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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

In re the Matter of: KIRALY v. KIRALY Petitioner: JAMES KIRALY and Respondent: ROBERT KIRALY	Case No. 1-12-DV-015910 **MEMORANDUM OF POINTS AND AUTHORITIES RE: LIMITING THE SCOPE OF CLETS ORDERS** **Hrg: April 8, 2012 @ 10:00 AM** **Trial: May 3, 2013 @ 1:30 PM** **Department 75** **Comm. Christine Copeland**

INTRODUCTION

Respondent, ROBERT KIRALY, is accused of perpetrating "Abuse," as that term is defined in Family Code §6203 and related sections. Those accusations were tendered after he made telephone calls wherein he requested the assistance of his parents, including his father, the Petitioner, JAMES KIRALY, in a project that he wanted to undertake – to write a book about families and relationships. Unfortunately, Respondent's book would include descriptions of prior incidents of physical violence perpetrated by JAMES KIRALY upon ROBERT KIRALY and others. The contents of said conversations devolved into unpleasantness. JAMES KIRALY's apparent response to the idea of having a book written that would include his past history of being an abusive father was to file for a CLETS Restraining Order.

That these facts are unusual should be taken as a given. It is unusual for the Courts to see CLETS cases between adult children and their parents, particularly where the child (ROBERT KIRALY) is age 54, and the parent (JAMES KIRALY) is over age 75[1]. It is unusual for the Court to issue any CLETS Orders where there has not been a single instance of physical violence between the parties within the last 30 years, or even a threat of violence during the same period. It is unusual for a Court to issue CLETS Orders where the parties live hundreds of miles apart (or, in the related case with THOMAS KIRALY, 1-12-DV-015924, much father than that – thousands of miles). It is unusual for anyone to call up their former abuser and ask him to collaborate on a book which will discuss that abuse. Finally, the Respondent, ROBERT KIRALY, is unusual. ROBERT KIRALY is neurologically different, a fact that his parents notified him of decades ago. In particular, he is very literal at times and shares this characteristic and other characteristics with people on the autism spectrum. His score on the Cambridge Autism Spectrum test appears to be at the high end of the scale.

ROBERT KIRALY thinks and reacts differently than most people. That difference may result in his writing an interesting book, as his different perspective could elucidate things about relationships that most of us do not see clearly.

The purpose of this Memorandum is to make clear that the CLETS Restraining Order exceeds the jurisdiction of the Court when it acts as a Prior Restraint on the type of Core Speech that ROBERT KIRALY wants to engage in. If the book was already fully written that point would be clear enough. ROBERT KIRALY plans to carefully and completely research the various factual details that will go into his book, and the 300 yard bubble created by the standard CLETS Restraining Order, combined with the uncertain definition of the prohibition on stalking, in this instance, effects an impermissible Prior Restraint on his research for his book.

This Memorandum is also is also an attempt to further the public policy of this State as revealed in Family Code §271, which favors settlement of litigation. It is Respondent's belief that Petitioner has brought the CLETS Request for the purpose of stopping his book, and that if the Court makes clear that the book cannot be stopped that Petitioner's desire to pursue this case further will wither away – greatly increasing the chances of settlement.

ARGUMENT

I.
THE SCOPE OF THE COURT'S JURISDICTION TO MAKE CLETS ORDERS IS LIMITED BY THE CALIFORNIA AND UNITED STATES CONSTITUTIONS.

California Code of Civil Procedure §410.10 states:

> "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

This statute represents the jurisdiction[2] the Legislature of California has granted to the Court[3]. While this statute is usually referred to in regards to whether service of process was valid (SEE Pennoyer v. Neff (1878) 95 U.S. 714; and/or International Shoe v. State of Washington (1945) 326 U.S. 310) Respondent nevertheless asserts that the Court's subject matter jurisdiction is also limited to what the California Legislature has allowed. Accordingly, Constitutional limitations must be considered.

Respondent's counsel could not find a statement of the Court's jurisdiction in Family Code §6200 et. seq.[4], so CCP §410.10 is presented to make clear the jurisdictional point[5].

II.
RESPONDENT'S PLANNED BOOK, ABOUT RELATIONSHIPS AND FAMILIES, IS INTENDED BY HIM TO BE A PART OF THE FREE TRADE IN IDEAS, AND SHOULD BE PROTECTED.

> " . . . The First Amendment, applicable to the States through the Fourteenth Amendment, provides that "Congress shall make no law . . . abridging the freedom of speech." **The hallmark of the protection of free speech is to allow "free trade in ideas"**—even ideas that the overwhelming majority of people might find distasteful or discomforting. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting); see also *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"). . . ." [Emphasis added] Virginia v. Black (2003) 538 U.S. 343, 358. [6][7]

Respondent's book has not yet been written, but he seeks consensual interaction with third parties from decades past and others from the present. The purpose of said interaction is to reconstruct, obtain, and/or understand factual details, including factual details of Respondent's own life. He also plans to include interviews of some of these people in his book. Some of the people he believes would have relevant things to say live in or near the town of Pismo Beach, California, (where Petitioner lives) and meeting with those people will potentially place him within the arbitrary[8] 300 yard bubble of protection of a standard CLETS Stay Away Order. Petitioner knows that Respondent does not deal well with uncertainty, ambiguity,

and/or gray areas, and that cutting Respondent off from researching the details could actually stop the writing of the book.

The scope[9] of Free Speech protected under the First Amendment encompasses more than just allowing statements already formulated to be made. In City of San Jose v. Garbett (2010) 190 Cal.App.4th 526, that Court considered California Code of Civil Procedure §527.8, and the Trial Court's crafting of an injunction to meet both the goal of protecting San Jose employees and allow for Mr. Garbett to attend City Council Meetings to exercise his Free Speech rights was upheld[10].

California Courts have limited the scope of statutes which cross over into areas covered by the California and Federal Constitutions. In Larson v. City and County of San Francisco (2011) 192 Cal.App.4th 1263 a voter approved statute related to rent control had provisions invalidated on the basis of a violation of the judicial powers clause (Cal.Const., art. VI, §1) and violations of both the Federal and State protections of Free Speech[11]. That Court opined that even if the speech was the lesser protected form of commercial speech (unlike here, it is core speech[12]) restrictions had to be limited to those that served the government's interest.[13]

The California Supreme Court has also upheld a statute (Penal Code §140) in People v. Lowery (2011) 52 Cal.4th 419, based upon a determination that the statute prohibited "true threats" and did not silence core political speech.

> " . . . ' [T]rue threats,' " the high court said, " encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." (*Virginia v. Black, supra*, at p. 359, 123 S.Ct. 1536, italics added.) Thus, the category of threats that can be punished by the criminal law without violating the First Amendment includes but is not limited to threatening statements made with the specific intent to intimidate. . . ." People v. Lowery (2011) 52 Cal.4th 419, 427.

The distinction in the instant case is that there has been neither any physical violence nor any threat of physical violence by the Respondent to the Petitioner. The reverse is not true. Nothing said by the Respondent could be construed by the Petitioner as a "true threat"; however, the Respondent does view Petitioner's CLETS filing as a threat to him and his ability to seek employment. Respondent's plan to write a book about relationships fits neatly within the definition of core speech, since it will be an attempt to both inform and possibly change society's understanding of relationships and how they can be affected by

Domestic Violence perpetrated by a parent against a young child, and the very long lasting nature of those effects.

Here, a portion of the goals of a typical CLETS Order, including the goal that the Petitioner not be made into a captive audience[14], forced to listen to either telephone calls from Respondent and/or being forced against his will to participate in the Speech by being quoted in the book (Freedom of Speech probably includes Freedom of Silence, the right to not say anything) probably does not violate the principles of Free Speech. Orders that Respondent not call, email, and/or write directly to the Petitioner are not objected to on the basis of Free Speech rights (Respondent does argue that no CLETS Order should be granted at all). The Petitioner can ask to be left alone[15] without running into the Free Speech issues.

III.
BY STOPPING RESPONDENT FROM GATHERING INFORMATION FOR HIS BOOK AND FOR HIS DEFENSE THE PETITIONER'S REQUEST TO QUASH THE SUBPOENA OF HIS TELEPHONE RECORDS RUNS EXACTLY CONTRARY TO THE INTENT BEHIND THE PROVISIONS OF THE CALIFORNIA CONSTITUTION, ARTICLE I SECTION 2(b).

It is restrictions on Respondent's ability to contact third parties, unnamed in the CLETS Orders, who may have information Respondent seeks to use in the drafting of his book about relationships that is objected to. The importance of and the need to protect the information gathering function that so often precedes the publishing of a magazine, periodical or, as in this case, a book, has long been recognized in California. In fact, the California Constitution, Article I Section 2(b)[16] sets forth that securing and protecting source material is an important matter in California. The location of this section[17], part (b) of the section setting forth the general right to Free Speech in California, makes clear that protection of the information gathering function is an integral part of the right to Free Speech in California[18]. The intent[19] to protect the information gathering function[20] is wholly inconsistent with now denying the Respondent access to the information he needs to prepare his book by granting a Quash Motion of the subpoena of telephone records.

Respondent's need, as part of his defense[21] to the alleged CLETS, to talk with the people the Petitioner called to see if in fact Petitioner asked them for anything he could use to "prosecute" the Respondent is in no way separate from his need to ask those same questions of the same people as material for his book. The father son relationship, including the apparent need for the father who is over age 75 to maintain control and protect his reputation from the truth getting out by soliciting people to generate

allegations against his 54 year old son, is a matter that fits within the expected zone of the book. Keeping Respondent from gaining access to that exact information runs exactly contrary to the public policy of the State of California as expressed in Article I Section 2(b) of the California Constitution.

IV.
RESPONDENT ALSO OBJECTS TO THE ARBITRARY MANNER IN WHICH A STANDARD CLETS CAN BE APPLIED TO ACT AS A PRIOR RESTRAINT ON HIS ABILITY TO COMPILE INFORMATION FOR HIS BOOK.

The arbitrary application of the 300 yard bubble, which bubble necessarily moves wherever the Petitioner moves, and could be placed, by the Petitioner, anywhere, including the exact location where Respondent seeks to interview an unnamed third party, is objected to. The unclear definition of stalking in a standard CLETS, which could include Respondent making a detailed listing of where the Petitioner has been in the past and how he has interacted with other people; to show the contrast between what he did at home and the face he has shown the world, is objected to.

Respondent also hopes that the Court can make clear that the Internet is a public forum[22], and that posting thereon, aimed at the whole world rather than just at the Petitioner, cannot be a violation of any CLETS Order, at least so long as the postings contain no "true threats."

V.
THE CLETS RESTRAINING ORDER IS NOT DESIGNED FOR CASES LIKE THIS ONE, WHERE THERE ARE NO "TRUE THREATS" TO BE DEALT WITH.

Petitioner has not even alleged, and Respondent has never engaged in, either physical violence or the threat of physical violence against the Petitioner. In Virginia v. Black (2003) 538 U.S. 343, a State's power to regulate "true threats", in light of the low societal value of those threats, as contrasted with Speech intended to convey a non-threat message, was the subject of much discussion. Generally, threats are worthless, and Core Speech is vital. "True threats", the stuff of most CLETS cases, can be regularly regulated without running into the protections for Speech.

This case is on the fringe of allowable CLETS cases, as should be clear from a reading of the CLETS statutes. Family Code §6203 states:

"For purposes of this act, "abuse" means any of the following:

(a) Intentionally or recklessly to cause or attempt to cause bodily injury.
(b) Sexual assault.

(c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
(d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320."

Sub-parts (a) - (c) refer to matters that fit within "true threats." Family Code §6320(a) states:

"(a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, *telephoning*, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, *contacting*, either directly or indirectly, by mail or otherwise, *coming within a specified distance of*, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members." [Underline & Italics added]

Again, most of the examples stated (as underlined) are "true threats." Respondent is alleged to have made some telephone calls that were unwanted. Penal Code §653m(a) & (b) state:

"(a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.
(b) Every person who, with intent to annoy or harass, *makes repeated telephone calls* or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business. " [Underlining and Italics added]

Sub-part (a) again looks like obscenity and "true threats." Respondent disputes that Sub-part (b) applies to him, because he made the calls in good faith. Nevertheless, the point is clear that the primary thrust of the CLETS statutes is to prevent physical violence and "true threats." The alleged annoying telephone calls are on the outer edge of that purpose. In contrast, the primary thrust of the right to Free Speech is the free exchange of ideas. Research for Respondent's book about relationships is part of that exchange.

Free Speech issues are at high tide here, and due to the complete lack of any "true threats" the public policy behind the standard CLETS is at low tide.

Worse, the underlying policy behind the CLETS system, protecting victims of abuse from abusers, is not actually served here, where the only abuser under Family Code §6203(a) & (c) was the Petitioner, JAMES KIRALY[23]. The CLETS process was never intended to be used as a tool to allow the abuser to

maintain ongoing control[24] and silence his victim.

CONCLUSION

The Court should DENY Petitioner's Motion to Quash the Subpoena, since the evidence sought is both relevant to Respondent's defense and also a part of the research for his book.

The Court should limit the scope of the Restraining Orders in light of the complete lack of any "true threats", and the very present Free Speech issues, relevant under both the California Constitution, Article I Section 2(a) and (b) and the United States Constitution, Amendment I, which provisions limit the jurisdiction of this Court to make Restraining Orders.

The Court should grant reasonable attorney's fees to Respondent.

Dated: March 26, 2013

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Attorney for Respondent, ROBERT KIRALY

By:_____
John H. Perrott, Associate

1. SEE the website: http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf This website provided the two page **Exhibit "A"** which could be used to see what a typical CLETS case is about.

2. ". . . **The term "jurisdiction," "used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition."** (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 287 (*Abelleira*).) Essentially, jurisdictional errors are of two types. "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Id*. at p. 288.) When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or collateral attack at any time." (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119 [101 Cal.Rptr. 745] (*Barquis*).). . . " [Emphasis added] People v. American Contractors Indemnity Company (2004) 33 Cal.4th 653, 660.

3. ". . . **[t]he will of the Legislature must be determined from the statutes**; intentions cannot be ascribed to it at odds with the intentions articulated in the statutes. (*People v. Knowles* (1950) 35 Cal. 2d 175, 182 [217 P.2d 1].). . ." [Emphasis added] City of Sacramento v. Public Employees' Retirement System (1994) 22 Cal.App.4th 786, 794-795.

4. Family Code §2010 is an express statement of jurisdiction in a Marital Dissolution Action, but counsel did not find such a statement in the DVPA. Assuming the DVPA has no jurisdictional statement of its own, the general statement for Civil Courts should apply.

5. SEE ALSO: Article VI, Section 2 of the United States Constitution states, in pertinent part:

> "2. **This Constitution**, . . . **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." [Emphasis added]

AND SEE: California Constitution, Article III Section 1:

> "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land."

AND SEE: The United States Constitution, Amendment XIV, Section 1 states, in part:

> ". . . **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ." [Emphasis added]

6. Virginia v. Black involved cross burning by the Klu Klux Klan. The Court found that there could be some First Amendment protections for his activity, but also that a State could ban "true threats." ROBERT KIRALY hopes that this Court will see the distinction that in this case he wants to write about being the recipient of "true threats", and that nothing he has done or said should be construed as a "true threat" of anything other than possible damage to his father's reputation.

7. Article I Section 2(a) of the California Constitution states:
"(a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. **A law may not restrain or abridge liberty of speech** or press." [Emphasis added]

8. " . . . A government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981). To curtail that risk, "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license" must contain "narrow, objective, and definite standards to guide the licensing authority." *Shuttlesworth*, 394 U.S. at 150-151; see also *Niemotko*, 340 U.S. at 271. The reasoning is simple: if the permit scheme "involves appraisal of facts, the exercise of judgment, and the formation of an [112 S.Ct. 2402] opinion," *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940), by the licensing authority, "the danger of censorship and of abridgment of our precious First Amendment freedoms is too great" to be permitted. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975). . . ." Forsyth County v. Nationalist Movement (1992) 505 U.S. 123, 130 -131.

9. " . . . Understanding the scope of the constitutional right is the first step in determining the yard stick by which we measure the state regulation. See, e.g., *Bd. Of Trustees of Univ. of*

Alabama v. Garrett, 531 U.S. 356, 365, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001) (" The first step in [analyzing legislation intersecting with enumerated rights] is to identify with some precision the scope of the constitutional right at issue."). . . ." Kachalsky v. County of Westchester (2nd Cir. 2012) 701 F.3d 81, 96.

10. "Other than for meetings, appellant was to stay 300 yards from the protected individuals and from city hall. Appellant was to enter city hall through specified entrances and be subject to search before entering the city council chambers. During the meetings he was to sit in a specific row and use a particular stairway. He also was not to file any document personally with the city clerk, but was required to mail it or have someone else deliver it for him." City of San Jose v. Garbett (2010) 190 Cal.App.4th 526, FN 2.

11. " . . . Freedom of speech is guaranteed under both the United States and California Constitutions. (*U.S. Const., 1st Amend.; Cal. Const., art. I, § 2, subd. (a).*) The First Amendment, made applicable to state and local governments by the Fourteenth Amendment, provides in part: " Congress shall make no law ... abridging the freedom of speech...." (*U.S. Const., 1st Amend.*) The California Constitution states: " Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (*Cal. Const., art. I, § 2, subd. (a).*) " The state Constitution's free speech provision is ' at least as broad' as [citation] and in some ways is broader than [citations] the comparable provision of the federal Constitution's First Amendment." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 958-959 [119 Cal.Rptr.2d 296, 45 P.3d 243] (*Kasky*); *Baba, supra*, 124 Cal.App.4th at p. 513, 21 Cal.Rptr.3d 428.) . . ." Larson v. City and County of San Francisco (2011) 192 Cal.App.4th 1263, 1283 - 1284.

12. " . . . As explained in Justice O'Connor's plurality opinion in that case, the cross burner might well be engaging in " constitutionally proscribable intimidation." (*Virginia v. Black, supra*, 538 U.S. at p. 365, 123 S.Ct. 1536.) But, the plurality noted, **that same conduct might likewise indicate " that the person is engaged in core political speech" protected under the First Amendment.** (*Virginia v. Black*, at p. 365, 123 S.Ct. 1536.) The plurality went on to state that although punishing cross burning " done with the purpose of threatening or intimidating a victim " does not run afoul of the First Amendment (*Virginia v. Black*, at p. 366, 123 S.Ct. 1536, italics added), that cannot be said of punishing cross burning intended as " a statement of ideology" or as " a symbol of group solidarity," both of which " ' would almost certainly be protected expression' " (id. at pp. 365-366, 123 S.Ct. 1536). . . ." [Emphasis added] People v. Lowery (2011) 52 Cal.4th 419, 425.

13. " . . . the First Amendment mandates that speech restrictions be ' narrowly drawn.' *In re Primus* [(1978)] 436 U.S. 412, 438 [98 S.Ct. 1893, 1908, 56 L.Ed.2d 417].... The regulatory technique may extend only as far as the interest it serves." (*Central Hudson, supra,* 447 U.S. at p. 565, fn. omitted.) Stated another way, the restriction must be " no more extensive than necessary to further the" government's substantial interest in regulating the commercial speech. (Id. at pp. 569-570, 572; *Lorillard, supra,* 533 U.S. at pp. 555-556.) " The State cannot regulate speech that poses no danger to the asserted state interest, see *First National Bank of Boston v. Bellotti* [(1978) 435 U.S. 765,] 794-795 [98 S.Ct. 1407, 55 L.Ed.2d 707] ..., nor can it completely suppress information when narrower restrictions on expression would serve its

interest as well." (*Central Hudson*, at p. 565.) A restriction that entirely suppresses commercial speech must be reviewed " with special care." [11] (*Central Hudson*, at p. 566, fn. 9.) . . ." Larson v. City and County of San Francisco (2011) 192 Cal.App.4th 1263, 1292 - 1293.

14. " . . . **The First Amendment "does not permit the government to prohibit speech as intrusive unless the 'captive' audience cannot avoid objectionable speech.**" *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S., at 542, 100 S.Ct., at 2335. Recipients of objectionable mailings, however, may " 'effectively avoid further bombardment of their sensibilities simply by averting their eyes.' " *Ibid., quoting Cohen v. California*, 403 U.S. 15, 21, 91 S.Ct. 1780, 1786, 29 L.Ed.2d 284 (1971). Consequently, the "short, though regular, journey from mail box to trash can ... is an acceptable burden, at least so far as the Constitution is concerned." *Lamont v. Commissioner of Motor Vehicles*, 269 F.Supp. 880, 883 (SDNY), aff'd, 386 F.2d 449 (CA2 1967), cert. denied, 391 U.S. 915, 88 S.Ct. 1811, 20 L.Ed.2d 654 (1968). . . ." [Emphasis added] Bolger v. Youngs Drug Products Corp. (1983) 463 U.S. 60, 72.

15. " . . . We have often recognized that individuals have a legitimate "right to be left alone" "in the privacy of the home," *FCC v. Pacifica Foundation*, 438 U.S. 726, 748, 98 S.Ct. 3026, 3040, 57 L.Ed.2d 1073 (1978), "the one place where people ordinarily have the right not to be assaulted by uninvited and offensive sights and sounds." Id., at 759, 98 S.Ct., at 3045 (opinion of POWELL, J.). Accord, *Rowan v. Post Office Dept.*, 397 U.S. 728, 736-738, 90 S.Ct. 1484, 1490-1491, 25 L.Ed.2d 736 (1970). The Government may properly act to protect people from unreasonable intrusions into their homes. . . ." Bolger v. Youngs Drug Products Corp. (1983) 463 U.S. 60, 77 - 78.

16. "(b) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.
Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

As used in this subdivision, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated." California Constitution Article I Section 2(b).

17. SEE California Code of Civil Procedure §1858: “In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”

18. SEE In re Marriage of Hobdy (2004) 123 Cal.App.4th 360, 366 discussing principles of statutory construction. SEE ALSO Civil Code §3541 “An interpretation which gives effect is preferred to one which makes void.”

19. SEE California Code of Civil Procedure §1859: “In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.”

20. “ . . . "A comprehensive reporter's immunity provision, in addition to protecting confidential or sensitive sources, has the effect of **safeguarding '[t]he autonomy of the press**.' (*O'Neill v. Oakgrove Constr.* (1988) 71 N.Y.2d 521, 526 [528 N.Y.S.2d 1, 3 ...] [construing a similar state constitutional provision].)... [¶] The threat to press autonomy is particularly clear in light of the press's unique role in society. **As the institution that gathers and disseminates information, journalists often serve as the eyes and ears of the public**. [Citations.] Because journalists not only gather a great deal of information, but publicly identify themselves as possessing it, they are especially prone to be called upon by litigants seeking to minimize the costs of obtaining needed information." (*Delaney, supra,* 50 Cal.3d 785, 820-821 (*conc. opn. of Mosk, J.*); see also *Matter of Woodhaven Lumber* (1991) 123 N.J. 481 [589 A.2d 135, 143]; *United States v. Cuthbertson* (3d Cir. 1980) 630 F.2d 139, 147.) The threat to the autonomy of the press is posed as much by a criminal prosecutor as by other litigants. . . .” [Emphasis added] Miller v. Superior Court (1999) 21 Cal.4th 883, 898.

21. “ . . . Under the California Constitution, the constitutional guarantees afforded to individuals accused of criminal conduct are no less well established or fundamental than the constitutional rights of privacy and due process or the guarantee of equal protection of the laws. (See, e.g., *Miller v. Superior Court* (1999) 21 Cal.4th 883, 892 [89 Cal.Rptr.2d 834, 986 P.2d 170] [distinct provisions of the Cal. Const. “have equal dignity as constituents of the state Constitution”].) . . .” Strauss v. Horton (2009) 46 Cal.4th 364, 450.

22. “ . . . This Court long ago recognized that **members of the public retain strong free speech rights when they venture into public streets and parks, "which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.**'" *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (quoting *Hague v. Committee for Industrial Organization,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939) (*opinion of Roberts, J.*)). In order to preserve this freedom, government entities are strictly limited in their ability to regulate private speech in such "traditional public fora." *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788,

800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Reasonable time, place, and manner restrictions are allowed, see *Perry Ed. Assn., supra,* at 45, 103 S.Ct. 948, but any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest, see *Cornelius, supra,* at 800, 105 S.Ct. 3439. and restrictions based on viewpoint are prohibited, see *Carey v. Brown,* 447 U.S. 455, 463, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980). . . ." [Emphasis added] Pleasant Grove City, Utah v. Summum (2009) 555 U.S. 460, 469.

Former Vice President Albert Gore referred to the Internet as the "Information Superhighway", and the Internet has the characteristics of a traditional public forum.

23. " . . . "Family courts are courts of equity and there is a basic principle of equity that one cannot take advantage of one's own wrong." (*In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 811 [81 Cal.Rptr.2d 797]; see Civ. Code, § 3517.) . . ." In re Marriage of Klug (2005) 130 Cal.App.4th 1389, 1403.

24. " . . . Domestic violence is the physical, sexual, psychological, and/or emotional abuse of a victim by his or her intimate partner, with **the goal of asserting and maintaining power and control over the victim.** (See, e.g., Note, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy* (2004) 52 Drake L.Rev. 295, 300; Dempsey, *What Counts as Domestic Violence? A Conceptual Analysis* (2006) 12 Wm. & Mary J. Women & L. 301.) **Most domestic violence victims are subjected to "an *ongoing* strategy of intimidation, isolation, and control** that extends to all areas of a women's life, including sexuality; material necessities; relations with family, children, and friends; and work." (Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control* (1995) 58 Alb. L.Rev. 973, 986, fn. omitted.) **Pursuing a remedy, criminal or civil, while in such an environment defies the abuser's control, thus exposing the victim to considerable risk of violence.** (See, e.g., Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?* (1994) 63 Fordham L.Rev. 853.) . . ." [Empasis added] Pugliese v. Superior Court (2007) 146 Cal.App.4th 1444, 1452.