* ***to do so as market regulator would violate the Dormant Commerce Clause.*** *E.g., White v. Mass. Council of Constr. Employers, Inc., 460 U.S. 204, 206-15 (1983); Reeves, Inc. v. Stake, 447 U.S. 429, 434-47 (1980); Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 802·10 (1976).*"

[85] *Id.*

[86] The *Dormant Commerce Clause* is a limitation on state sovereignty that serves to deter states from legislating on interstate commerce, which is in Congress's sole discretion, in ways that discriminate and promote economic provincialism. The *Privileges and Immunities Clause*, on the other hand, deters discrimination against protected populations based upon the denial of *important* and *fundamental* rights.

[87] *See* MCL 445.771 – MCL 445.788 *et. seq*.

The above constitutional barriers are equally applicable when all three branches of the "*corporate*" municipality," the "*charter*" county and "*state*" agencies acting in their private capacities, are shown to be banding together and conspiring to undermine their fiduciary obligations and legal liabilities. This they are clearly doing when treating their own "*member*" officials differently than "*citizens*" who are not members of those organizations.

The above has been found to be true with regard to who actually receives the *benefits* of public liability coverage that is purchased from taxpayer funds for the purpose of fulfilling, in relevant part, "*blanket*" performance contracts procured by and on behalf of public functionaries. Yet these performance contracts are consummated by the public declarations those functionaries make, orally and in writing, when they proclaim their Oaths to the state and United States constitutions.[88]

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[88] In evaluating the predicate and secondary offenses of the "*joinder*" cases, the Rational Standard Test is the judicial standard of review that examines whether a legislature had a reasonable and not an arbitrary or capricious basis for enacting a particular statute that is alleged to violate constitutionally protected interests. A law that touches on a constitutionally protected interest must be rationally related to furthering a legitimate government interest. In applying the rational basis test, courts begin with a strong presumption that the law or policy under review – which happens to be the state and federal constitutions to which the agents of the co-Defendants have sworn their Oaths –is valid. The burden of proof is on the party making the challenge to show that the law or the "*pattern and practice*" of policy implementation is unconstitutional. To meet this burden, the party must demonstrate that the implementation of the law or policy, by pattern and practice, does not have a rational basis. Thus, the rational standard test is the primary

C. Argument for the Private Attorney General to Intervene in This Case in the Public Interest and as a Matter of *Important Right*

The case that purportedly launched the term "*private attorney general*"[89] was *Associated Industries v. Ickes*, a 1943 Second Circuit case that arose in the context of a New Deal regulatory scheme. The ruling in that case held that Congress also could enact a statute "*conferring on any non-official person, or on a designated group of non-official persons, authority to bring a suit . . . even if the sole purpose is to vindicate the public interest. Such persons, so authorized, are, so to speak, [P]rivate Attorney Generals*."[90] Thus, the *"private attorney general*" was conceived originally as a private advocate with distinctive public backing. Thirty years later, in *Association of Data Processing Service Organizations v. Camp*,[91] the Supreme Court generalized this approach by interpreting the Administrative Procedure Act provision that "*any person aggrieved*" can seek judicial review as creating a right to appeal as a "*private attorney general*."

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baseline for determining the constitutionality of classifications that encroach upon constitutional rights, economic interests, or that blatantly discriminate against protected groups.

[89] "*The concept generally serves* as a *placeholder for any person who mixes public and private features in the adjudicative arena.*" *See* William B. Rubenstein, *supra,* (summary/preface page). *See also*, Rabkin, *supra*, p.180, "The "*private attorney general...always had implicit public patronage*."

[90] Jeremy A. Rabkin, *supra*, p.182

[91] *Id*. 397 U.S. 150 (1970). Justice Douglas' opinion cites *Associated Industries* for the proposition that a plaintiff may argue on behalf of the public interest as a "*private attorney general*."

The principle is similar to that embodied today by Federal Rule of Civil Procedure 24, which instructs the judicial functionaries of the federal courts as follows:

> *a. Intervention of Right. Upon timely application anyone SHALL be permitted to intervene in an action: . . .(2) when the applicant claims an interest relating to the . . . transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.*

In fact, today the private attorney general ("PAG") doctrine provides for the enforcement of public rights through the use of private lawsuits, as opposed to public lawsuits brought by the attorney general. This is because in today's paradigm PAG case, where the defendants are claiming to be public functionaries and the grieved parties are seeking attorneys' fees, **the PAG(s) bring suit to enforce a right left *unenforced* by the ordinary enforcement mechanisms of the political process[92]**, such as when public officials like the "*state's chief law enforcement officer*" – the past two Michigan Attorney Generals Mike Cox and

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[92] *See* Carl Cheng, supra, p.1942 (footnote), "*There is a distinction here between the political process that results in the enactment of a statute, and the political process that results in its enforcement. It is the latter political process which stands to be overridden by the courts' allocation of attorneys' fees.... The private attorney general doctrine awards attorneys' fees to parties for vindicating certain rights. The purpose of the award is to encourage the private enforcement of such rights where enforcement is needed due to the absence of public enforcement. In awarding private attorney general fees, courts are ordering public policy priorities by deciding which policies should receive resources for enforcement. In so doing, the courts are in effect overriding the resource-allocation priorities previously established by the political process."*

Bill Schuette – arbitrarily decline such civil and/or criminal enforcements[93] as what is described above with the case of the alleged *judicial usurper* Virgil Smith; or when they otherwise abuse their discretion by refusing to "*equally apply*" such enforcements over their own cronies and "*professional*" colleagues.

Thus, by courts awarding attorneys' fees for the enforcement of some rights but not others, these court can act independently to apply "*checks and balances*" under the PAG doctrine, in such fashion that effects the reordering of disorganized public policy priorities that have been *corrupted* by the political process.[94] They

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93 As cited by Rabkin, *supra*, p.198, "*In the background is a serious issue: Why should it be up to a private party to decide when a legal violation is serious enough to justify a prosecution?*" The False Claims Act of 1986, 31 U.S.C. §§ 3729-33 (1994) *"gives the public Attorney General some control over the matter, by requiring qui tam plaintiffs to notify the Justice Department, which then can decide to join in the case or order it halted. But the law does not require the Justice Department to make either decision, and it actually imposes a series of procedural hurdles that may discourage the government from halting the case. Many cases thus go forward without any participation by the Justice Department, which neither affirms nor denies the claim. Responsibility is shifted from the Attorney General to the private party—whose motives are not under scrutiny*."

94 *See* Carl Cheng, *supra*, p.1929-30, "*Under this characterization of its actions, the court's task is to articulate standards for the review of the political process's ordering of public policy priorities*."

effect such change through the creation of judicial[95] *incentives* for the ***private enforcement*** of such otherwise unenforced public rights.[96]

The private attorney general doctrine is an outgrowth of the common-

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[95] *Id*, p.1930, Cheng has suggested that the same method with which the judiciary resolves judicial review tensions in the equal protection context may be applied in the private attorney general context. He stated, "*The judiciary, in reviewing results of the political process, must reconcile the tension between its own view of the public good and its recognition that its insularity from public opinion makes it less competent than the political process to determine public policy priorities. In the area of equal protection analysis, the judiciary resolves this tension by subjecting the results of the political process to differing levels of scrutiny, depending upon the rights and the class of persons affected in a particular case. If the rights are fundamental, or if the class of persons is suspect, the judiciary has reason to question the political process's results. The more reason the judiciary has for such questioning, the higher the level of scrutiny applied. The higher the level of scrutiny, the higher the propensity of the judiciary to strike down the results*."

[96] *Id*, p.1929 for further elaboration on the significance of the judiciary responsibly making public their performance of a *test* under the private attorney general doctrine, for whether the political process's ordering of enforcement priorities passes judicial review. **Based upon a *true*** (i.e., not a misstated or misleading as claimed herein against alleged *judicial usurpers* of state and federal authority and power) **accounting of the actual right being left unenforced by the political process**, Cheng proposes that if its source is in general economic and social-welfare legislation, *rational basis scrutiny* is triggered. If the unenforced right has its source in statutes protecting women and parentless children, *intermediate scrutiny* is to be triggered. If the unenforced right has its source in state or federal constitutions and/or statutes protecting those *fundamental* rights (i.e., where "*fundamental right*" is a term of art defined by the large body of *equal protection* and *due process* case law), or protecting suspect classes based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status, *strict scrutiny* is to be triggered. **Where the political process's non-enforcement result survives the applicable level of scrutiny, its ordering of enforcement priorities should be upheld. Where the result does not survive the applicable level of scrutiny, the ordering should be overridden and attorney fees awarded to encourage proper future PAG litigation of public interests leading to proper enforcements of public rights.**

fund doctrine[97] and substantial benefit doctrine.[98] Where a PAG successfully sues to enforce some public right, s/he has benefited the public. As such, Courts award such a plaintiff attorneys' fees[99], reasoning that where a large number of people benefit from the vindication of an important right, it is unfair for the plaintiff to bear the entire litigation cost, especially where the cost is wholly disproportionate to the plaintiff's individual gain. Since initially the defendants in PAG lawsuits tended to be state agencies, the courts undoubtedly felt that by placing the

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97 *See* Cheng, *supra*, p.1931. The *common fund doctrine* is where the litigation efforts of one class member result in the creation or preservation of a fund to be distributed among all members of that class, the litigating class member is permitted to deduct attorneys' fees from the fund before the proceeds are distributed to the others of the class. The doctrine springs from the *common law rule* that the beneficiaries of the common fund must bear their fair share of the costs of creating the fund.

98 *Id*. The *substantial benefits doctrine* is where, if the litigation efforts of one member of a class do not result in the creation of a common fund, but nevertheless confer a substantial benefit on the class, the this doctrine allows a court to award attorneys' fees in circumstances such as when the opposing party is in a position to spread the costs of the proponent's attorneys' fees over the benefiting class. In such cases, fees may be assessed against a defendant corporation (e.g., where it is able to spread the plaintiff costs among the benefiting shareholders) or against the state (e.g., where the state is able to spread the costs among the benefiting taxpayers). Here, Cheng generally cites, *Serrano v. Priest*, 20 Cal. 3d 25, 34-42, 569 P.2d 1303, 1306-12, 141 Cal. Rptr. 315, 318-24 (1977).

99 Black's Law Dictionary defines the "*private attorney general*" concept as "*hold[ing] that a successful private party plaintiff is entitled to recovery of his legal expenses, including attorneys' fees, if he has advanced the policy inherent in public interest legislation on behalf of a significant class of persons*." *See* Rubenstein, *supra*, p.2149 referencing Black's Law Dic. p.129 (6th ed. 1990) (sub definition of "*Attorney General*") (quoting Dasher v. Hous. Auth. of Atlanta, 64 F.R.D. 722, 729 (N.D. Ga. 1974)).

plaintiff's litigation costs on the defendant-state, those costs would be borne by those receiving the benefits, society in general.[100] The doctrine was further supported by the policy of encouraging public interest litigation by shifting costs away from interests which otherwise could not afford to be represented in the courts.

There is synergetic significance to this public/private dichotomy of the PAG as explained by Rubenstein in terms of public deterrence and private compensation as a joint lawful remedy:

> "*Deterrence feels public when it applies broadly to enjoin future activity, because then it operates somewhat like law itself. Compensation seems private because it is almost invariably realized individually. The point is not that public lawyers pursue only deterrence and private lawyers only compensation. The point is that when anyone pursues a deterrent remedy, particularly one with wide application, it feels as if they are doing something public, while when anyone pursues compensation, it feels as if they are doing something private.*"

To the extent that economics drives the decision to act as a private attorney general, more is needed than the promise of fees far down the road. The need for more powerful or reliable incentives is recognized in two legal arrangements where the term "*private attorney general*" is sometimes deployed. First, and most

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100 See Kim, supra, p.570 (footnote) referring to Dauenhauer & Wells, "*The community as a whole must take steps to ensure that the 'empowering function' of the state prevails over its 'dominating, disempowering function' if it is to prevent a collapse of social order. Along these same lines. Wells and Eaton also argue that courts should limit constitutional torts to cases that implicate a threat to concern and respect for the individual by the government, since this is the interest that the Constitution intended to protect."*

common, are provisions for punitive damage awards. The theory behind punitive damages is that particularly willful or reckless tortfeasors ought to suffer some penalty, beyond merely paying for the damage they have caused.[101] The deterrent effect, however, does not require that the entire penalty be paid directly to the plaintiff.[102] The point of allowing the plaintiff to recover punitive damages (or

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101 See Una A. Kim, supra, p.575 (footnote), "*There is no fear that imposing liability in these cases will produce the loss-creating behavioral deterrence that drives so much of the courts' wariness... Indeed, the Supreme Court endorsed this view in Carey v. Piphus, 435 U.S. 247,257 n.ll (1978) (sanctioning punitive damage awards where government agents acted 'with a malicious intention to deprive [plaintiffs] of their rights or to do them other injury'). See also Fallon & Meltzer, at 1793-94 (arguing that when the conduct in question is clearly prohibited, 'to withhold remedies because of cost or disruption would threaten the maintenance of an appropriate structure of incentives to learn and comply with constitutional rules. By contrast, when officials reasonably might have thought their conduct constitutionally valid, there is less need to impose a 'penalty' to deter future misconduct.'); Alan K. Chen, The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law, 47 Am. U. L. Rev. 1,102 (1997)*"

102 In the context of this case the scope of numbers of actual people damaged by the activities of the *domestic terrorists* operating on behalf of the Defendant Charter County of Wayne alone is unimaginable. With a $100 Billion "*terrorism*" insurance contract now under claim as held between these terrorists and their co-Defendants "ICSOP" and "AIG," Grievants/PAGs Schied and Squires propose that the majority of punitive damages be awarded to those others of the community that have been directly and indirectly affected by these terrorists' activities. Such action would be the most *rational* alternative to what has been otherwise suggested by the so-called "*Wayne County Executive*" Warren Evans and the mainstream media by way of county bankruptcy, or of a county manager, or of further concessions of the taxpayers through more mass land auctions, surrendering of pensions, the cutting of public services, and employment layoffs.

treble damages in certain federal statutes) is to encourage lawsuits beneficial to the public.[103]

SUMMARY IN CONCLUSION

Constitutional recovery should be reserved for those abuses that government actors are able to commit precisely *because* they are government actors. Thus, backward-looking access-to-courts claims like those presented herein as "*joinder*" to Grievant David Schied's case involve exactly such scenarios with heightened allegations that show, like the Graylord cases of the Chicago area in the late 1970's and early 1980's, judges are central to the wider range of problems.[104] It is clear that government bodies and their agents are armed with the power to provide protections for the public by enacting and enforcing laws and investigating infractions. This very power, carrying with it a special ability to monopolize

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[103] *See* Rabkin, *supra*, p.196.

[104] See Kim, *supra*, p.575 (footnote), "*The Fifth Circuit was the first to rule decisively on the issue in Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 1983), finding a denial of access to courts where a local prosecutor used his authority to cover-up a murder to look like a suicide. Id. at 973. The Seventh Circuit followed suit a year later in Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984). To date, in addition to the Fifth and the Seventh Circuits, the Second, Ninth, Tenth, and Eleventh, and D.C. Circuits have affirmatively recognized the validity of backward-looking access claims. Chappell v. Rich, 340 F.3d 1279 (11th Cir. 2003); Delew v. Wagner, 143 F.3d 1219 (9th Cir. 1998); Barrett v. United States, 798 F.2d 565 (2d Cir. 1986); McKay v. Hammock, 730 F.2d 1367 (10th Cir. 1984). The Third Circuit, in Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1991), and the Sixth Circuit, in Swekel v. City of River Rouge, 119 F.3d 1259, 1262 (6th Cir. 1997), recognized in dicta the holdings of Bell and Ryland, but have not yet upheld a violation of the right."*

information and impede information dissemination[105], also carries with it a special susceptibility for abuse, which affords government officials the opportunity to effect their conspiracies.[106]

There is no disagreement among courts or scholars as to whether cases of intentional wrongdoing and/or malice should trigger liability.[107] Backward-looking access claims are ideal for addressing these types of cases because they deal only

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105 The Supreme Court has expressed a similar concern in this arena as well. For instance, as pointed out by Kim (*supra*, footnote p.585), "*in United States v. Bagley, 473 U.S. 667, 682-83 (1985), Justice Blackmun stated that a prosecutor's failure to respond to a specific request for information during discovery could prejudice the defense not simply by depriving it of potentially important information, but by 'representing to the defense that the evidence does not exist... [such that] the defense might abandon lines of independent investigation, defenses, or trial strategies*.'"

106 *See* Kim, *supra*, p.574 with reference to *Swekel v. City of River Rouge*, 119 F.3d 1259, 1262 (6th Cir. 1997). *("[T]o what avail would it be to arm a person with such a constitutional right, when the courtroom door can be hermetically sealed by a functionary who destroys the evidence crucial to his case.").*

107 *Id*. Kim, p.574 citing Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 GA. L. Rev. 845, p.853 (2001). *"[W]here courts are confronted with actions that they apprehend as egregious and largely devoid of social utility, e.g.,... corruption... courts perceive no danger of over-deterring vigorous, legitimate police activity, because the challenged action is, by definition, one which any reasonable officer will clearly understand to violate the most basic constitutional norms."*.

with deliberate, knowing efforts to cover up[108] other harmful activity.[109] Similarly, for the instant joinder cases to Grievant David Schied's persistent claims filed in May, 2015 and still without judicial address by the federal judge(s) of the U.S. District Court or the 6th Circuit Court of Appeals, there are no better qualified to address these collective matters than PAGs David Schied and Cornell Squires. They together have nearly three decades of experience in litigating these very same types of cases and factual issues and, as purported *domestic terrorism* victims

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[108] *Id*., p.584 (footnote), **"*The Fifth Circuit in Ryland...[found] that a constitutional deprivation could occur from delay [of litigation on the merits] alone, even in the absence of prejudice to the underlying cause of action."*** In furthering this argument, Kim added (in footnotes pp.585-586), "*If the fraud has indeed succeeded in prejudicing the [original] claim, the plaintiff has a viable denial-of-justice claim along with potential state claims for the underlying cause of action*." *See generally* Bell v. City of Milwaukee, 746 F.2d 1205, 1224-25 (7th Cir. 1984) "*[I]f the Bells were prevented from pursuing their denial-of-access claim simply because they could still pursue a wrongful death suit in state court, there would be no vindication of the injuries inflicted by the conspiracy at all — i.e., the Bell's would recover as if the conspiracy had never happened and the offending police officers would also go unpunished. Although the ends of corrective justice might be satisfied...the equally powerful policy goal of deterrence is not. Given that constitutional torts are in large part propagated by a desire to deter government officials from unconstitutional behavior...this above scenario finds no justification in law or policy."*

[109] *Id*. p.575, "*In sum, backward-looking access claims are prototypical of claims that the courts envisioned when they first began to use the Constitution as a vehicle for recovery and espouse the very principles that drive imposition of liability on government actors. There are few distinguishing factors to justify excluding recovery for backward-looking claims and allowing recovery for forward-looking ones, or recognizing some constitutional torts but not backward-looking access claims*."

themselves with claims of injuries, are intimately familiar with the types of claims being enjoined.

To remedy this problems presented by Grievant/PAG Schied's original claims and the "*joinder*" claims now being added, the Article III Court of Record properly define the rights being violated and more narrowly delineate a precise blueprint for addressing the future potential for these types of claims against *government* usurpers in general and *judicial* usurpers in particular. To this end, the federal courts need to cease adjudicating backward-looking access claims under vague notions of "*fundamental rights*" or the generic rubric of "*due process*." Instead, the courts need to frame the right in the constitutional provision where it is most specifically addressed: the *First Amendment's Petition Clause*.[110]

Respectfully submitted,

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3/9/16

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[110] *Id*. Kim, p.576 in reference to the U.S. Constitution, Amend. I; and by reference to James E. Pfander, *Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government*, 91 Nw. U. L. Rew. 899, 929-34 (1997) stating, "*the First Amendment's Petition Clause was intended to allow citizens to sue the government for unlawful conduct*."