

Crisis in California: Constitutional Challenges to Inadequate Trial Court Funding

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There is an old Irish proverb which states that there are three things that are important in life: God, human folly, and justice. The first two are beyond our control, so we must do what we can with the third.¹

I. Introduction

On September 26, 1994, the case that has been heralded as the trial of the century—*People of the State of California v. Simpson*—came to trial.² On that and the following days, throngs of photographers, reporters, camerapeople, and interested citizens swarmed the Criminal Courts Building in Los Angeles, anxious to learn about recent developments in the trial. Even more amazing, perhaps, was the media circus that occurred within the courtroom itself. Most of the networks provided live, almost continuous coverage of all phases of the trial. One reporter described the event as “a thick ghetto of satellite dishes outside the Downtown Criminal Courts Building where the proceeding was scheduled to begin in two hours, televised live—gavel to gavel, follicle to follicle—by the big networks and every major Los Angeles television station but one. Moses parting the Red Sea wouldn’t get this coverage.”³ In fact, the hyped-up and often inaccurate media coverage surrounding the Simpson trial was condemned by Judge Lance Ito on September 23, 1994, when he threatened to ban television coverage of the trial.⁴ Perhaps the most amazing aspect of the Simpson trial was the excessive amount of money spent to investigate and prosecute Orenthal James Simpson. Los Angeles County reportedly spent \$273,454 investigating the case over a one month

1. COMMISSION ON THE FUTURE OF THE CALIFORNIA COURTS, JUSTICE IN THE BALANCE 2020; REPORT OF THE COMMISSION ON THE FUTURE OF THE CALIFORNIA COURTS 137 (1993) (quoting Attorney, Los Angeles Hearing, Aug. 25, 1993). This commission was created in December 1991, by Chief Justice Malcolm M. Lucas to anticipate what state the California courts would be in by the year 2020. *Id.* at 2.

2. Jim Newton and Andrea Ford, *Murder Trial of Simpson Begins*, L.A. TIMES, Sept. 27, 1994, at A1.

3. Howard Rosenberg, *TV Carnival Presents Gavel-to-Gavel, Follicle-to-Follicle Coverage*, L.A. TIMES, July 1, 1994, at A7 (home edition).

4. Jim Newton and Andrea Ford, *Irate Judge Threatens to Bar TV in Simpson Case*, L.A. TIMES, Sept. 24, 1994, at A1 (home edition).

period.⁵ In addition, it was speculated that sequestering the jury would cost approximately \$3,446 per day throughout the trial.⁶ Total costs for the trial alone were estimated to have reached \$1.8 million by February, 1995.⁷

Yet, while attention focused on O.J. Simpson's criminal court proceedings, few realized that what they found so riveting—the California judicial process—was and continues to be in a state of crisis. This crisis is due to inadequate funding and resources allocated to the California trial courts. Furthermore, this crisis threatens to disproportionately impact the civil justice system due to the constitutional mandate that criminal trials take precedence over civil trials.⁸

On July 8, 1994, Governor Pete Wilson signed into law the 1994 Budget Act for the State of California.⁹ This Act allocated \$638 million from the general fund and \$173 million from special funds to the trial courts for fiscal year 1994-95.¹⁰ This amount was \$37 million less than that originally allotted for in the 1993-94 budget.¹¹ In addition, the state contributed only 58% of trial court expenses,¹² despite legislation¹³ mandating the state to contribute 65% of the state trial court budget in 1994-95.¹⁴ These numbers, however, are particularly low when considered with appropriation decreases from previous years. For example, in 1993-94 the trial court budget for California was slashed by \$79 million.¹⁵ Furthermore, in 1993-94 the state contrib-

5. *Fox Scrubs Simpson TV Movie: Concern for Fair Trial Prompts Network to Delay Broadcast*, S.J. MERC., Aug. 20, 1994, at A9.

6. William Carlsen, *No Gag Order in Simpson Case; Petition Filed to Sequester Jury*, S.F. CHRON., Sept. 3, 1994, at A3.

7. Vincent J. Schodolski, *What Price Simpson Justice?; It's \$1.8 Million and Counting*, CHI. TRIB., Feb. 19, 1995 at C6.

8. "Criminal cases take priority over civil cases because criminal defendants have a well-defined constitutional right to speedy trials." Ted Rohrlich, *County Bar May Sue Court Over Delays in Civil Cases*, L.A. TIMES, Nov. 14, 1987, § 1 at 1 (home edition), at 1. The Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. amend. VI, cl. 1. There is no similar provision for civil trials.

9. Daniel M. Weintraub, *Wilson Makes Final Deletions, Then Signs \$57.5-Billion State Budget*, L.A. TIMES, July 9, 1994, at 24 (home edition).

10. STATE OF CALIFORNIA, DEP'T OF FINANCE, BUDGET FOR THE FISCAL YEAR 1994-95 FINAL CHANGE BOOK (1994).

11. *1993-94 Budget Cuts Trial Court Funding*, COURT NEWS, Aug.-Sept. 1993, at 3.

12. JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 6 (1994).

13. The Trial Court Realignment and Efficiency Act of 1991 provides, "Beginning with the 1994-95 fiscal year, it is the intent of the Legislature to increase trial court funding by an amount sufficient to fund 65 percent of the annual costs for court operations. It is the intent of the Legislature that this funding shall increase to 70 percent for the 1995-96 fiscal year." CAL. GOV'T CODE § 77200 (West Supp. 1994).

14. CAL. GOV'T CODE § 77200 (West Supp. 1994).

15. *1993-94 Budget Cuts Trial Court Funding*, COURT NEWS, Aug.-Sept. 1993, at 3.

uted a mere 44% of total state court budget needs—not the 60% required under California Government Code section 77200.¹⁶

Despite unprecedented decreases in state financial support for the judiciary, case filings have increased. These two factors, more work and less money, have put unprecedented strain on the judicial system. For example, superior court filings in California have increased from 738,363 in 1981-82¹⁷ to 1,017,798 in 1992-93,¹⁸ an increase of 37.85%. Although the raw numbers do not seem surprising in light of California's population growth rate of 2.4% per year,¹⁹ deeper trends forecast the courts' growing inability to cope with the rise in case filings and case complexity. California, which has the nation's second highest population growth rate,²⁰ is expected to increase in size to 50 million by the year 2020.²¹ In contrast, California's population today is roughly 32.5 million.²²

While California's increasing population puts new pressures on the legal system, judicial resources are shrinking. During the twelve year period from 1981-93, the number of judicial seats in California superior courts grew from 723 to 929, an increase of only 21.4%.²³ This number is markedly small when compared to the 26.4% increase in case filings during the same period.²⁴ Further budget cuts would merely serve to limit or decrease the number of judicial seats. Without adequate funding, the state and counties will be unable to appoint

16. *Id.*

17. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, VOLUME II: JUDICIAL STATISTICS FOR FISCAL YEAR 1990-1991 44 (1992).

18. JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 114. This rise in case filings is due to filing increases in certain types of dispositions. For example, from 1983 to 1993, the number of total civil filings increased from 561,916 to 684,070. *Id.* at 119. Interestingly, 1992-93 filings for personal injury, death, property damage, probate and guardianship, and family law all registered below their corresponding 1983-84 numbers. *Id.* What accounts for the increase in total civil filings, then, is due largely to the increase in "other civil petition" filings. *Id.* These "other civil petitions" include "[p]etitions for adoption; for change of name; to establish the fact of birth or death (if not part of a pending probate proceeding); for writs of review, mandate, and prohibition; for conciliation (when not part of a pending family law proceeding); petitions filed under the Reciprocal Enforcement of Support Act; and other special proceedings." *Id.* at 223.

19. COMMISSION ON THE FUTURE OF THE CALIFORNIA COURTS, *supra* note 1, at 19.

20. Samuel Krislov & Paul Kramer, 2020 *Vision: The Future of the California Civil Courts*, 66 S. CAL. L. REV. 1915, 1920 (1993).

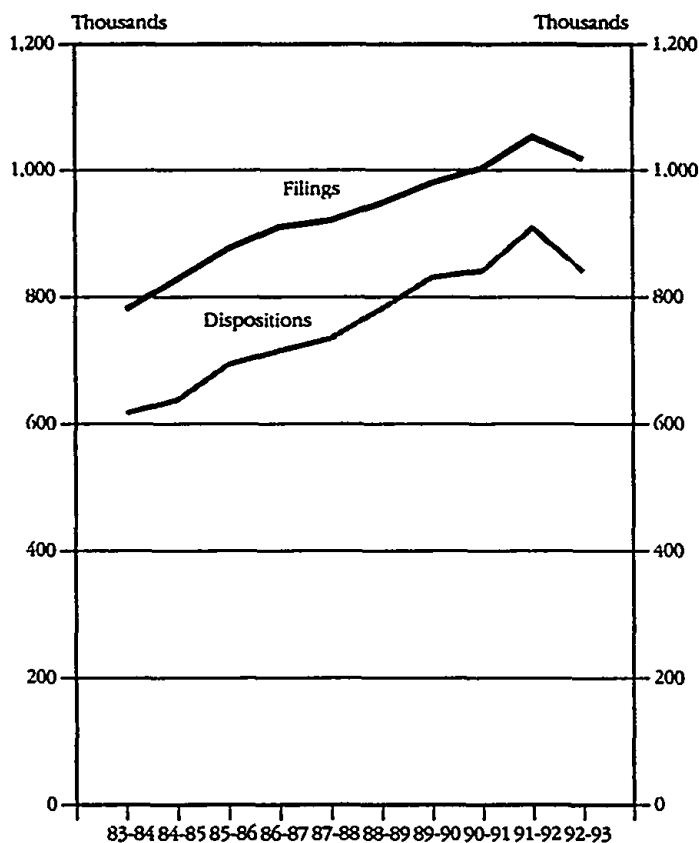
21. COMMISSION ON THE FUTURE OF THE CALIFORNIA COURTS, *supra* note 1, at 19 (citing CAL. DEP'T OF FINANCE, PROJECTED TOTAL POPULATION OF CALIFORNIA COUNTIES: 1990 TO 2040 (1993)).

22. Ed Mendel, *GOP Candidates Try to Mobilize the Asian-American Community*, SAN DIEGO UNION-TRIB., June 20, 1994, at A-3.

23. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, *supra* note 17, at 44; JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT (1994), *supra* note 12, at 114.

24. *Id.*

Table 1
Total Filing and Dispositions in California Superior
Courts Fiscal Years 1983-84 through 1992-93



Source: JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 113 (1994).

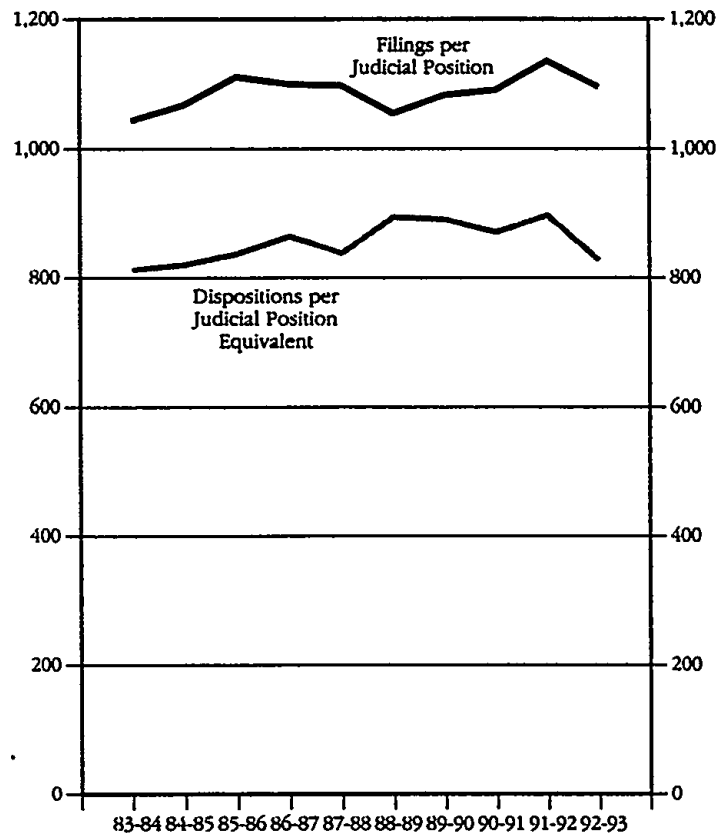
enough new and qualified judges to keep pace with the rise in case filings.

Of course, such budget crises are national in scope and not unique to California. In 1991, a \$77 million cut in the New York state judicial budget led to a highly publicized battle for funding between then Chief Judge Sol Wachtler and Governor Mario Cuomo.²⁵ In Vermont, civil jury trials were suspended during the last five months of 1990.²⁶ In Minneapolis, civil courts were closed for three months in

25. Edward Frost, *Battle of New York "Titans,"* 76 A.B.A. J., Dec. 1991, at 18.

26. Bruce Rutledge, *Tight Budgets in a Time of Recession,* *The Judges' Journal*, Summer 1991, at 18.

Table 2
Total Filings per Judicial Position and Dispositions
per Judicial Position Equivalent in California
Superior Courts Fiscal Years 1983-84 through 1992-93



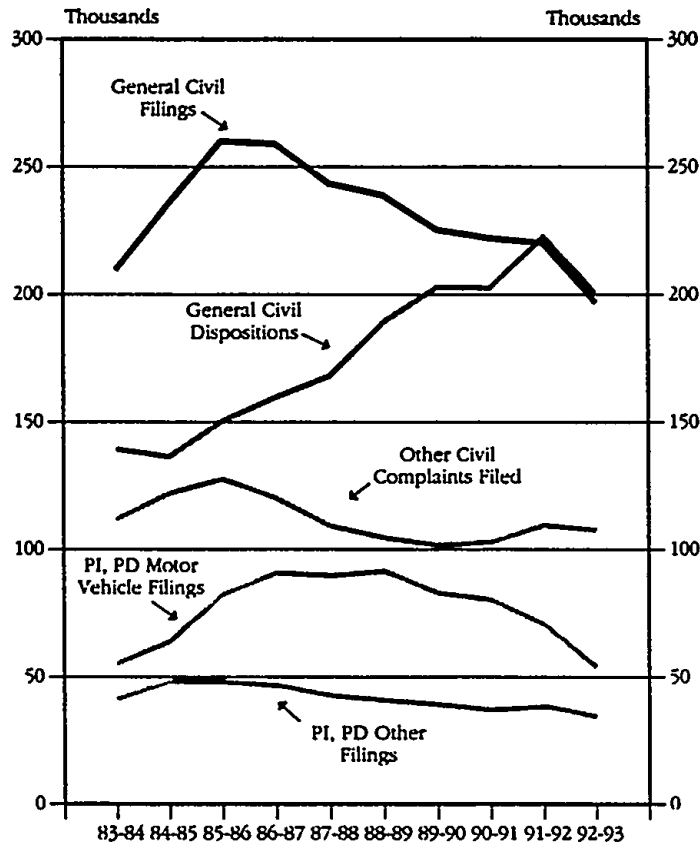
Source: JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 113 (1994).

1989 in order to process back-logged felony cases.²⁷ Clearly, inadequate court funding is a national concern.

Moreover, the impact of inadequate judicial funding threatens more than judiciary salaries or court budgets. The current fiscal crisis literally jeopardizes the existence, welfare, and viability of our judicial system. Without adequate funding, citizens can expect longer trial delays, poorly maintained court facilities, little or no courtroom security, limited training for judges, and completely outdated court equip-

27. Richard Chernick, Panel Discussion at the American Judicature Society Midyear meeting (Mar. 6, 1992), in *Funding State and Local Courts: Increasing Demands and Decreasing Resources*, 76 JUDICATURE, Aug.-Sept. 1992, at 83.

Table 3
General Civil Filings and Dispositions in California
Superior Courts Fiscal Years 1983-84
through 1992-93



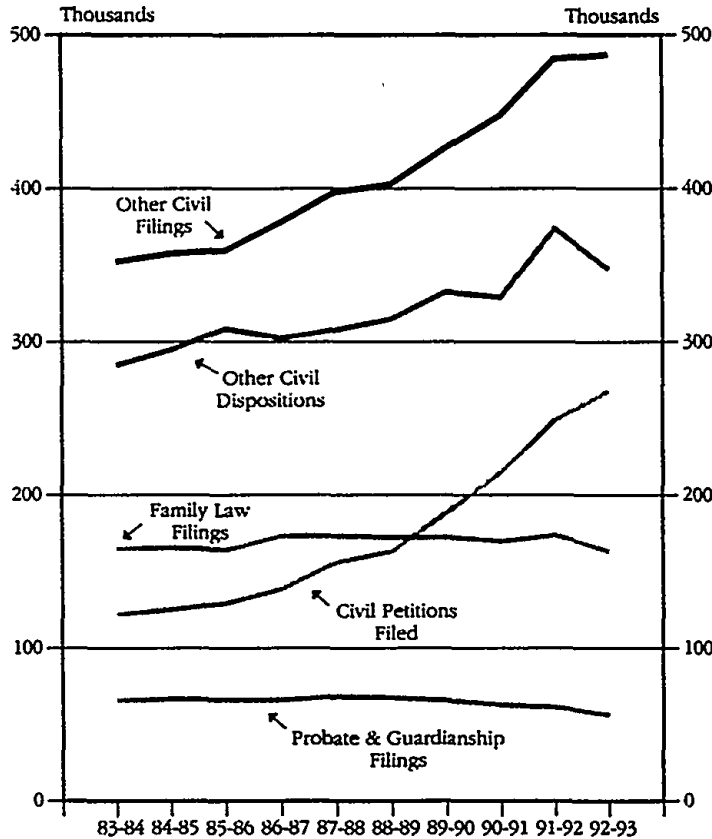
Source: JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 118 (1994).

ment.²⁸ This Note will assess the budget crisis plaguing the California state courts and propose constitutional arguments which challenge current court funding levels. While much of the discussion will focus on the California courts, arguments and prescriptions can apply in other states as well.

First, this Note will examine California’s trial court funding process, analyzing the dual roles of the state and county governments. Second, this Note will present and assess four constitutional challenges to inadequate court funding. These constitutional challenges are based on the Inherent Powers doctrine, the First Amendment’s

28. Melvyn Tanenbaum, *The State Court Funding Crisis*, THE JUDGES’ JOURNAL, Winter 1993, at 21.

Table 4
Other Civil Filings and Dispositions* in California
Superior Courts Fiscal Years 1983-84
through 1992-93



Source: JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 118 (1994).

* Other civil filings are civil filings that are not general civil filings. They comprise family law, probate and guardianship, and civil petitions.

right to petition, the Sixth Amendment's right to a jury trial, and the Fourteenth Amendment's Due Process Clause. Finally, the conclusion will describe how the California courts can apply these constitutional challenges to receive sufficient funding.

II. The Trial Court Funding Process in California

A. The California Court Structure

There are four separate levels in the California court system: municipal courts, superior courts, appellate courts, and the supreme court.

Prior to the passage of Proposition 191 in November 1994, the lowest tier of courts in California were divided into municipal and justice courts. Municipal courts were established for judicial districts exceeding 40,000 people and their judges were chosen by the governor.²⁹ Justice courts, on the other hand, served populations of 40,000 or less³⁰ and their judicial officers were appointed by the respective boards of supervisors.³¹ Proposition 191 merged the municipal and justice courts in order to "make better use of judges' time."³²

State legislation authorizes county boards of supervisors to divide each county into judicial districts.³³ As of 1992, California had 90 municipal courts with 616 judges and 53 justice courts with 53 judges.³⁴ In 1995, with the implementation of Proposition 191, California will have 129 municipal courts with 637 judges.³⁵

Municipal courts operate at the local level and have original criminal jurisdiction for misdemeanors and original civil jurisdiction for claims of \$25,000 or less.³⁶ Municipal courts also maintain small claims jurisdiction for cases where the amount in controversy is \$5000 or less.³⁷

The second tier of courts in California, superior courts, are California's trial courts of general jurisdiction.³⁸ Both probate and juvenile courts operate on this tier.³⁹ Superior courts have jurisdiction over all felony cases, all civil cases with claims exceeding \$25,000, and over all appeals from municipal or small claims court decisions.⁴⁰ These courts also hear claims requesting specific relief, such as mo-

29. JUDICIAL COUNCIL, 1992 ANNUAL REPORT, *supra* note 17, at 68.

30. David Minier writes, "Justice courts originated in England in the 1300s, when towns were small and isolated. They were the workhorses of English justice, using non-lawyer judges to dispense speedy justice in minor cases. The justice court system came to America with colonization, and soon every small community had its own court." David D. Minier, *Proposition 191 Sweeps Away a Tradition in Rural California Justice*, SAC. BEE, Nov. 3, 1994, at B7.

31. *Id.*

32. *Post-Election: More Order in the Courts*, L.A. TIMES, Nov. 30, 1994, at 4. "Proposition 191 purports merely to change the name of justice courts to municipal courts, effective Jan. 1, 1995. Indeed, as the ballot argument in favor of the proposition correctly points out, there is currently no significant difference between the rural justice courts and the more numerous municipal courts. They have the same legal jurisdiction, handle the same kinds of cases and follow the same procedures." Minier, *supra* note 30, at B7.

33. CAL. CONST. art. 6, § 4 (West 1995).

34. See JUDICIAL COUNCIL, 1994 ANNUAL REPORT, *supra* note 12, at 154.

35. *190 and 191: 'Yes' on Judicial Reform*, L.A. TIMES, Oct. 10, 1994, at B6.

36. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, *supra* note 17, at 68.

37. *Id.*

38. CAL. CONST. art. 6, § 10 (West 1995).

39. JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 104.

40. *Id.*

tions for declaratory judgments and injunctions.⁴¹ There are 58 superior courts (one for each county), employing approximately 789 judges statewide.⁴² In fact, there are more than 200 superior court judges sitting in Los Angeles county alone.⁴³

The third tier of the California judicial system consists of the courts of appeal, California's primary courts of appellate review.⁴⁴ These courts typically sit in three-judge panels, hearing appeals from the superior courts, and habeas corpus, mandamus, certiorari and prohibition proceedings.⁴⁵ California has six appellate districts with 88 justices in all.⁴⁶

Finally, the highest tier in California's judicial structure and the state's highest court is the California Supreme Court. The supreme court is made up of the Chief Justice and six associate justices.⁴⁷ This court has the discretion to review appellate court decisions and *must* review all death penalty appeals.⁴⁸ In addition, the supreme court has original jurisdiction to hear mandamus, certiorari, prohibition and habeas corpus proceedings.⁴⁹

B. History of Trial Court Funding in California

Courts at different tiers are supported by different funding mechanisms. The state of California completely funds the state supreme court and the courts of appeal.⁵⁰ In contrast, the trial courts (the municipal and superior courts) are only partially funded by the state. The counties must provide the remainder of the money needed to operate these trial courts.⁵¹

Prior to 1985, trial courts were funded primarily by the counties.⁵² The Trial Court Funding Act of 1985 (Assembly Bill No. 19),⁵³ the first legislation enacted to reform trial court funding in forty years, provided that the state would supply bloc grants to the counties ac-

41. *Id.*

42. *Id.*

43. While the number of judicial seats seems exceedingly high, the true measure of adequate judicial resources, however, depends on the ratio of judges to case filings. For example, from 1983 to 1992, the number of case filings per judicial seat increased from 1,044 to 1,134 — an increase of 8.6%. JUDICIAL COUNCIL OF CALIFORNIA, 1993 ANNUAL REPORT, VOLUME II: JUDICIAL STATISTICS FOR FISCAL YEAR 1991-1992 44 (1993).

44. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, *supra* note 17, at 16.

45. *Id.*

46. JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 86.

47. *Id.* at 4.

48. *See* CAL. CONST. art. VI, § 12; CAL. CONST. art. VI, § 11.

49. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, *supra* note 17, at 4.

50. CAL. GOV'T CODE § 77200 (West Supp. 1994). *See also* CAL. CONST. art. VI, § 12.

51. CAL. GOV'T CODE § 77200 (West Supp. 1994).

52. *State Funding for Trial Courts: A Brief History*, COURT NEWS, Feb.-Mar. 1993, at 5.

53. A.B.19 (enacted as CAL. GOV'T CODE § 77200).

ording to the number of authorized judicial positions in each county.⁵⁴ Under the 1985 Act, counties retained control of grant allocation within the various judicial departments.⁵⁵ Ironically, no money was ever appropriated to implement the law, and the structure of trial court funding remained as it had been prior to the 1985 legislation.⁵⁶ In other words, from 1985 to 1988 no comprehensive trial court funding reform was implemented.

In 1988, the Brown-Presley Trial Court Funding Act was enacted, superseding the 1985 legislation by similarly providing for state financial support of trial courts.⁵⁷ The Brown-Presley Act, by appropriating bloc grants to each county, absorbed part of total trial court costs.⁵⁸ This Act is still in force today in an amended version.⁵⁹ Under the 1988 Act, the state was to fund 50% of court operation costs starting in 1988-89; the state's share was to increase by 5% in the 1989-90 budget.⁶⁰ In 1989-90, the first year the Brown-Presley Act was implemented, the state contributed only \$537 million, or 44% of total trial court costs.⁶¹ The next year the state, due to internal fiscal problems, allocated even less—a mere \$398.2 million, or 37.6% of trial court needs.⁶² Clearly, actual grants did not match those required by the legislature.

In response to this dramatic decrease in court funding, California State Senator Phil Isenberg introduced what was to become the Trial Court Realignment and Efficiency Act of 1991. (“The Realignment Act”).⁶³ The Realignment Act called for the state to increase its contribution to trial court funding by 5% each year until it reached 70% in 1995-96.⁶⁴ Despite this noble effort to increase funding for the trial courts, the state is still far short of its 70% goal. The 1993-94 budget allocated only \$673 million, a 44% contribution, to the state trial courts.⁶⁵

Included in the Realignment Act is a provision which creates the

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*; see CAL. GOV'T CODE §§ 77000-77400 (West 1993 & Supp. 1994).

58. *Id.*

59. See CAL. GOV'T CODE § 77200 (West 1993 & Supp. 1994).

60. CAL. GOV'T CODE § 77200 (West 1988).

61. *State Funding for Trial Courts: A Brief History*, *supra* note 52, at 5.

62. *Id.*

63. CAL. GOV'T CODE § 77200(a) (West 1995) (enacted). See also JUDICIAL COUNCIL OF CALIFORNIA, 1993 ANNUAL REPORT VOLUME I: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 10 (1993).

64. *Id.*

65. *1993-1994 Budget Cuts Trial Court Funding*, COURT NEWS, Aug.-Sept. 1993, at 3.

Trial Court Trust Fund.⁶⁶ This fund is actually a state-wide collection of civil filing and court reporter fees.⁶⁷ The revenue generated by collecting these fees is intended to partially offset the state's greater burden of trial court funding.⁶⁸ This fund, however, has fallen far short of expectations. For fiscal year 1992-93, the fund was expected to amass some \$140 million.⁶⁹ The *Daily Journal*, however, reported that as of April 29, 1993, with just two months left to collect fees for that year, the fund had raised only \$60 million.⁷⁰

Currently, trial court funding is appropriated according to the Brown-Presley and the Realignment Acts. Under these measures, the state apportions part of its general fund towards the trial courts and administers the Trial Court Trust Fund. The state legislature has authorized an increase in state contributions until the state's share reaches 70% of budget needs.⁷¹ Unfortunately, these lofty goals are unrealistic. Legislators appropriating future funds have miscalculated the recession's drastic impact on the California treasury.⁷² For example, in 1991-92, the legislature made appropriations based on an expected \$300 million increase in the general fund.⁷³ That year, however, the general fund suffered a net loss of \$57 million.⁷⁴ The state-wide recession resulted in less tax revenue for the state and, consequently, less money for the courts from the general fund.⁷⁵ As the state finds itself with fewer and fewer resources to dole out among competing government agencies, the burden of funding the trial courts has fallen largely on California's counties.

C. The County's Role in Trial Court Funding

With few state monies allocated to fund state trial courts, counties must provide the bulk of the money to operate the courts.⁷⁶ The counties, however, are severely limited by the ways they can raise revenue. Three factors prevent the counties from effectively raising revenue to fund the trial courts: Proposition Thirteen, the unattractiveness of user fees, and the organizational structure of the counties. In 1977,

66. *\$140 Million in Trust Fund Monies Expected for Courts*, COURT NEWS, Apr.-May 1993, at 1.

67. Tom Dresslar, *Assembly Panel Cuts \$90 Million in Court Funds*, L.A. DAILY J., Apr. 29, 1993, at 8.

68. *State Funding for Trial Courts: A Brief History*, *supra* note 52, at 5.

69. *Id.*

70. Dresslar, *supra* note 67, at 8.

71. CAL. GOV'T CODE § 77200(a) (West 1993 & Supp. 1994).

72. Dresslar, *supra* note 67, at 8.

73. *Id.*

74. *Id.*

75. Don J. De Benedictis, *Budget Ax Hits Justice*, 77 A.B.A. J., May 1991, at 16.

76. Carl Baar, *SEPARATE BUT SUBSERVIENT: COURT BUDGETING IN THE AMERICAN STATES* 5 (1975).

California voters approved Proposition Thirteen.⁷⁷ This measure provided for real property to be taxed according to its purchase value.⁷⁸ In order to prevent the counties from subverting the goal of Proposition Thirteen to freeze property tax rates, the constitutional amendment also limited the counties' ability to levy sales and other local taxes.⁷⁹ Under Proposition Thirteen, counties may not increase sales or other taxes without the approval of two-thirds of the voters.⁸⁰ The likelihood that a tax hike will pass with a 66% vote is extremely remote considering the current public disfavor for higher taxes.⁸¹

Proposition Thirteen does not inhibit the counties' ability to raise direct user fees for county services.⁸² However, the ethics, constitutionality, and practicality of substantially raising court fees has been called into question by a number of authorities. Chief Justice Malcolm Lucas of the California Supreme Court addressed the problem as follows:

[I]ncreased user fees, such as penalty assessments or higher filing fees, [are not] the solution. As regressive sources of revenue, they too often unfairly place the burden for sustaining courts without regard to ability to pay or consideration for the overall benefit we each derive from their service. In speaking of funding for the courts, we cannot focus on a fiscal budget sheet's bottom line because the real bottom line cannot be measured in dollars and cents.⁸³

Given these circumstances, counties have few, if any, acceptable means of independently raising revenue to adequately fund trial courts.

Furthermore, inadequate consideration of trial court needs often attends the disbursement of county funds. Budgetary authority at the county level is vested in various county boards of supervisors. These boards have discretionary power to allocate money and must choose to appropriate funds among competing public entities, including hos-

77. Proposition Thirteen is now codified as CAL. CONST. art. XIII A.

78. CAL. CONST. art. XIII A, § 2.

79. *Id.* at § 4.

80. *Id.* See also Joanna M. Miller, *Counties Brace for Cuts in Police, Other Services*, L.A. TIMES, Aug. 30, 1992, at 3.

81. Public opposition to higher taxes may be demonstrated by the Clinton Administration's recent announcement of a "middle class tax cut." Leo Rennert, *Clinton Proposes \$60 Billion Tax Cut*, SAC. BEE, Dec. 16, 1994, at A1. Many have speculated that this announcement was fueled, in large part, by President Clinton's attempts to gain popularity with the electorate. See *id.*; *Clinton Likely to Propose Tax Cut for Middle Class*, S.F. EXAMINER, Dec. 13, 1994, at A15; Michael Wines, *The Nation*; *The Talk is Tax Cuts: Look Who's Talking Too*, N.Y. TIMES, Dec. 18, 1994, § 4, at 4.

82. *Id.*

83. Hon. Malcolm M. Lucas, *Is Inadequate Funding Threatening Our System of Justice?*, JUDICATURE, Apr.-May 1991, 292, 293.

pitals, museums, libraries, parks, and social services.⁸⁴ Once a final budget is approved and money is appropriated, it is extremely difficult to challenge the board of supervisors for increased funding.

Under the procedures outlined in the Budget and Tax Levy Act,⁸⁵ boards of supervisors have final discretion to determine what amounts will be appropriated for various departments.⁸⁶ After a final budget has been adopted by a board, appropriations cannot be modified unless the budget itself is revised, cancelled, or funds are transferred from another department.⁸⁷ In addition, the budget can only be modified to deal with emergencies, to follow court orders, or as otherwise specifically provided by law.⁸⁸

Courts, however, have interpreted the seemingly stringent language of the Budget and Tax Levy Act to allow modification of budgets after adoption by boards of supervisors. In *Niceley v. County of Madera*,⁸⁹ a sheriff incurred separate expenses by employing detectives to track down cattle thieves and investigate a murder. These expenses were in excess of the amount allotted to his office by the county budget for the fiscal year.⁹⁰ A claim for the items in excess of the budget was filed with the Madera County Board of Supervisors. The board of supervisors refused to pay for the expenses, finding them unnecessary and noting that the sheriff had already exhausted the allocated funds.⁹¹ The trial court found the expenses proper and necessary, holding that the expenses constituted a legal charge against the County of Madera. The sheriff was awarded judgment against the county in the full amount of the claim.⁹² The appellate court affirmed the ruling, stating:

[I]t is important to observe that subdivision 5 of section 3714 [now Government Code section 29122] . . . does not make final the budget as adopted by the board of supervisors, nor does it make final the sum or allowance made or allotted to any particular official. The question is left open for a determination by the court as to whether any other items of expenditure shall be determined to be a claim against the county, and whether the county shall be held liable therefor. This plainly appears from the words specifying that no payment shall be made "except upon an order of a court of competent jurisdiction." And this

84. Carla Rivera, *County Charts Risky Course With Budget*, L.A. TIMES, July 31, 1993, at 1.

85. CAL. GOV'T CODE § 29120 (West 1994).

86. Rivera, *supra* note 84, at 1.

87. CAL. GOV'T CODE § 29120 (West 1994).

88. CAL. GOV'T CODE § 29122 (West 1994).

89. 111 Cal. App. 731 (1931).

90. *Id.* at 733.

91. *Id.*

92. *Id.*

provision follows that portion of the section relating to expenditures outside of, and in excess of, the budget allowance.⁹³

Accordingly, expenditures in excess of budget appropriations can be authorized by a court or by the board of supervisors in case of emergency or where required by law.⁹⁴ In addition, county boards of supervisors cannot be relieved of mandatory duties by failing or refusing to appropriate adequate funds to meet the expenses necessary to carry out such duties.⁹⁵ Nevertheless, county officials, including elected officers, cannot completely ignore the final budget as adopted by the respective board of supervisors. In *Taliaferro v. Locke*⁹⁶ the court observed:

As concerns the enforcement of the criminal law the office of the district attorney is charged with grave responsibilities to the public. These responsibilities demand integrity, zeal and conscientious efforts in the administration of justice under the criminal law. However, both as to the investigation and prosecution that effort is subject to the budgetary control of boards of supervisors or other legislative bodies controlling the number of deputies, investigators and other employees.⁹⁷

A county officer has the responsibility to stay within the amount appropriated by the board of supervisors. Specifically, these responsibilities include the efficient completion of official duties within the amounts budgeted.⁹⁸ Emergency appropriations for overtime pay, however, are not sanctioned if the county officer failed "to properly organize the work of the department," undertook to perform activities outside his or her official duties, or extravagantly performed such duties.⁹⁹ Furthermore, "under the guise of emergencies, the [county officer] may not make a practice of requiring overtime work of his [or her] staff where no emergency exists and extraordinary services are not required for the immediate preservation of public order Such practice does not come within the emergency exception nor is it the payment of mandatory expenditures required by law."¹⁰⁰

A county officer is thus normally required to carry out his or her duties within the amounts appropriated by the board of supervisors. A county officer does not have "unlimited license" in the expenditure of county funds.¹⁰¹ State law, however, does permit the expenditure

93. *Id.* at 735 (citations omitted).

94. *Accord* 15 Ops. Cal. Atty Gen. 259, 263 (1950).

95. *See, e.g.,* Ross v. Superior Court, 569 P.2d 727 (Cal. 1977); County of Los Angeles v. Payne, 66 P.2d 658 (Cal. 1937).

96. 182 Cal. App. 2d 752 (1960).

97. *Id.* at 755-56.

98. 39 Ops. Cal. Atty. Gen. 318, 321-22 (1962).

99. *Id.*

100. *Id.*

101. *Niceley v. County of Madera*, 296 P. 306, 310 (Cal. 1931).

of amounts in excess of budgeted appropriations under extraordinary, unusual, or unanticipated circumstances.¹⁰²

In the event that a claim is made in excess of budgetary appropriations, the board of supervisors must review the claim to determine whether the expense is a necessary and valid county charge.¹⁰³ If the board rejects the claim, the courts are the final arbiter of both the expenditure's necessity and the legality of the charge against the county.¹⁰⁴

Boards of supervisors have broad powers to oversee the operations of all county officers, agencies, departments, and employees.¹⁰⁵ In addition, boards have general supervisory control of all county financial affairs.¹⁰⁶ The boards' budgetary authority, however, does not grant the boards autonomous authority to control or limit discretion vested in county officers. For instance, a county officer need not first consult with the board of supervisors before incurring an expense that the officer deems proper in the discharge of statutory duties.¹⁰⁷ Such limits on the power of boards of supervisors have been confirmed in a number of cases.

In *Hicks v. Board of Supervisors*,¹⁰⁸ the court limited the board's authority to reallocate budgetary resources.¹⁰⁹ In *Hicks*, the Los Angeles Board of Supervisors attempted to transfer investigators from the district attorney's office to the sheriff's office.¹¹⁰ The court concluded that the transfer was not a budgetary action and that the law did not enable the board to transfer one officer's statutory function to another officer.¹¹¹

Furthermore, in *Brandt v. Board of Supervisors*,¹¹² the court concluded that the board of supervisors lacked the authority to use its budgetary power to control government employees, particularly sheriffs. In *Brandt*, the petitioner challenged the living conditions at the county jail.¹¹³ The court held that the board of supervisors was improperly named as a defendant. Specifically, the court found that there was no evidence presented that the board had failed to provide the sheriff with sufficient funds to perform his statutory duty of oper-

102. *Id.* at 309. Under certain circumstances, county officers may even be required to spend in excess of appropriations granted.

103. *County of Yolo v. Joyce*, 105 P. 125, 126-27 (Cal. 1909).

104. *Cunning v. County of Humboldt*, 266 P. 522, 523 (Cal. 1928); *Niceley*, 296 P. at 308.

105. *Niceley*, 296 P. at 309.

106. CAL. GOV'T CODE § 29001; *see also White v. Mathews*, 156 P. 372, 374 (Cal. 1916).

107. *Thiel Detective Co. v. County of Tuolumne*, 173 P. 1120, 1122 (Cal. 1918).

108. 69 Cal. App. 3d 228 (1977).

109. *Id.* at 244.

110. *Id.* at 232.

111. *Id.* at 240.

112. 84 Cal. App. 3d 598 (1978).

113. *Id.* at 602.

ating the jail.¹¹⁴ The court stated that “the board not only had no duty but also had no right . . . to control employment in or operation of the sheriff’s office.”¹¹⁵

In sum, boards of supervisors may determine amounts to be appropriated to county entities. These boards, however, may not dictate how those funds are used to carry out state-mandated duties. To the extent boards fail to appropriate sufficient funds for their county officers to carry out mandated duties, a court may order that funds be provided.

Where judges are viewed as “state officers,” funding challenges must be brought directly against the state. If, on the other hand, judges and other court personnel are regarded as “county officers,” with relationships similar to those between sheriffs and boards of supervisors,¹¹⁶ courts may incur expenses against the counties which are necessary to fulfill state-mandated duties.

Article VI, section 1 of the California Constitution provides: “[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts.”¹¹⁷ Despite this extremely broad directive, case law has established limits on the power granted to California’s judicial branch. For example, in the early decision of *People v. Bird*,¹¹⁸ the California Supreme Court defined judicial power as the “power to adjudicate upon the legal rights of persons or property.”¹¹⁹ Such power, however, is limited by duties delegated to other branches of government. The judiciary may not usurp executive or legislative exercises of power: a judicial act “determines what the law is, [and] what the rights of parties are with reference to transactions already had; [whereas, a legislative act] prescribes what the law shall be in future cases arising under it.”¹²⁰ Similarly, the judicial branch is limited through its exercise of jurisdiction. The California courts may not hear cases subject to federal or other states’ jurisdiction.

Therefore, the California trial courts may act independently of the boards of supervisors to fulfill state-mandated duties. While the boards do have the power to define and set county budgets, their

114. *Id.*

115. *Id.*

116. *People v. Otto*, 18 P. 869, 870 (Cal. 1888). *See also* *County of Placer v. Freeman*, 87 P. 628, 630 (Cal. 1906); *Crowley v. Freud*, 64 P. 696, 698 (Cal. 1901) (Van Dyke, J., dissenting). *But cf.* *County of Sonoma v. Workers’ Compensation Appeals Bd.*, 222 Cal. App. 3d 1133, 1145 (1990) (holding that judges are state employees for purposes of workers’ compensation).

117. CAL. CONST. art. VI, §1.

118. 300 P. 23 (Cal. 1931).

119. *Id.* at 26.

120. *Nider v. Homan*, 89 P. 2d 136, 139 (Cal. 1939) (quoting *Sinking Fund Cases*, 99 U.S. 708, 761 (1878)).

power may not be used to limit the fulfillment of mandated judicial functions. In other words, where the county has appropriated insufficient funds for the courts to operate in their official capacities, county boards of supervisors may be compelled to release monies to the judiciary. The next section will explore the precise constitutional challenges that may be forwarded to compel county and state governments to adequately provide for the trial courts.

III. Arguments to Compel Court Funding

Faced with scarce resources, state trial courts have few ways to cope with inadequate court funding. For example, prior to the enactment of the 1993-94 budget, the Los Angeles courts reduced their expenditures by \$15 million by imposing hiring freezes and offering early retirement plans.¹²¹ These measures reduced the superior court work force by 17% and the municipal court work force by 15%.¹²² Despite these efforts to efficiently and effectively administer the courts, trial court budgets were even further decreased. For example, trial court funding in Los Angeles was reduced by \$58 million for 1993-94.¹²³ In order to comply with this budget, it was estimated that the Los Angeles superior court would be forced to lay off 55% of its employees.¹²⁴ According to Los Angeles Superior Court Presiding Judge Robert M. Mallano, such drastic cuts would give priority to criminal cases over civil cases on the courts' dockets due to the Sixth Amendment's right to a speedy trial.¹²⁵ Funding and personnel cuts would deprioritize and create delays for the trial of any civil matters. In June 1993, Judge Mallano warned:

The consequences of these reductions would be severe. The protection of the courts would be unavailable to those who need it most, such as battered women and children, who are the subject of custody disputes. Injured persons seeking recompense, consumers seeking their rights, businesses seeking to enforce contracts for payment of goods, and landlords seeking to collect rents would be turned away. The Courts in California provide a constitutionally established process for protection [of] our citizens by resolving civil disputes. This process is at the core of a civilized society. Without access to the courts, one's legal rights exist only on paper.¹²⁶

121. Robert M. Mallano & Aviva K. Bobb, *Letter to the Editor*, L.A. TIMES, June 4, 1993, at B6 (home edition).

122. *Id.*

123. *Id.*

124. Lauren Blau, *Superior Court Facing Major Personnel Cuts*, L.A. DAILY JOURNAL, May 4, 1993, at 1.

125. Mallano & Bobb, *supra* note 121, at B6.

126. *Id.*

In order for the California courts to address the problem of inadequate funding, it is helpful to look at how other jurisdictions have handled similar crises. Since 1985, courts throughout the country have brought claims challenging inadequate funding.¹²⁷ Traditionally, such claims have rested on the basic premise that the judicial system has the inherent power to compel funding in order to maintain its own integrity.¹²⁸ Three additional arguments, however, may be advanced to secure adequate trial court funding. These arguments include: (1) the First Amendment's right to petition; (2) the Sixth Amendment's guarantee of the right to a jury trial; and (3) the Fourteenth Amendment's Due Process Clause. The following section outlines and evaluates these arguments.

A. The Inherent Powers Doctrine

Around the turn of the century, the inherent powers doctrine was developed and applied by the judiciary to compel adequate court funding.¹²⁹ This doctrine is essentially an extension of the separation of powers theory embedded throughout the first three articles of the United States Constitution.¹³⁰ According to the noted constitutional scholar Laurence Tribe, the framers of the Constitution separated governmental power into three separate branches so that no single branch might divest other branches of power.¹³¹ In order for this system of checks and balances to function properly, each branch must be independent of the others: "A breakdown of such independence would result in the inability of one branch of government to check the arbitrary or self-interested assertions of another."¹³²

The inherent powers doctrine stresses that the judicial system, as one of the branches of government, must claim and exert certain powers to maintain the integrity of the judicial branch. Such powers include those that ensure the continuity and viability of the judicial system.

1. Cases Implicating the Inherent Powers Doctrine

Many states recognize that courts have the inherent authority to order payment of expenses that are reasonably necessary for the ad-

127. De Benedictis, *supra* note 75, at 18.

128. See, e.g., *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971), *cert. denied*, 402 U.S. 974 (1971); *O'Coin's, Inc. v. Treasurer of Worcester*, 287 N.E.2d 608 (Mass. 1972).

129. See *State ex rel. Kitzmeyer v. Davis*, 68 P. 689 (Nev. 1902); *Millholen v. Riley*, 293 P. 69 (Cal. 1930).

130. Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 MD. L. REV. 217, 224 (1993).

131. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 15-16 (1978).

132. Jackson, *supra* note 130, at 224.

ministration of justice.¹³³ These jurisdictions, however, have developed different interpretations about the breadth of the doctrine. Jurisdictions that have applied the inherent powers doctrine can be divided into three groups.¹³⁴ First, a number of states have adopted the broad view that a court's inherent power extends to incurring and ordering payment of *all* debts necessary to administer the duties of a court.¹³⁵ Under this view, the judicial branch is seen as having a constitutional mandate to maintain its independence and fulfill its duties. Therefore, the courts' inherent powers are constitutional in nature and may not be limited by legislation. Second, a number of jurisdictions, including California, have restricted the breadth of the inherent powers doctrine, holding in "less sweeping language" that the judiciary can only compel funding necessary for the performance of judicial duties.¹³⁶ Under this interpretation, funding can be compelled "to remove obstructions to [the courts'] successful and convenient operation, to secure the free and untrammelled exercise of their functions, or to properly perform their business."¹³⁷ The legislature, however, may limit the courts' ability to compel funding under this view.¹³⁸ Finally, other courts have taken a more limited approach to the inherent powers doctrine and applied it only to specific expenses, without indicating whether the doctrine might have greater application.¹³⁹

The broad doctrinal view that trial courts can order payment of all expenses necessary for the administration of justice has been adopted in eleven jurisdictions.¹⁴⁰ For example, in *Carlson v. State*,¹⁴¹ the Supreme Court of Indiana held that a trial court could compel a city council to fund the salaries of court employees.¹⁴² In *Carlson*, a municipal court judge calculated the court's budget for 1965 and sub-

133. Fifteen states, including California, Colorado, Georgia, Idaho, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, Ohio, Pennsylvania, and Washington have all ruled on the application of the inherent powers doctrine. Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R. 3d 569 (1974 & Supp. 1994).

134. *Id.* at 574-75.

135. *Id.* at 574.

136. *Id.* at 574-75.

137. *Id.* at 575 (citations omitted).

138. *See infra* notes 165-67 and accompanying text.

139. Spivey, *supra* note 133, at 575.

140. These include Colorado, Idaho, Indiana, Massachusetts, Michigan, Missouri, Pennsylvania, Georgia, Louisiana, Ohio, and Washington. *Id.* at 581-84.

141. 220 N.E.2d 532 (Ind. 1966). The Indiana system of determining the courts' budget is similar to that of California. In California, the courts compile their budgets and submit them to the Board of Supervisors and the state legislature for approval. The *Carlson* case demonstrates how the municipal courts in Indiana similarly compute their budgets and submit them to the city councils for approval.

142. *Id.* at 536.

mitted it to the city council for approval.¹⁴³ The council reduced the amount requested from \$71,042.50 to \$53,247.50.¹⁴⁴ In doing so, the council cut the salaries of a referee, a bailiff, and a probation officer.¹⁴⁵ The supreme court found that the city council's actions violated the court's authority to expend money necessary for the proper functioning of the court.¹⁴⁶ The court also rejected the argument that such a broad and judicially deferential interpretation of the inherent powers doctrine would lead courts to spend extravagant amounts on unnecessary expenses.¹⁴⁷ The court first reasoned that the judiciary was in the best position to understand what expenses would be truly necessary, and second, that if extravagant expenditures did occur, the judiciary would be subject to voter approval in the form of elections.¹⁴⁸

The inherent powers doctrine was similarly interpreted in the Pennsylvania decision of *Commonwealth ex rel. Carroll v. Tate*.¹⁴⁹ On December 3, 1969, the Philadelphia Court of Common Pleas submitted its proposed operating budget of \$19,706,278 to the city's finance director.¹⁵⁰ This proposed budget was reduced by the finance director to \$16,488,263 and subsequently approved by the mayor.¹⁵¹ The Court of Common Pleas then asked for additional funding of \$5,230,817—a full \$2,012,801 more than originally requested.¹⁵² The city council denied the request and appropriated \$16,488,263 to the courts—the amount that the finance director and the mayor had originally approved.¹⁵³ Presiding Judge Vincent A. Carroll brought a mandamus proceeding on behalf of the judges of the Court of Common Pleas in Philadelphia to compel the mayor and city council to appropriate the additional funds to the courts.¹⁵⁴ The Supreme Court of Pennsylvania held that the judiciary could order the executive and legislative branches to provide reasonably necessary funds even though such funds had previously been denied.¹⁵⁵ Relying on the inherent powers doctrine, the court reasoned that the judiciary must have the ability to compel payment of sums reasonably necessary to carry out mandated duties and to protect the “efficient administration

143. *Id.* at 533.

144. *Id.*

145. *Id.*

146. *Id.* at 536.

147. *Id.*

148. *Id.*

149. 274 A.2d 193 (Pa. 1971).

150. *Id.* at 194-95.

151. *Id.* at 195.

152. *Id.*

153. *Id.*

154. *Id.* at 194.

155. *Id.* at 199.

of justice” against impairment by the executive and legislative branches.¹⁵⁶ “Efficient administration of justice,” as defined by the court, meant the “proper functioning or adequate administration” of the court system.¹⁵⁷ While the decision did not define in great detail what expenses might be considered “reasonably necessary,” it did indicate that funding to ensure adequate personnel, competitive salaries, necessary administration services, and maintenance of court facilities would probably be included within this definition.¹⁵⁸ In support of the broad reading of the inherent powers doctrine, the court cited the increased demands upon the judicial system and specifically, the increase in the number of civil and criminal trials.¹⁵⁹ At the same time though, the court indicated unwillingness to consider burdens, such as the city’s financial difficulties, in determining the reasonableness of the appropriations: “[T]he deplorable financial conditions in Philadelphia must yield to the Constitutional mandate that the Judiciary shall be free and independent and able to provide an efficient and effective system of Justice.”¹⁶⁰

Massachusetts also endorsed a broad application of the inherent powers theory. In *O’Coin’s, Inc. v. Treasurer of Worcester*¹⁶¹ the Supreme Judicial Court declared that the state judiciary may incur all debts reasonably necessary for its operation.¹⁶² The court further held that ex parte orders may be issued to compel payment by the county of such debts.¹⁶³ In *O’Coin’s*, a superior court judge purchased a tape recorder and three tapes to use in criminal trials.¹⁶⁴ The judge then forwarded the invoice for \$86.00 to the county treasurer for payment, along with a letter indicating that the tape recorder was a “necessary” expenditure to ensure that the court would sit even when the stenog-

156. *Id.* at 197.

157. *Id.* at 199.

158. *Id.* Although concurring in the result, Justice Jones disagreed that “reasonably necessary” was the proper gauge to determine whether a court could compel funding. Specifically, he stated that a city’s financial resources should be taken into account when deciding whether a court can order payment of expenses:

[T]he majority essentially holds that whatever amount is “reasonably necessary” for judicial administration must be awarded *even though the City may have no available funds*. With this proposition I cannot agree; in my opinion, the computation of a “reasonably necessary” amount must consider the financial resources available to the city.

Id. at 204 (emphasis added) (Jones, J., concurring).

159. *Id.* at 199.

160. *Id.*

161. 287 N.E.2d 608, 612 (Mass. 1972); *See also* County of Barnstable v. Commonwealth, 572 N.E.2d 548 (Mass. 1991).

162. *O’Coin’s*, 287 N.E.2d at 612.

163. *Id.* at 611.

164. *Id.* at 610.

rapher is unavailable.¹⁶⁵ The treasurer refused to pay for the tape recorder arguing that no statutory scheme delegated authority to the judiciary to make such purchases.¹⁶⁶ The Supreme Judicial Court of Massachusetts ordered the treasurer to pay for the recorder, explaining that each judge possessed inherent powers to protect the courts from “impairments,” such as inadequate facilities, supplies or personnel.¹⁶⁷ To prevent such “impairment,” the judiciary is authorized to incur expenses and order government officials to make payment, even in the absence of an applicable statute.¹⁶⁸ As the court noted, however, the inherent power of the judiciary is not without limits.¹⁶⁹ For example, the judiciary must exercise self-restraint and “proceed cautiously . . . whenever exercise of an inherent judicial power would bring [it] near the sphere of another department.”¹⁷⁰

A second, more restrained approach to the inherent powers doctrine maintains that the judiciary does have inherent power to compel the appropriation of funds so long as the funding is necessary for the performance of judicial duties.¹⁷¹ Such necessary expenses under this approach have included court employee salaries and jury costs.¹⁷² California adopted this slightly more restrictive interpretation in the 1930s.¹⁷³

California first addressed the issue in 1930 in *Millholen v. Riley*,¹⁷⁴ where the state treasurer refused to pay the salary of a legal secretary.¹⁷⁵ The Court of Appeal for the Second District appointed Millholen as a legal secretary and fixed her compensation at \$225 per month.¹⁷⁶ Even though funds had been appropriated by the legislature for the court, the department of finance refused to pay Millholen’s salary. The California Supreme Court concluded that a “court set up by the Constitution has within it the power of self-preservation . . . to remove all obstructions to its successful and convenient operation.”¹⁷⁷ The court, however, recognized that there are limitations on the inherent powers of the judiciary. For example, the legislature can regulate or put “reasonable restrictions” on the courts as

165. *Id.*

166. *Id.* at 610-11.

167. *Id.* at 612.

168. *Id.*

169. *Id.* at 615.

170. *Id.*

171. Spivey, *supra* note 133, at 174-75.

172. *Id.* at 584-85.

173. *Id.* at 584.

174. 293 P. 69, 69-70 (Cal. 1930).

175. *Id.*

176. *Id.*

177. *Id.* at 70.

long as the court's essential functions are not impaired.¹⁷⁸ This early case indicated California's acceptance of the inherent powers doctrine. The *Millholen* decision, however, signified that California would not recognize the inherent powers doctrine in its unadulterated form. Accordingly, reasonable legislative restrictions may exist to preclude a court from exercising complete inherent authority over appropriations. Therefore, unlike the broad interpretation of the inherent powers doctrine, the courts may only compel reasonably necessary expenses if the legislature has not prohibited them.

Rappaport v. Payne,¹⁷⁹ a later California appellate decision, relied on *Millholen*. In this case, Samuel Rappaport worked for two days in December, 1932 as a temporary court reporter for the Los Angeles Superior Court.¹⁸⁰ The superior court certified that the services were "just and legal" and ordered the county auditor to pay Rappaport \$30.00.¹⁸¹ The auditor refused the request.¹⁸² In ruling that the superior court was empowered to order the county to pay for a *pro tempore* court reporter,¹⁸³ the California Supreme Court held that the judiciary's inherent power of self-preservation included the ability to demand funds essential to its proper operation.¹⁸⁴ Again, the court noted that such discretion can be limited by legislative regulation, provided that judicial efficiency is not hampered.¹⁸⁵

Finally, certain jurisdictions have adopted a third approach to inherent powers cases.¹⁸⁶ These jurisdictions recognize that the judiciary can compel payment for *specific* judicial expenses only if they are allowed by statute or case law. If particular court expenses have not been approved by statute or case law, those expenses will need to be tested through litigation. For example, certain states have only ruled on the application of the inherent powers doctrine in such areas as compensation of court employees,¹⁸⁷ the costs of upkeep for court-

178. *Id.* at 71.

179. 35 P.2d 183 (Cal. 1934).

180. *Id.* at 183.

181. *Id.*

182. *Id.*

183. *Id.* at 184.

184. *Id.*

185. *Id.*

186. Such jurisdictions include Colorado, Florida, Georgia, Illinois, Indiana, Louisiana, Michigan, Minnesota, Missouri, Montana, New Jersey, North Carolina, Ohio, Pennsylvania, West Virginia, and Wisconsin. Spivey, *supra* note 133, at §§ 7-15.

187. See generally Laughlin v. Clephane, 77 F. Supp. 103 (D.D.C. 1947); McAfee v. State, 284 N.E.2d 778 (Ind. 1972); Seventeenth Dist. Probate Court v. Gladwin County Bd. of Comm'rs, 401 N.W.2d 50 (Mich. 1986); State ex rel. Douglas v. Westfall, 89 N.W. 175 (Minn. 1902); State ex rel. Anderson v. St. Louis County, 421 S.W.2d 249 (Mo. 1967); State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. 1970); Board of Comm'rs v. Eleventh Judicial Dist. Court, 597 P.2d 728 (Mont. 1979); Azbarea v. North Las Vegas, 590 P.2d 161 (Nev. 1979); State ex rel. Lorig v. Board of Comm'rs, 369 N.E.2d 1046 (Ohio

houses,¹⁸⁸ publication costs,¹⁸⁹ costs associated with transcribing testimony,¹⁹⁰ jury-related expenses,¹⁹¹ and prosecutorial/criminal defense costs.¹⁹²

2. *Limitations on the Inherent Powers Doctrine*

Many jurisdictions that have adopted the inherent powers doctrine have limited the courts' implied powers. For instance, certain jurisdictions permit courts to exercise their inherent power only in the absence of statutory authority.¹⁹³ Some jurisdictions require that courts first exhaust alternative means of funding before resorting to implied powers.

In *State ex rel. Hillis v. Sullivan*,¹⁹⁴ the Montana Supreme Court held that the judiciary lacked the authority to order the payment of a court employee's salary where this authority was vested by statute in the county sheriff.¹⁹⁵ Similarly, in *Board of County Commissioners v. Devine*,¹⁹⁶ the Nevada Supreme Court ruled that a judge could not appoint more bailiffs per court than provided by statute.¹⁹⁷ Even California has recognized that statutory limitations may curtail a court's inherent power. In *Millholen v. Riley*,¹⁹⁸ the court noted that the state legislature had the authority to limit inherent functions of the court by statute: "[T]he Legislature may put reasonable restrictions upon constitutional functions of the courts provided they do not defeat or materially impair the exercise of those functions."¹⁹⁹

The inherent powers doctrine has also been limited to situations in which statutory methods to compel funding have first been explored. For example, *Devine* sketched out the procedure necessary to invoke the inherent powers doctrine in Nevada:

1977); Commonwealth *ex rel.* Carroll v. Tate, 274 A.2d 193 (Pa. 1972); Commonwealth v. Dodson, 11 S.E.2d 120 (Va. 1940).

188. See generally Gary City Court v. Gary, 489 N.W.2d 511 (Ind. 1986); Board of Comm'rs v. Gwin, 36 N.E. 237 (Ind. 1894); State *ex rel.* Kitzmeyer v. Davis, 68 P. 689 (Nev. 1902); In re Alamance County Court Facilities, 405 S.E.2d 125 (N.C. 1991); Committee for Marion County Bar Ass'n v. County of Marion, 123 N.E.2d 521 (Ohio 1954); State *ex rel.* Finley v. Pfeiffer, 126 N.E.2d 57 (Ohio 1955).

189. See generally State *ex rel.* Tippecanoe County Comm'rs v. Flynn, 69 N.E. 159 (Ind. 1902); Scott v. Minnehaha County, 152 N.W. 699 (S.D. 1915).

190. See generally Gallagher v. Boyle, 209 P. 80 (Cal. 1922); Moynahan v. New York, 98 N.E. 482 (N.Y. 1912).

191. See generally Stowell v. Jackson County Supervisors, 23 N.W. 5757 (Mich. 1885).

192. See generally Spivey, *supra* note 133, at §§ 13-14.

193. See Spivey, *supra* note 133, at 586.

194. 137 P. 392 (Mont. 1913).

195. *Id.* at 395-96.

196. 294 P.2d 366 (Nev. 1956).

197. *Id.* at 368.

198. 293 P. 69 (Cal. 1930).

199. *Id.* at 71 (quoting Brydonjack v. State Bar, 281 P. 1018 (Cal. 1929)).

[T]he power of a court or judge to secure an attendant for his court, at public expense, could properly be exercised only where the regular, orderly statutory methods had failed, or where the officials charged by the legislature to provide the necessary attendant had arbitrarily or capriciously failed to do so, or where an emergency otherwise existed.²⁰⁰

Courts in California may rely on the inherent powers doctrine to challenge budget cuts. Although California's interpretation of this doctrine is not as broad as that of other jurisdictions, California case law has established that state legislative actions which impair essential judicial functions violate the separation of powers guaranteed under the federal and state constitutions. If under-financed state courts resort to using the inherent powers doctrine, the state legislature may attempt to enact legislation which directly limits, but does not impair the essential functions of the courts. *Millholen* affirmed that the California legislature may properly limit the use of the inherent powers doctrine by statute so long as the courts can still perform their integral functions. Nonetheless, the California legislature has never attempted to place direct limits on judicial power.²⁰¹ Furthermore, case law has not determined if county or local governmental bodies similarly possess the state authority to limit by legislation the inherent powers of the judiciary.

B. The First Amendment Right to Petition

The First Amendment guarantees that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."²⁰² The parallel provision of the California Constitution states, "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good."²⁰³

Federal and state courts have a long history of interpreting the First Amendment's guarantees of free speech, press, and assembly. Despite judicial focus on the First Amendment, the right to petition the government for redress of grievances has historically been ignored.²⁰⁴ In fact, only within the past twenty years have courts even begun to explore the constitutional implications of the right to

200. *Devine*, 294 P.2d at 367.

201. See *supra* text accompanying notes 174-192.

202. U.S. CONST. amend. I.

203. CAL. CONST. art. 1, § 3.

204. 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. 15, 16 (1993).

petition.²⁰⁵

1. *History of the Right to Petition*

In June of 1789, James Madison presented his proposed constitutional amendments to the House of Representatives.²⁰⁶

The proposed amendments separated the right to assemble and petition from the rights to speech, press and religion.²⁰⁷ On July 28, 1789, Madison's amendments were modified by the House, which consolidated into one amendment the rights to petition, assembly, press, speech, and church.²⁰⁸ No documents explain why the framers of the Constitution included the right to petition and assemble with the other First Amendment rights rather than accepting Madison's dichotomous approach.²⁰⁹ On September 24, 1789, the First Amendment of the Constitution was ratified in its present form.²¹⁰ The final version of the First Amendment does not indicate if the right to petition is corollary to, or separate from other First Amendment guarantees. This vagueness has created confusion in the interpretation of the right to petition.

2. *The Right of Access to the Courts is Encompassed Under the First Amendment's Petition Clause*

Only a handful of Supreme Court cases have addressed whether the First Amendment supplies a substantive right of access to the courts.²¹¹ One of the few cases to address this issue is *California Motor Transportation Co. v. Trucking Unlimited*.²¹² In this case, the petitioners and respondents were competing trucking companies operating in California.²¹³ Trucking Unlimited brought suit against

205. The earliest case which predominantly relies on the First Amendment's right to petition is *NAACP v. Button*, 371 U.S. 415 (1963). However, it was not until the 1980's that most courts began to address this issue. See, e.g., *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983); *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064 (3d Cir. 1990); *Altman v. Hurst*, 734 F.2d 1240 (7th Cir. 1984), *cert. denied*, 469 U.S. 982 (1984); *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983).

206. Spanbauer, *supra* note 204, at 39.

207. *Id.* The First Amendment originally read "to guarantee the right to petition the Legislature." *Id.* at 43 n.96. While in committee, the House changed the provision to "the right to petition Government." *Id.* The modification expanded petition rights to apply to all aspects of government, including the judicial branch. *Id.*

208. *Id.* at 40.

209. *Id.*

210. *Id.* at 42.

211. See *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 222-24 (1967); *NAACP v. Button*, 371 U.S. 415, 429 (1963); *Ryland v. Shapiro*, 708 F.2d 967, 971-72 (5th Cir. 1983).

212. 404 U.S. 508 (1972).

213. *Id.* at 509.

California Motor Transportation, Inc., alleging that the carrier participated in anti-trust activities by filing legal suits to defeat applications for trucking operating rights.²¹⁴ The Supreme Court held that under anti-trust laws, a valid cause of action was stated because use of the judicial system is a fundamental right under the First Amendment's Petition Clause.²¹⁵ Any scheme or attempt to prevent litigants from accessing judicial channels would, therefore, violate the First Amendment's Petition Clause.²¹⁶

In *Bill Johnson's Restaurants, Inc. v. NLRB*,²¹⁷ a unanimous Supreme Court reiterated that the First Amendment guarantees a right of access to the judicial system. Specifically, the Court held that well-founded but retaliatory lawsuits brought by employers against employees may *not* be enjoined as an unfair labor practice.²¹⁸ Recognizing the importance of the right to petition, the Court noted: "The right of access to a court is too important to be called an unfair labor practice solely on the ground that what is sought in the court is to enjoin employees from exercising a protected right."²¹⁹

In *Ryland v. Shapiro*,²²⁰ the Fifth Circuit provided a more elaborate explanation of the right of access guaranteed by the Petition Clause. In *Shapiro*, Lavonna Ryland was murdered by the defendant Alfred Shapiro, a local prosecutor.²²¹ Shapiro and another deputy district attorney concealed Lavonna's murder and prevented a full investigation by cancelling the autopsy and convincing the coroner to list suicide as the cause of death.²²² The prosecutors also pressured the police to halt the investigation of Lavonna's murder.²²³ After eleven months, the cover-up was exposed and Shapiro was convicted of murder.²²⁴ Lavonna's parents brought suit under the Civil Rights Act,²²⁵ alleging that the cover-up had denied them access to the courts and prevented them from instituting a wrongful death claim.²²⁶

The Fifth Circuit concluded that the Rylands were entitled to a

214. *Id.*

215. *Id.* at 510-11. ("Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition.").

216. *Id.* at 515.

217. 461 U.S. 731 (1983).

218. *Id.* at 731.

219. *Id.* at 741 (citing *Peddie Buildings*, 203 NLRB 265, 272 (1973)).

220. 708 F.2d 967 (5th Cir. 1983).

221. *Id.* at 969.

222. *Id.*

223. *Id.*

224. *Id.*

225. 42 U.S.C. § 1983.

226. *Ryland*, 708 F.2d at 969-70.

“substantive constitutional right of access to the courts.”²²⁷ Further, the Fifth Circuit Court held that due process required “adequate, effective, and meaningful” access.²²⁸ Accordingly, the Fifth Circuit remanded the case to the district court to determine if the defendants’ actions wrongfully interfered with the plaintiffs’ rights to access to such a degree that a constitutional violation had occurred. On remand, the district court determined that no constitutional violation had been committed by the prosecutors.²²⁹

The above cases indicate that the United States Supreme Court, while never ruling directly on the issue, would be willing to find a right of court access embodied in the First Amendment’s Petition Clause.²³⁰ In *California Motor Transportation Co. and Bill Johnson’s Restaurants, Inc.*, the Supreme Court stated that the First Amendment guarantees access to and use of the judicial system so long as suits are not baseless. Moreover, the Fifth Circuit, in *Ryland*, held outright that interference with a litigant’s right to petition may constitute a First Amendment violation.²³¹ These cases, however, do not hold that *all* suits between private litigants have an absolute right to be heard. Rather, the right to access under the Petition Clause, as described in *California Motor Transportation Co. and Bill Johnson’s Restaurants, Inc.*, guarantees only that private parties have the opportunity to resolve legitimate grievances through public channels. For example, litigants asserting frivolous claims may be barred from presenting grievances in a court of law.²³² This is because only certain claims, and not access per se, have been barred, even though the practical effect of establishing restrictions on certain claims may be to preclude a party from accessing the courts.

3. Court Access as a Form of Political Expression

The Supreme Court has also applied First Amendment petition protection to civil actions involving “forms of political expression.”

227. *Id.* at 973.

228. *Id.* at 972 (citing *Bounds v. Smith*, 430 U.S. 817, 822 (1977)).

229. *Ryland v. Shapiro*, 586 F. Supp. 1495 (W.D. La. 1984).

230. Even though the Supreme Court has never explicitly ruled whether the Petition Clause guarantees an absolute right of judicial access, the Ninth Circuit did address the issue in *Los Angeles County Bar Ass’n v. Eu*, 979 F.2d 697 (9th Cir. 1992). In this case, Judge O’Scannlain, writing for the majority, stated that “the right of access to the courts has been described as ‘one aspect of the right to petition’ protected by the First Amendment. . . . Notwithstanding the fundamental rights of access to the courts, the Bar Association does not cite . . . any decision recognizing a right to judicial determination of a civil claim within a prescribed period of time as an element of such right.” *Id.* at 706 (quoting *California Motor Transp. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)).

231. *Ryland v. Shapiro*, 708 F.2d 967, 971-72 (5th Cir. 1983).

232. *See* FED. R. CIV. P. 11.

For example, in *NAACP v. Button*,²³³ the Court held that the activities of the NAACP, including solicitation of legal advice, are protected under the First Amendment as a mode of political expression.²³⁴ In the *Button* case, Virginia enacted a statute that prohibited solicitation of any legal advice.²³⁵ The NAACP claimed exemption from application of the statute.²³⁶ While the Court primarily relied on freedom of expression and association to find that the NAACP was not subject to regulation under the statute, the Court did postulate an important rule regarding the Petition Clause and expressive activity. The Court stated:

In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. . . . And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.²³⁷

Therefore, the Supreme Court discreetly widened the application of the Petition Clause to cases involving expressive activity. Statutes that limit the ability of certain groups to bring their grievances to court and thereby “express” themselves violate the Petition Clause.

After the *Button* decision, the Supreme Court left unclear whether the First Amendment protects only substantive access to the courts for claims invoking political expression. The *Button* decision rested on the overlap between the NAACP’s litigation and expressive activities: litigation is necessary for the NAACP to forward its political ideas. Other groups, however, may not present such a similar link between litigation and expression. Claims asserting a right of access to the courts based on political expression will, in all likelihood, be analyzed on an individualized basis. The Petition Clause will not be used by the courts to guarantee substantive access where litigation and expressive activity are only tangentially related. The nature of the underlying “expressive” claim and the extent to which litigation forms an essential part of a group’s expressive activity will, therefore, determine whether access is guaranteed under the First Amendment.

233. 371 U.S. 415 (1963).

234. *Id.* at 428-29.

235. *Id.* at 415.

236. *Id.*

237. *Id.* at 429-30.

4. *Limitations on the Right to Petition*

a. Excessive Court Delays and the Petition Clause

Although the Supreme Court has indicated (albeit in vague terms) that the First Amendment probably supplies a substantive right of access to the courts by private parties, it is unclear whether this right requires mitigation by courts of lengthy trial delays. In the recent landmark case of *Los Angeles County Bar Ass'n v. Eu*,²³⁸ the Ninth Circuit finally addressed the issue of whether excessive court delays constitute a violation of the Petition Clause. In *Eu*, the Los Angeles County Bar Association challenged the constitutionality of a California statute which limited the number of judges that could sit on the Los Angeles Superior Court.²³⁹ The statute authorized 224 judges for Los Angeles' superior courts, plus another fourteen to be appointed at the option of the county.²⁴⁰ The Bar Association claimed that the strict limitations on the number of judges caused excessive delays and violated the First Amendment's Petition Clause.²⁴¹ The Bar Association also claimed that trial delays in Los Angeles County, which far exceeded those of most other counties in California, deprived citizens of the equal protection of the laws.²⁴²

The Ninth Circuit court in *Eu* first recognized the severity of trial delays in Los Angeles County, noting that "for civil jury trials held in June 1988, the median time from filing to trial was fifty-nine months. In 1989, only 50% of all civil cases in Los Angeles County were resolved in less than two years, 90% were resolved in 4.2 years, and 98% in 6.3 years."²⁴³ The court, however, acknowledged that significant improvements in caseload management had improved trial backlogs.²⁴⁴ After recognizing that the Petition Clause of the First Amendment guarantees substantive access to the courts, the court finally addressed whether the trial delays denied litigants access to the

238. 979 F.2d 697 (9th Cir. 1992). See also *supra* note 230.

239. *Id.* at 699-700.

240. CAL. GOV'T CODE § 69586 (West 1994).

241. *Eu*, 979 F.2d at 699-700.

242. *Id.* at 699.

243. *Id.* at 700.

244. *Id.* These improvements in caseload management were largely attributable to the Trial Delay Reduction Acts of 1988 and 1990. See CAL. GOV'T CODE §§ 68600-68620 (West 1994). The TCDRA, or "fast-track" systems, delegated primary responsibility for case management to the judges, including setting time limits, enforcing deadlines, and reporting the ages of cases. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, VOLUME I: JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 12 (1992). While "fast-track" has improved caseload management, civil trial delays continue to plague the system. For example, as of June 30, 1993, 49,510 cases were awaiting trial (or fifty-three cases per judicial position). JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 109. Of this number, 41,451 were civil cases. *Id.* at 125.

judicial system.²⁴⁵ The court concluded that the statute prescribing the number of judges in Los Angeles County was constitutional.²⁴⁶ Specifically, the court found that there is “no basis in the Constitution for a rigid right to resolution of all civil claims . . . within a time frame.”²⁴⁷ Judge O’Scannlain, writing for the majority, reasoned that civil trials, unlike criminal proceedings, progress at varying rates depending on discovery and settlement negotiations.²⁴⁸ These considerations prevent the implementation of rigid time limits. Nevertheless, the court specifically refused to rule on whether there is an “outer [time] limit” for civil trial delays.²⁴⁹ Confined to the facts of the case, the court was forced to find that trial delays in Los Angeles County did not amount to a constitutional violation:

The Bar Association has not provided any evidence that the average length of civil proceedings in Los Angeles Superior Court leads to inaccurate decisions or ineffective relief, or even that court delays have *ever* deprived *any* Los Angeles County litigant of the ability to vindicate important rights. Furthermore, we are unable to discern, on this record, how much the average delay must be attributed to the state’s administration of the judicial system, and how much is properly laid at the feet of the litigants themselves. . . . This record reveals nothing that would enable this court to hold that the delays should be elevated to violations with constitutional stature.²⁵⁰

Finally, the Ninth Circuit court in *Eu* dismissed the Bar Association’s equal protection argument, finding that California’s judicial system is “rationally designed.”²⁵¹ Specifically, the court found that tolerating longer trial delays in certain geographic areas is rationally related to a legitimate state interest because trial delays may be better tolerated in urban areas than in rural locations.²⁵² In *Eu*, the court rejected the application of heightened scrutiny because “[s]ection 69586 [the code section in dispute] does not classify persons on the basis of any suspect characteristic and . . . the Supreme Court has never recognized a fundamental right to judicial resolution of civil actions within a prescribed period of time.”²⁵³

245. *Eu*, 979 F.2d at 706.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.* at 706-07.

250. *Id.* at 707 (emphasis in original).

251. *Id.* at 708.

252. *Id.*

253. *Id.* at 707.

b. The Relationship between the Petition Clause and Other First Amendment Protections

Another factor that may prevent courts from finding a substantive right to judicial access is the interpretation of the Petition Clause adopted by three circuit courts.²⁵⁴ According to these courts' view, there is only a substantive right to petition the government when other First Amendment rights are also asserted. Therefore, the religion, speech, press, and assembly clauses of the First Amendment define the application of the petition clause. In *Altman v. Hurst*,²⁵⁵ the Seventh Circuit decided that a police officer who had filed a civil rights suit against his employer could not assert a substantive right of access to the judicial system. The court concluded that constitutional protection under the Petition Clause only exists where the underlying claim implicates other First Amendment rights.²⁵⁶ Therefore, "a private office dispute cannot be constitutionalized merely by filing a legal action."²⁵⁷ Even though courts might be willing to recognize a right to petition only where other First Amendment rights are implicated, other constitutional guarantees may be invoked to protect judicial access.

C. The Right to a Jury Trial

The Seventh Amendment states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."²⁵⁸ This United States constitutional right to a jury trial, as well as the corollary right guaranteed under the California Constitution,²⁵⁹ may provide another challenge to inadequate court funding. The essence of the argument is that trial delays, due to inadequate funding, infringe on the right to a jury trial at common law.²⁶⁰ This is especially true where courts have halted jury trials due to a lack of funds to pay juror expenses.²⁶¹ Seventh Amendment challenges to compel court funding have met with some success in both

254. These are the 5th, the 7th, and the 11th Circuits. See Spanbauer, *supra* note 204, at 46-47.

255. 734 F.2d 1240 (7th Cir. 1984). See also *Day v. South Park Indep. Sch. Dist.*, 768 F.2d 696, 700-01 (5th Cir. 1985), *cert. denied*, 474 U.S. 1101 (1986); *Renfroe v. Kirkpatrick*, 722 F.2d 714, 715 (11th Cir. 1984), *cert. denied*, 469 U.S. 823 (1984).

256. *Altman*, 734 F.2d at 1244 n.10.

257. *Id.*

258. U.S. CONST. amend. VII.

259. CAL. CONST. art. I, § 16.

260. Kenneth J. Chesebro & Ned Miltenberg, *Justice Denied: Constitutional Challenges to Court Delay*, TRIAL, Apr. 1993, at 26-27.

261. In 1990, Vermont declared a six-month moratorium on jury trials in civil cases. Charles Edward Anderson, *Budget Trials; Lower Court Strikes Down Vt. Cost-Cutting Jury Moratorium*, A.B.A. J., June 1990, at 23. In addition, courts in California, Alaska, North Dakota, Connecticut, and Massachusetts have all temporarily halted jury trials for some

federal and state courts. The Ninth Circuit first tackled this issue in *Armster v. United States*.²⁶²

In *Armster*, the petitioners were plaintiffs in civil cases pending before the Federal District Court of Alaska and the Central District Court of California.²⁶³ In 1986, both of these courts suspended civil jury trials due to a lack of funds to pay jury fees.²⁶⁴ These jury suspensions were based on the recommendations of the Administrative Office of the United States Courts and the Executive Committee of the Judicial Conference to suspend civil trials for three-and-one-half months in 1986.²⁶⁵ The plaintiffs argued that the suspensions infringed on their right to a jury trial.²⁶⁶ The Justice Department, however, contended that the Seventh Amendment does not require that civil jury trials occur within a specified time frame and, therefore, the suspensions were constitutionally valid.²⁶⁷

The Ninth Circuit accepted the petitioners' argument and held that civil jury trial suspensions violated the Seventh Amendment.²⁶⁸ First, the court noted that the right to a jury trial in civil cases is "fundamental" and that limitations on this right must be scrutinized in the "most rigorous manner."²⁶⁹ Next, the Ninth Circuit court observed that the civil jury system is not costly.²⁷⁰ For example, the cost of funding the civil jury system in 1979 was roughly equal to "two jet fighters,"²⁷¹ and the cost of funding criminal and civil juries in 1986 was "one-sixtieth . . . of building one new space shuttle."²⁷² Finally, the Ninth Circuit harshly condemned the civil jury suspensions as unconstitutional:

[T]he availability of constitutional rights does not vary with the rise and fall of account balances in the Treasury. Our basic liberties cannot be offered and withdrawn as "budget crunches" come and go. . . . [C]onstitutional rights do not turn on the political mood of the moment, the outcome of cost/benefit analyses or the results of economic or fiscal calculations. Rather, our constitutional rights are fixed and immutable. . . . The constitu-

length of time. See *Armster v. United States Dist. Court*, 792 F.2d 1423 (9th Cir. 1986); *Odden v. O'Keefe*, 450 N.W.2d 707 (N.D. 1990).

262. 792 F.2d 1423 (1986).

263. *Id.* at 1424.

264. *Id.*

265. *Id.*

266. *Id.* at 1428.

267. *Id.*

268. *Id.* at 1430.

269. *Id.* at 1428.

270. *Id.* at 1429.

271. *Id.* (citing *In re United States Fin. Sec. Litig.*, 609 F.2d 411, 430 & n.71 (9th Cir. 1979), cert. denied, sub nom. *Gant v. Union Bank*, 446 U.S. 929 (1980)).

272. *Id.*; see J.N. Wilford, *Reagan Is Reported Near Decision to Approve a New Space Shuttle*, N.Y. TIMES, May 25, 1986, at 1.

tional mandate that federal courts provide civil litigants with a system of civil jury trials is clear. There is no price tag on the continued existence of that system.²⁷³

In 1989, civil jury trials were similarly suspended in North Dakota by the Presiding Judge of the Northeast Judicial District.²⁷⁴ This two-year blanket moratorium was implemented due to chronic court underfunding.²⁷⁵ The North Dakota Supreme Court, in *Odden v. O'Keefe*,²⁷⁶ using almost the exact language of *Armster*, found that the blanket moratorium violated the Seventh Amendment.²⁷⁷

Vermont, on the other hand, decided that suspensions of civil jury trials may be constitutional. In late 1989, the governor of Vermont ordered a two-percent reduction in judicial appropriations due to the state's financial problems.²⁷⁸ Subsequently, the Vermont House of Representatives cut the judicial budget by another \$127,000.²⁷⁹ In reaction to this fiscal crisis,²⁸⁰ on January 11, 1990, the Vermont Supreme Court promulgated Administrative Directive 17, ordering all state courts to suspend civil jury trials.²⁸¹ This Directive, however, allowed administrative judges to hear civil jury trials "where justice requires."²⁸² Litigants from thirteen civil court cases brought suit challenging the constitutionality of the directive.²⁸³ In *Administrative Directive 17 v. Vermont Supreme Court*, the court reached a different conclusion than the North Dakota court and the Ninth Circuit regarding whether moratoria delaying civil jury trials violate the Seventh Amendment. After observing that trial delays are not per se unconstitutional and that judges need the requisite authority to manage dockets, the court distinguished *Armster*.²⁸⁴ First, the court interpreted

273. *Armster*, 792 F.2d at 1429.

274. *Odden v. O'Keefe*, 450 N.W.2d 707, 707 (N.D. 1990). In addition to the moratorium on civil jury trials, the Presiding Judge asked for criminal jury expenses to be cut by 51%. *Id.* at 707 n.1.

275. *Odden*, 450 N.W.2d at 707.

276. 450 N.W.2d 707 (N.D. 1990).

277. *Id.* at 709.

278. Vermont Supreme Court Admin. Directive No. 17 v. Vermont Supreme Court, 579 A.2d 1036 (Vt. 1990).

279. *Id.*

280. The Vermont court budget in 1990 was \$13 million. *Vermont Judiciary Suspends Civil Jury Trial*, UPI, Jan. 21, 1990, available in LEXIS, Nexis Library, UPI File. The moratorium, however, was predicted to save only \$70,000. *Id.* Vermont Supreme Court Administrator, Thomas Lehner, further stated: "The Supreme Court does not intend by this cut that the Legislature replace the money. . . . It simply is dealing with a necessity of accommodating the deficit. . . . Any cuts at this time in the judiciary's budget are going to affect services. . . . The Supreme Court's choice is between civil cases and criminal cases." *Id.*

281. *Admin. Directive No. 17*, 579 A.2d at 1037.

282. *Id.*

283. *Id.*

284. *Id.* at 1042-43.

Armster to mean that the length of moratoria on civil jury trials is the critical issue in determining Seventh Amendment violations.²⁸⁵ While blanket moratoria necessarily violate the right to a jury trial because the trials are indefinitely suspended, the Seventh Amendment is not violated where directives only temporarily, and for a short time, suspend jury trials.²⁸⁶ The court next distinguished *Armster* by stating that its opinion relied on Vermont constitutional provisions, not the federal constitutional right to a jury trial.²⁸⁷

In *Administrative Directive 17* the court mistakenly concluded that the Directive is a mere suspension of civil jury trials rather than an unconstitutional blanket moratorium. Even though the Directive technically allowed civil jury trials to be held "where justice require[d]," the effect of the moratorium was to delay nearly all civil jury cases.²⁸⁸ Therefore, the moratorium was blanket in nature because it would apply to practically all civil trials. Furthermore, the length of the moratoria in the two cases varied: the moratorium found to be unconstitutional in *Armster* lasted only three-and-one-half months.²⁸⁹ In comparison, the Vermont moratorium lasted a full six months.²⁹⁰ In light of the longer length of the Vermont moratorium and its broad application to almost all civil trials, the Vermont Supreme Court's decision is illogical.

California's guarantee of a right to a jury trial is more extensive than the corollary federal constitutional right, and perhaps will afford more protection from court underfunding. The California Declaration of Rights reads: "Trial by jury is an inviolate right and shall be secured to all."²⁹¹ While no California court has had opportunity to apply this constitutional provision to compel court funding, the deference accorded this right has been restated in many cases. For example, in *People v. Walker*,²⁹² the court stated that the constitutional guarantee to a jury trial "must be strictly followed."²⁹³ Similarly, in

285. *Id.* at 1042.

286. *Id.* at 1043.

287. *Id.* These Vermont constitutional provisions are VT. CONST. chap. I, art. 12 and VT. CONST. chap. II, § 38. *Admin. Directive No. 17*, 579 A.2d at 1038-39. VT. CONST. chap. I, art. 12 states: "When any issue in fact, proper for the cognizance of a jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred." VT. CONST. chap. I, art. 4 states: "Every person within this state ought to find a certain remedy, by having recourse to the laws . . . he ought to obtain right and justice . . . promptly and without delay."

288. *Admin. Directive No. 17*, 579 A.2d at 1037.

289. *Armster v. United States Dist. Court*, 792 F.2d 1423 (9th Cir. 1986).

290. *Admin. Directive No. 17*, 579 A.2d at 1037.

291. CAL. CONST. art. I, § 16.

292. 338 P.2d 536 (Cal. 1959).

293. *Id.* at 540.

Byram v. Superior Court,²⁹⁴ the court held that “the right to trial by jury is a basic and fundamental part of our system of jurisprudence. As such, it should be zealously guarded by the courts. In case of doubt, therefore, the issue should be resolved in favor of preserving a litigant’s right to trial by jury.”²⁹⁵ Furthermore, any act of the legislature which attempts to abridge the constitutional right to trial by jury is void.²⁹⁶ However, the legislature may “establish reasonable regulations or conditions on enjoyment of the right [to a trial by jury] as long as the essential elements of trial by jury are preserved.”²⁹⁷ These statements indicate that California courts might be willing to find an abridgment of the state constitutional right to a trial by jury where court underfunding effectively prevents the trial of matters by jury.

D. The Due Process Clause

A fourth and final approach to challenge inadequate court funding is to assert the Due Process Clause of the Fourteenth Amendment. This clause reads: “No state shall . . . deprive any person of life, liberty, or property, without due process of law.”²⁹⁸ As discussed in the first section of this Note, inadequate court funding creates trial delays and perhaps even prevents parties from bringing suits altogether.²⁹⁹ If causes of action are viewed as a type of property, then the Fourteenth Amendment dictates that the government may not place restrictions on court access.

In 1982, in *Logan v. Zimmerman Brush Co.*,³⁰⁰ the United States Supreme Court recognized that a plaintiff’s cause of action is a property interest. The plaintiff, Laverne Logan, was hired by the defendant as a shipping clerk.³⁰¹ One month later, Logan was allegedly discharged because his short left leg hindered the performance of his job duties.³⁰² Logan filed timely charges against his employer with the Illinois Fair Employment Practices Commission.³⁰³ Under Illinois law, the Commission was required to set up a fact finding conference within 120 days from the date the charges were filed.³⁰⁴ The Commission, however, mistakenly scheduled the conference after the 120 day

294. 74 Cal. App. 3d 648 (1977).

295. *Id.* at 654 (citations omitted).

296. *See* *People v. One 1941 Chevrolet Coupe*, 231 P.2d 832 (Cal. 1951).

297. *People v. Collins*, 552 P.2d 742, 745 (Cal. 1976), *cert. denied* 429 U.S. 1077 (1977).

298. U.S. CONST. amend. XIV, § 1.

299. *See supra* notes 23-28 and accompanying text.

300. 455 U.S. 422 (1982).

301. *Id.* at 426.

302. *Id.*

303. *Id.*

304. *Id.* at 424-25.

period had expired, thereby destroying the plaintiff's claim.³⁰⁵

The Supreme Court ruled that Logan's causes of action were protected under the Due Process Clause and that he was entitled to have his claim fairly adjudged. Justice Blackmun, writing for the majority, applied the two-part *Mullane* test³⁰⁶ to determine if Logan's claims were deserving of Fourteenth Amendment protection. In *Mullane*, the Supreme Court limited trial courts' authority to dismiss cases without an opportunity for a hearing on the merits.³⁰⁷ The *Mullane* test essentially asks if the plaintiff was deprived of a protected interest and if so, what process is due.³⁰⁸

First, the Court in *Logan* announced that "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."³⁰⁹ Justice Blackmun supported this contention by arguing that prior Supreme Court decisions had held that the Fifth Amendment's Due Process guarantee creates a personal right to a fair hearing.³¹⁰ Justice Blackmun also argued that case law had established that the Fourteenth Amendment's Due Process Clause could be used to prevent states from denying litigants access to the courts.³¹¹

Next, the Court approached the question of what specific interests had been violated. Justice Blackmun stated that the interest implicated in the case was that "the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement."³¹² The Court's determinations were reached by employing the *Mathews v. Eldridge*³¹³ balancing test. This balancing test weighs three factors: 1) the private interest affected by the official action; 2) the risk of deprivation of due process rights through the procedures used; and 3) the government's interests involved.³¹⁴ In *Logan*, the Court concluded that the plaintiff's individual interests in having his claims adjudicated outweighed the financial burdens that would otherwise be imposed on the state.³¹⁵

305. *Id.* at 426.

306. See *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950). In *Mullane*, a New York law was challenged that provided for common trust fund accounts to be settled by fiduciaries through notice published in newspapers. *Id.* at 306. The Court concluded that the statute did not give adequate notice and, therefore, deprived the beneficiaries of their rightful property without proper notice and hearing. *Id.* at 320.

307. *Mullane*, 339 U.S. at 314.

308. *Logan*, 455 U.S. at 428.

309. *Id.*

310. *Id.* at 429.

311. *Id.*

312. *Id.* at 434.

313. 424 U.S. 319 (1976).

314. *Id.* at 335.

315. *Logan*, 455 U.S. at 434-35.

Under the *Mullane* standard, due process challenges to inadequate court funding in California will only be analyzed on a case-by-case basis. Employing the *Mullane* methodology, the California courts will find that only where inadequate funding threatens to destroy a plaintiff's cause of action completely will the claim be viewed as a property interest worthy of Fourteenth Amendment protection.³¹⁶ Small trial delays, on the other hand, do not implicate the Due Process Clause. If a cause of action passes this first step of the *Mullane* test, then the *Mathews v. Eldridge* factors are balanced to determine if due process was violated. One federal trial judge observed that "[g]iven federal budget constraints, the probability of a due process challenge surviving a balancing test will depend upon a showing of relatively extensive delays and a resultant deprivation of justice that is considerably pervasive."³¹⁷

A higher standard of review may be employed to assess due process concerns by arguing that the right of access to justice is fundamental. This approach is based on the seminal case of *Boddie v. Connecticut*.³¹⁸

In *Boddie*, a class of female welfare recipients seeking divorces brought suit challenging court access fees.³¹⁹ The women were unable to obtain divorces due to the mandatory filing fees which cost, on average, \$60.00 for a divorce.³²⁰ The Supreme Court, in a majority opinion written by Justice Harlan, concluded that the mandatory access fees violated the Due Process Clause of the Fourteenth Amendment.³²¹ The access fees were deemed unconstitutional because they denied the female welfare recipients "an opportunity to be heard upon their claimed right to a dissolution of their marriages."³²² By this, however, the Court did not state that access fees were per se unconstitutional. Rather, only where the litigants' rights are "of basic importance in our society,"³²³ and where no "countervailing" state interests justify the denial of due process,³²⁴ do court access fees constitute a Fourteenth Amendment violation. Therefore, Fourteenth Amendment challenges will be most successful where court un-

316. See *Mullane*, 339 U.S. at 314. The *Mullane* standard, that views a lawsuit as a property interest, is only available for civil actions. Criminal actions would be analyzed under the Fifth Amendment's Due Process Clause and applied to the states through the Fourteenth Amendment.

317. David Hittner & Kathleen Weisz Osman, *Federal Civil Trial Delays: A Constitutional Dilemma?*, 31 S. TEX. L. REV. 341, 354 (1990).

318. 401 U.S. 371 (1971).

319. *Id.* at 372.

320. *Id.*

321. *Id.* at 380-81.

322. *Id.*

323. *Id.* at 376.

324. *Id.* at 377.

derfunding hinders resolution or determination of “fundamental rights,” such as marriage.

In fact, Justice Harlan struggled to distinguish the facts of *Boddie* from other access fee challenges. In particular, Harlan emphasized the importance of the specific right that the plaintiffs attempted to assert—namely, the right to dissolve marriages. After explicitly conceding that *Boddie* was decided solely on the merits of the case, however, Harlan enunciated the most puzzling statement of the opinion: “[W]e hold only that a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so.”³²⁵

Lower court cases have split on the interpretation of this statement. Some jurisdictions have read the opinion to indicate that access to justice itself is a fundamental right.³²⁶ According to this theory, the exercise of a right (in this case, the dissolution of marriage) becomes especially vital where states have provided a cause of action for infringement of the right “without affording all citizens access” to exercise the right.³²⁷

On the other hand, other courts have limited *Boddie* to cases in which access to courts is required to assert a fundamental interest (such as the dissolution of marriage) and where judicial rule is the only means available to effectuate that interest.³²⁸ Most courts have applied this interpretation to strike down access fees only where “fundamental interests” are implicated. Access to the courts, however, is not a “fundamental interest.” Therefore, analysis of the rights which litigants attempt to assert under the “fundamental standard” determine whether access fees violate the Fourteenth Amendment.

California has adopted the approach that access to the courts is a fundamental right. In *Los Angeles County Bar Ass’n v. Eu*, the Ninth Circuit court reasoned that, while there is no constitutional right to have civil claims disposed of within a certain time frame, access to the courts is a “fundamental right[].”³²⁹ Specifically, the *Eu* court found that the “fundamental” nature of the right is based on the Privileges

325. *Id.* at 383.

326. *See* *Nickens v. Melton*, 38 F.3d 183, 185 (5th Cir. 1994) (“[T]he interest at stake (the right to appeal a civil damage suit) is not *as* fundamental as, for example, marriage or liberty (in the sense of freedom from imprisonment)” (emphasis added)); *Eichenseer v. Reserve Life Insur. Co.*, 881 F.2d 1355, n.6 (5th Cir. 1989); *Allen v. Greyhound*, 656 F.2d 418, 422 (9th Cir. 1981); *Fisher v. City of Cincinnati*, 753 F. Supp. 681, 685 n.4 (D. Ohio 1990).

327. *Id.* at 383.

328. *See supra* text accompanying note 253.

329. *Los Angeles County Bar Ass’n v. Eu*, 979 F.2d 697, 706 (9th Cir. 1992).

and Immunities Clause, the First Amendment's Petition Clause, as well as the Due Process Clause.³³⁰ Civil trial delays, according to the *Eu* court, might also constitute due process violations where delays "deprive individual litigants of the ability to vindicate fundamental rights."³³¹ Therefore, state legislative restrictions hindering access to the courts will be deemed per se unconstitutional. Restrictions that only produce trial delays, however, are not unconstitutional unless they prevent a litigant from vindicating fundamental rights.³³²

Even Harvard law professor Laurence Tribe observed that barriers to access might be found unconstitutional on a federal level:

What emerges from these [referring to *Boddie*] disparate cases and lines of thought is, quite clearly, less than a solidly grounded or coherently elaborated right of judicial access. But it would be surprising, and ultimately indefensible, if the separate strands of doctrine . . . were not in the end woven into a fundamental right of access to a neutral and fair tribunal . . . to ventilate such claims of right as one may have under the governing body of substantive law.³³³

IV. Proposals

As noted in Part I, the California trial courts are confronted with shrinking resources while the number and complexity of cases continue to increase. In order to better cope with these problems, California should develop a comprehensive plan to adequately fund the courts, protect the independence of the judiciary, and provide quality justice during times of economic hardship. This proposal contains three elements: (1) the establishment of a Commission on the Judiciary to set trial court funding levels; (2) the enforcement of adequate funding through suits at law; and (3) structural improvements in court management.

A. The Commission on the Judiciary

The first element is the establishment of a commission to set and appropriate trial court budgets. Furthermore, the state should assume responsibility for 100% of state trial court funding needs. Under the

330. *Id.* at 705-06.

331. *Id.* at 707. The *Eu* court also refused to strike down California's five-year mandatory dismissal statute as violative of due process. *Id.* (citing CAL. CIV. PROC. CODE § 583.360 (West 1994)). According to the court, the petitioners failed to show "any instance in which court congestion caused [sic] delays leading to dismissal under this statute, effectively preventing vindication of fundamental rights." *Eu*, 979 F.2d at 707.

332. *Id.*

333. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 759 (2d ed. 1988). See also Kenneth J. Chesebro & Ned Miltenberg, *supra* note 260, at 27.

Trial Court Realignment and Efficiency Act of 1991,³³⁴ the state government has agreed to provide only up to 70% of state trial court funding. This means that the counties must make up the difference. Unfortunately, the counties have few resources and cannot levy sales or other taxes to provide the remaining sums needed to fund the trial courts. By providing complete funding, however, the state and its agencies will have the means and ability to adequately fund the courts by drawing on state revenues.

Shifting funding responsibility solely to the state, however, creates the potential for the judiciary to become enmeshed in legislative budgetary quarrels. For example, in 1991, the Supreme Court of California held legislative term limits to be constitutional.³³⁵ The legislature, obviously displeased with this result, retaliated against the court by decreasing their funding by 38%: “[L]egislators didn’t just get mad [with the term limits decision in *Eu*]. They got even. Four months later, the first Assembly committee to review the high Court’s budget chopped 38 percent off the top—precisely the same reduction imposed on the Legislature by Proposition 140. The subcommittee’s action . . . was the opening day in a season of revenge against the Supreme Court.”³³⁶

Presently, the Trial Court Budget Commission (TCBC) oversees the compilation and presentment of the judicial budget to the legislature.³³⁷ This commission, however, does little more than review individual requests by the trial courts and assemble them into a single state-wide judicial budget.³³⁸ In order to ensure an independent judiciary, free from political blackmail, this commission should be empowered to separately review and submit the state court judicial budget for gubernatorial approval. Moreover, this commission should consist of equal representatives from the judiciary, the legislature, and the executive branches. The TCBC should have sole authority to decide trial court budgets, by-passing legislative decisionmaking and submitting its budget directly to the governor for approval with the state-wide budget. In this sense, the commission will act as a legislative committee, but its recommendations will not need the full approval of the state Senate and Assembly.

334. CAL. GOV'T CODE § 77200 (West 1993).

335. *Legislature of Cal. v. Eu*, 816 P.2d 1309 (Cal. 1991), cert. denied, 112 S. Ct. 1292 (1992).

336. Bill Ainsworth, *Battle of the Branches—The Supreme Court vs. the Legislature*, CALIFORNIA JOURNAL, Jan. 1, 1993, at 21-22. The Legislature also retaliated by introducing a Senate amendment to prevent the judiciary from “undo[ing] budget cuts.” *Id.* Eventually, Governor Pete Wilson convinced the legislature to cut the court’s budget by only 10 percent. *Id.* See also J. Clark Kelso, *A Report on the Independence of the Judiciary*, 66 S. CAL. L. REV. 2209, 2215 (1993).

337. JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 5.

338. *Id.*

The TCBC should be bound by the mandate to provide sufficient funding in order to maintain "quality justice." The term "quality justice" should be interpreted to prevent underfunding in the courts. However, provision should also be made for decreases in funding in the event of emergency situations. In deciding courts' budgets, the Commission should take into account the number of case filings, the complexity of the cases, and opportunities for alternative dispute resolution. Furthermore, the TCBC should be subject to a strict time limit to present its budget to the governor.

B. Suits at Law to Procure Necessary Funding

A second element of the proposal is to bring mandamus writs to compel adequate financing to the courts based on the constitutional arguments discussed in this Note. Such writs should argue the applicability of the Inherent Powers Doctrine, stressing the need for the California courts to adopt a broad interpretation of the doctrine so that court expenses may be compelled without the threat of imposition of statutory limitations. This view best adheres to our system of checks and balances by ensuring an independent judiciary, free from legislative controls. This check against the legislature is particularly important as the legislature can easily subdue, coerce, or punish the judiciary through funding mechanisms.

Federal and state guarantees of the right to petition may also be argued where funding cutbacks deny potential litigants access to the courts. Where suits are well-founded in law and fact, litigants should be able to rely on the First Amendment to ensure access to federal and state court systems. Furthermore, if a litigant's expressive activity is hampered through an inability to access judicial channels, courts may even be more willing to find that a constitutional violation has occurred. Finally, limitations imposed on the Petition Clause should be reconsidered and overturned by the Supreme Court. The *Eu* opinion, which held that excessive trial delays do not violate the Petition Clause,³³⁹ is inadequate because excessive time delays create strong barriers to litigation. When faced with inordinate trial delays, many litigants will simply refuse to file suit. The Supreme Court should correct this problem by applying a strict scrutiny standard of review to cases where the Petition Clause is invoked to challenge time delays.

In addition, the Seventh Amendment's (and the California Constitution's)³⁴⁰ protection of jury trials should be interpreted to prohibit *any* moratoria on jury trials. Moratoria that allow jury trials under exceptional circumstances or where "justice so requires" nonetheless violate the Seventh Amendment. It will be extremely difficult for liti-

339. *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 706 (9th Cir. 1992).

340. *See* CAL. CONST. art. I, § 17.

gants to prove that their case merits a trial by jury under the exceptions. In addition, the blanket/temporary moratoria distinction in *Administrative Directive 17*³⁴¹ should be abandoned because it is impossible to forecast how long a moratorium on jury trials might last. For example, the moratorium found unconstitutional in *Armster*³⁴² lasted two and a half months while the constitutional moratorium in *Administrative Directive 17* lasted six months.³⁴³

Lastly, challenges to inadequate funding should rely on the Due Process Clause of the Fourteenth Amendment in arguing that the right to justice is fundamental and should be accorded heightened scrutiny. The *Mullane*³⁴⁴ test, which equates lawsuits as property interests, neglects the symbolic and functional importance that our judicial system serves for every citizen. Justice, whether it be civil or criminal, is not simply a private property interest, but a public interest and code of action that dictates societal behavior. In this sense, justice should be viewed as a fundamental right and accorded strict scrutiny where court delays undermine its imposition.

C. Internal Structural Reforms

The first two elements of this proposal attempt to reform external factors that affect the functioning of the courts—namely, the budget process and funding levels. The proposal, however, is not complete without addressing needs for internal reform. Recently, many ideas have been presented to internally reform the judicial branch. These include: court automation, case management, trial court consolidation, and the use of alternative dispute resolution.³⁴⁵

1. Court Automation

Within the past decade many judicial processes have been automated in California. Such automation has included video arraignments, fax filings, electronic audio recordings, and document imaging. Courts in Los Angeles, Orange, San Bernardino, and San Diego counties have experimented with using video arraignments.³⁴⁶ The use of video arraignments eliminates the need to transport prisoners for ar-

341. See *supra* text accompanying notes 278-287.

342. See *supra* text accompanying notes 262-273.

343. Vermont Supreme Court Admin. Directive No. 17 v. Vermont Supreme Court, 579 A.2d 1036, 1036 (Vt. 1990).

344. See *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950); see also *supra* text accompanying notes 306-311.

345. See generally Harry N. Scheiber, *Innovation, Resistance, and Change: A History of Judicial Reform and the California Courts, 1960-1990*, 66 S. CAL. L. REV. 2049 (1993).

346. *Ready for Prime Time?*, L.A. TIMES, Sept. 30, 1993, at B6 (home edition); Mark Pinsky, *Jury Out on High-Tech Courtroom*, L.A. TIMES, Dec. 17, 1993, at A1 (home edition).

raignments, thereby reducing the prison costs.³⁴⁷ Los Angeles County Deputy District Attorney Norman Shapiro described the benefits of televising arraignments:

With video arraignments, a defendant is booked in the downtown Parker Center jail [in Los Angeles], then goes to a sound-proof booth in the jail cafeteria with a defense attorney and appears before the judge on T.V. There is no need to transport the accused to the Criminal Courts Building, a saving of time and security problems. . . . The judge communicates with the defendant through a speaker. An electronic camera installed in the T.V. set projects his [or her] image to the courtroom. The prosecutor, who is at the courthouse, also is visible to the defendant. A videotape of the proceedings shows a three-way split screen with all participants visible.³⁴⁸

In addition to the use of video arraignments in county jails, such arraignments were recently introduced in the state prison system.³⁴⁹ On August 29, 1994, an inmate from Pelican Bay State Prison was arraigned via video.³⁵⁰

Document filing via facsimile has also been introduced to the California trial court system.³⁵¹ In 1992, the Judicial Council propagated rules requiring all trial courts to accept filings by facsimile if the document met all necessary requirements except an original signature.³⁵² Facsimile filing not only facilitates document filing for attorneys, but also reduces staff needs in clerk offices.

Another development in court automation is the use of electronic recording devices to replace court reporters.³⁵³ According to studies undertaken by the Judicial Council, audio recordings save approximately \$28,000 per year in each courtroom while video recordings save roughly \$41,000 per year in each courtroom.³⁵⁴ Finally, the Administrative Office of the Courts³⁵⁵ has introduced document imaging technology to the trial courts.³⁵⁶ Document imaging technology utilizes incorporates documentary evidence into the trial record.³⁵⁷

347. Linda Deutsch, *L.A. Court Uses TV to Streamline Arraignment Process*, FRESNO BEE, Jan. 27, 1991, at B4.

348. *Id.*

349. *Prison Inmate Arraigned by Video*, S.F. EXAMINER, Aug. 29, 1994, at A14.

350. *Id.*

351. JUDICIAL COUNCIL OF CALIFORNIA, 1993 ANNUAL REPORT, *supra* note 63, at 29.

352. *Id.*

353. *Id.* at 27.

354. JUDICIAL COUNCIL OF CALIFORNIA, 1992 ANNUAL REPORT, *supra* note 244, at 20.

355. The Administrative Office of the Courts was established as a department of the Judicial Council and "carries out the official actions of the Judicial Council . . . under the supervision of the Administrative Director of the Courts." JUDICIAL COUNCIL OF CALIFORNIA, 1994 ANNUAL REPORT, *supra* note 12, at 212.

356. JUDICIAL COUNCIL OF CALIFORNIA, 1993 ANNUAL REPORT, *supra* note 63, at 28.

357. *Id.* at 28.

In addition to the implementation of such court automation procedures, the legislature has attempted to encourage the use of court automation. For example, the Trial Court Realignment and Efficiency Act requires that two percent of all fines, penalties, and forfeitures collected in criminal cases be placed in a court automation fund.³⁵⁸

2. Case Management

Perhaps the most important development in increasing judicial efficiency has been the introduction of case management programs. In California, such case management programs have typically focused on reducing trial delays.³⁵⁹ The Trial Court Delay Reduction Acts (TCDRA) of 1986 and 1990 allocated primary case management responsibility to the individual trial judges to manage their own trial calendars.³⁶⁰ Furthermore, the TCDRA, or "fast-track" system encouraged judges to meet self-imposed deadlines by encouraging judges to approximate how much time each trial would last before the trial commenced.³⁶¹ In addition, the 1990 Trial Delay Reduction Act established a differential case management program from civil cases—a "system that assigns cases to disposition time goals based on the relative complexity of the case."³⁶² Today in California, *all* trial courts have adopted "fast track" systems to improve case management.³⁶³

3. Trial Court Consolidation

Another reform measure that has been proposed in California is to merge the municipal and superior courts into one trial court. Boalt Hall professor Harry Scheiber indicates that trial court unification has been endorsed as a measure of judicial reform since the 1940s.³⁶⁴ In fact, he quotes a statement made by Dean Roscoe Pound in 1940: "Unification of the courts [of original or limited jurisdiction] would go far to enable the judiciary to do adequately much which in desperation or efficient legal disposition by fettered courts, tied to cumbersome and technical procedure, we have been committing more and more to administrative boards and commissions."³⁶⁵

Interestingly, court consolidation has once again been proposed as a way to increase judicial efficiency. One recently considered mea-

358. CAL. GOV'T CODE § 68090.9 (West 1995).

359. See JUDICIAL COUNCIL, 1992 ANNUAL REPORT, *supra* note 244, at 12.

360. CAL. GOV'T CODE § 6807 (West 1995); JUDICIAL COUNCIL, 1992 ANNUAL REPORT, *supra* note 244, at 12.

361. JUDICIAL COUNCIL, 1992 ANNUAL REPORT, *supra* note 244, at 12.

362. CAL. GOV'T CODE § 68603 (West 1995).

363. JUDICIAL COUNCIL, 1993 ANNUAL REPORT, *supra* note 63, at 11.

364. Scheiber, *supra* note 345, at 2076.

365. *Id.* (quoting Roscoe Pound, *Law in Book and Law in Action*, 44 AM. L. REV. 12 (1910)).

sure proposed merging the municipal and superior courts. The Uniform Court Proposal Act, known as "SCA-3" (state constitutional amendment) sought to "eliminate the provisions for superior, municipal, and justice courts, and instead provide for district courts, their establishment, and jurisdiction, and the qualification and election of judges thereof."³⁶⁶ The impetus behind SCA-3 was to streamline the administration of justice by creating one layer of trial courts that could better assign, coordinate, and monitor cases.³⁶⁷ Under SCA-3, "all trial court judges would be allowed to hear the entire range of cases, from traffic tickets to death penalty to antitrust cases."³⁶⁸ SCA-3 was estimated to save approximately \$200 million.³⁶⁹

SCA-3, however, was criticized for its virtual elimination of court specialization. For example, many superior court judges argued that municipal court judges were not prepared to handle many of the cases currently residing in superior court dockets.³⁷⁰ Furthermore, officials from the governor's office argued that the measure would actually increase costs by \$8.5 million because municipal court judges' salaries would be raised to match superior court salaries.³⁷¹

Ultimately, the arguments of the Wilson administration and the superior court judges prevailed and SCA-3 did not receive sufficient votes in the state assembly to become a ballot initiative.³⁷² The Judicial Council, however, recently adopted rules similar to those in SCA-3.³⁷³ Such rules require the courts to "maximize the efficient use of all judicial resources' by training and cross-assigning judges" from municipal and superior courts.³⁷⁴

4. *Alternative Dispute Resolution*

The final element of internal reform is the careful removal of certain actions to alternative dispute resolution (ADR) forums. Traditionally, ADR consists of negotiation, mediation, and arbitration.³⁷⁵ Each type of ADR may be conducted under the auspices of court supervision or by private organizations. Furthermore, ADR may be either binding or nonbinding. Where the court supervises ADR, trial

366. Cal. S.B. 379, 1993-94 Reg. Sess. (1993).

367. Bill Ainsworth, *Bill to Consolidate Trial Courts Falls Victim to Partisan Politics*, THE RECORDER, Sept. 1, 1994, at 1.

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.*

372. Bill Kisliuk, *Never the Twain Shall Meet?*, THE RECORDER, Oct. 17, 1994, at 1.

373. Bill Kisliuk, *Court Consolidation Moving Forward Without Legislature*, THE RECORDER, Feb. 14, 1995, at 2.

374. *Id.*

375. Krislov & Kramer, *supra* note 20, at 1940.

expenses and judicial resources are saved because a judge need only ensure that negotiations between the parties are fair. Private ADR, so long as it is binding, completely removes certain disputes from the judicial system and therefore results in an even larger conservation of judicial resources.

In the 20/20 Vision Report, Samuel Krislov and Paul Kramer argue that California's justice process should adopt the multidoor courthouse approach.³⁷⁶ The authors analogize this system to "triage" in the medical profession where "the most serious injuries are treated first, and those persons who are not in immediate danger can be given preliminary treatment that allows them to wait until a physician is available to treat them further."³⁷⁷ An important aspect of the multidoor courthouse approach is that cases are directed to alternative dispute resolution (ADR) services where feasible. Krislov and Kramer argue that certain types of cases that take up much court resources, such as business litigation, should automatically be removed to ADR.³⁷⁸

V. Conclusion

The extent of discussion and innovation of trial management techniques demonstrates that California is seeking viable solutions to real problems. Obviously, there are many possible ways to streamline the judicial process. With this in mind, measures adopted must be weighed for their cumulative effect on the quality, as well as the administration of justice.

Clearly, present economic, demographic, and social pressures put unprecedented strain on California's judicial system. Solutions adopted will define the role California's courts will play throughout the next century. Legislators, court administrators, judges, and even attorneys must work together to develop goals and standards that guide the courts in the future:

376. *Id.* at 1938. In fact, the Commission on the Future of the California Courts endorsed the multidoor courthouse concept in their 2020 Vision Report. *JUSTICE IN THE BALANCE; 2020*, *supra* note 1, at 41.

377. Krislov & Kramer, *supra* note 20, at 1938.

378. *Id.* at 1941.

Alternative futures planning is not about predicting the future but about postulating a plausible range of futures, to help us select that which we hope to see. Remember Ebenezer Scrooge. When the Ghost of Christmas Past shows him a scenario of a possible future based on trends in Scrooge's life, Scrooge asks, "Are these things that must be, or only things that may be?" The answer for Scrooge and for us is that we may create and choose the vision of the future that we prefer, and then seek to make it real.³⁷⁹

379. JUSTICE IN THE BALANCE; 2020, *supra* note 1, at 7 (*quoting* Commission Chairman, Dr. Robert R. Dockson, Address to the Symposium on the Future of the Courts, Dec. 1992).

