Power Politics

An Equitable Remedy

by Zeke Layman

"If Americans wish to be free of judicial tyranny, they must at least develop basic knowledge of the judicial role in our republican government. The present state of affairs is a direct result of our collective ignorance."

— Ron Paul

Introduction

Welcome to Power Politics!

This is the second E-Book published in a series that is meant to educate those who desire a more effective and self-obtained remedy in their effort to secure and defend their constitutional rights. I know that rights do not come from the Constitution, however they are protected by the courts of equity, which our Constitution recognizes as within the judicial power.

The First introduction E-Book explains how the separate powers of government are set up for individuals to take action to protect their rights. It acts as a primer for this "Equitable Remedy" and as a foundation to understanding how and why we are the only ones who can restrain government.

"The judicial power of the United States shall be vested in one supreme court,..."

The introduction is free and can be downloaded from our *website*.

This E- book offers a simple concept with some complex legal distinctions. The idea of restraining government agents is simple and to restrain those agents that exercise the power of the executive unconstitutionally or in an unconstitutional manner, we have the judicial power of the Constitution.

Once the individual decides to fight an action taken by agents of government, if he fails to go "collateral" and use an *equity* method, as opposed to a *law* method, he will forever be fighting a losing battle. The rules are already fixed for the law jurisdiction. Trying to beat them at their own game is exhausting. The reason is that you can rarely beat them at their own game! That is what "no adequate remedy at law" means.

When one tries to defend in their game, defenses and challenges are made and denied faster than they are typed up. There are many approaches that have been tried and have failed. I've seen and tried an amazing number of arguments and angles, such as status arguments, denials that you are the "person"(i.e. the "defendant"), "that's not me!", "I'm not a citizen!", "demurrer", "cross-complaint", "no jurisdiction!", "gold fringed flag", "oath of office", "name in all capitol letters", etc.

Next come the commercial remedies under "law" such as U.C.C. stuff, the "straw-man concept", "accepted for value", commercial liens and redemption stuff that is corporate

in nature and "uncommon". There must be something to all this or the courts, judges and lawyers wouldn't be acting as if this is so important! There is; corporate profit! That means no justice.

After filing title 42 actions (civil) and trying to file title 18 actions (criminal) and getting nowhere fast, the next is the tort-claim stuff, and the A4V (Accepted for Value) if you haven't already been there. Before I could try anything beyond these, I learned what the phrase "no remedy at law" means, and discovered the injunction process and saw where the remedy was!

Now here we are, over 28 years later, still discovering the true nature of the power of the people, the Constitution, the process, and the Common Law. I am simply putting forth that the direction we need to go is restraining government with the equity jurisdiction and the judicial power of the Constitution. It is up to each individual to research, learn, and put into action, under their own power, the best available remedies that they can find. Good luck in your ventures.

Restraining Government

We as individuals have the power to obtain a court order to protect constitutional rights and to redress grievances, yet very few know the rules and procedures to obtain the order necessary to restrain the personal acts of government agents. Each individual needs this order because the presumption of government agents is accepted, or consented to, by the people through their silence. This silence is shown by failure to get the order. In other words, in the legal world, it is known that in certain situations, like arrests and detentions, "silence is consent." We are reminded of this by a maxim of law:

> *"The law helps the vigilant, before those who sleep on their rights."*
>
> — *Cal. Civ. Code 3527*

The extremely SECRET and hidden knowledge of the separation of powers and the role we are required to play in the constitutional struggle between these three powers, is discussed in the previous *E-Book*, and is the foundation for this PDF which is about the procedural process that is available to those who understand how the Constitution works and more importantly how to work it!

Here I intend to tell you what I believe is an answer to the question of how one can protect constitutional rights using the current court system. It's a simple answer, yet it may not be so easy to initiate unless one has the necessary paralegal skills and some knowledge of equitable procedures. Like shooting baskets, some shoot and fail to score, so it is with this remedy. Just because someone else can do it doesn't mean everyone can. We are all free and independent. This means free to walk into slavery and give up all our power, as well as exercise sovereignty and restrain government agents and their acts.

The U.S. Constitution is the basis for the relationship between the government agents and the people. When the government agents act, they act upon a presumption that everyone is under the statute, whether true or false. Even they do not know that there are exceptions. The reason they do not know is because they did not receive the order that it did not apply, or the order to stop. If they don't get the order, they must proceed upon their original presumption.

This E-Book is designed to bring to light the idea that there is a process to obtain an order that will restrain government agents and that this process is the method to protect the threatened enforcement of an invalid statute or ordinance under certain conditions and encourage those being injured to take the steps to obtain the order.

> *"Restraint of government is the true liberty and freedom of the people."*
>
> *— John P. Reid*

What Do We Do?

"You should start a group." ... "We should do a class action law suit." ... "Let's get together to fight this issue." For many years, people have grouped together to fight injustice in a variety of different ways. My approach is different. I believe that each one of us has the power to protect our rights and freedom individually since each right belongs to each individual. We can get help, but no one can do it for us.

If our rights are laid out (enumerated) in the Constitution and we can look to them to determine if they have been violated, then it must be made clear that the Constitution is not violating our rights. I say this only to point out that since it is not doing the violating then it does not need to be changed or altered.

Who violates Constitutional rights? Only individuals can violate rights. It turns out that the government agents who are positioned to protect our rights are among the types of individuals who use their jobs as an excuse to violate our rights.

My point is, don't attack the Constitution, the courts, or the corporations. These entities are inanimate and are unable to take any kind of action. Action is taken by individuals regardless or whom they represent or claim to represent.

Every agent assumes that he or she has the authority to write a ticket and force a person to sign a notice to appear. This assumption does not take into consideration the Constitution. In fact, many agents assume that the Constitution does not apply. They are free to make these assumptions. However in a Constitutional government, like we have here in America, that assumption could very well be a violation of someone's rights.

Let's assume that every time an agent applies a statute or code to you, they are violating your rights. How, you ask? The statute or code is not in the Constitution and therefore it is "unconstitutional" and void. All statutes, codes, and ordinances are either unconstitutional or unconstitutionally applied, I'm 100% positive… unless they can show otherwise!

Most government agents are taught that it is constitutional for them to apply their federal, state, county, or city laws to anyone they want to. In other words, they presume that everything they are doing is constitutional. Notice the key issue between us and the agent is whether their statutes, codes, and ordinances are "constitutional" or not.

If this is the issue, and we agree that it is, then how do we determine who is correct in the determination of constitutionality of the "laws". Either the agents are violating our constitutional rights or they are not. Here is where things get a little jumbled up. If it is true that the agent is violating our constitutional rights, they are not going to admit it or even think about that issue because they cannot violate our constitutional rights if they know they are doing so, or can they?

If we are to assume that the agent is violating our constitutional rights then we must also assume that they are unaware of doing so. This tells us that we must look further to determine if the officer is constitutionally restrained or not. The way to determine this is if there is that "order" that restrains them from unconstitutional enforcement of

statutory law. Remember the quote above, true liberty and freedom of the people is restraint of government? Is the agent constitutionally restrained? Our mistake has been that we presumed that this order was in effect when we were born and somehow we had constitutional rights. However when we go into court talking about the Constitution, the judge yells "don't bring that constitutional crap into my court!" Is he quietly saying to himself "where is the order"? If there is no order, what else can the judge or magistrate do but go by the statute?

Who is the Agent?

The enforcement branch of the Constitution is called executive power. When an individual signs up for this position, generally known as an officer or law enforcement agent, an interesting dichotomy arises.

First, the agent signs an oath that he or she will uphold the Constitution and protect people's rights. The next thing that happens is the agent joins a business called *the department*. The department is like a corporation or entity that requires the agent to collect revenue without ever determining the rights of the people who are being fleeced. This is called his "job." This is the same for all government executive agents, both state and federal.

So, the agent has two conflicting tasks. One to protect the people's rights (oath) and the other to collect revenue for the corporate business (job). Which is more important? The business, of course, because this is what keeps the agent alive. Further, and moreover, when acting on behalf of the corporate business, the agent is always violating constitutional rights if he or she is affecting us in any way, whether he or she knows it, but does anyone ever object ... properly?

Let's presume that the agent is enforcing corporate business codes, statutes and ordinances, all in violation of the Constitution. Everyday the agent violates people's rights in order to feed the corporate business which, in turn, defends the actions of the agent as if he or she is acting for the corporate business properly. Neither the agent nor the corporation ever bring up or talk about constitutional rights. Why?

The reason is, that it is up to the individuals whose rights are being violated to raise the issue and not someone else's. If you don't do it, the representatives or agent won't do it

either. So, the bottom line is that each individual must take personal action to protect Constitutional Rights.

The Equitable Remedy

> *"The judicial power shall extend to all cases, in law and equity, arising under this constitution,...."*
>
> —*Article III section 2, United States Constitution*

When legislative and executive power is used to attack an individual's rights, the remedy lies in the Judicial Power. This means that when an agent issues a ticket or what we call "process", there is no defense because the officer is taking you into the legislative courts where there is no judicial power. The individual must come with a collateral attack, using equitable remedies under the judicial power, to restrain the action that the officer is taking in the legislative courts. Again, this is done by initiating a civil action in an equity court using the judicial power of the Constitution. To get liberty and freedom, government must be restrained!

You have to stand up for yourself. You can't rely on congress, the president, the media, a lawyer or anyone else. It takes the highest power of authority, the Republic and the Chief Justice, to act; that's you. *So, let's restore the republic by exercising personal judicial power!*

Any issue regarding rights under the Constitution must be heard in court. This is called due process, and it is the right to go into a court and get a remedy. However, to go into court one must have "standing" to be a plaintiff in order to sue. Witnesses, clerks, juries, lawyers, judges, and observers do NOT have standing in court cases, although they are allowed to participate.

If you are arrested or ticketed, you will become the defendant but, who is the plaintiff? Under todays "trust" styled government (known as a *shell game*), the "People of the State" will be listed as the plaintiff, some states list just the state. The question is, "do they have standing?" The answer, I have found, is that they will not address this question or they will say they do have standing and if you don't like the ruling you can appeal.

So, this whole approach to contain or control the actions of the "plaintiff" and challenge their "standing", needs to be re-examined knowing the officer brought us into the legislative court, where there is NO ADEQUATE REMEDY AT LAW!

There is no speedy nor adequate remedy in the ordinary course of law. What does that mean? It means that, generally, we cannot win with challenges and defenses! An individual who's rights have been violated must move with a collateral or alternative attack. We must get into the position to exert the judicial power for a remedy when our rights are violated.

Sometimes, the judge or magistrate will let some people win in order to keep them guessing and thinking that there may be some kind of remedy at law. THERE ISN'T! Even when one wins on reasons such as demurrer or the speedy trial law, discovery issues, etc. It's all at the whim of the judge or magistrate if he wants to make you appeal a case or not.

So, what is the answer? If you haven't figured it out yet, let me list a few more concepts that I think we need to consider when trying to obtain a remedy that I believe must be pursued in the courts of equity.

I Want to Do it My Way

> *"Judicial power is the authority vested in courts and judges, as distinguished from the executive and legislative power. It is a power involving exercise of judgment and discretion in determination of questions of right in specific cases effecting interests of person or property, as distinguished from ministerial power involving no discretion."*
>
> — *Black's Law Dictionary*

The ministerial power is what the agent is using when he or she pulls us over. They do not weigh the question of our rights against their ministerial duty. They leave that up to us if we feel that we need a remedy from the actions they are taking.

Before responding to the ministerial power that the agent is pursuing, I'm looking for a situation that meets the 5 points below that will guide our actions:

1. **We must have the power of the officer.** By this I mean if an agent can just write their "opinion" down and force us to take action to defend, we must have a process

that we can do the same to them. We should be able to write our own ticket, so to speak, and bring the agent in to answer our charges and not have to depend on anyone else like a lawyer, judge or clerk. If we look at how courts are set up, we see that the plaintiff who files an affidavit is automatically considered the winner, unless the defendant can prove the plaintiff is lying. The agent simply writes a ticket, and we are sent to the court to tell the judge why we should not be found guilty.

2. **There must be a statute, code or ordinance that we can use to make them answer.** By this I mean there has to be a legal process (in the code books) that is for our benefit against government agents or anyone who violates our rights.

3. **It must be personal.** By this, I mean just me and the guy who is doing it to me. No corporations, companies, governments, clubs or entities. Although cities and other entities can be named, they are merely the deep pockets or the ones who take liability, not necessarily the ones responsible for the injuries. Also, we need to take personal action to do this and not rely on a class action or any attorneys.

4. **It must be an equitable remedy.** By this I mean justice is the main focus and NOT the law. The fairness of what the agents did will not be looked at in court of law. We must be in a court with judicial power and equitable remedies where we are the moving party.

5. **It must go across the board.** By this I mean this remedy should work against all federal and state agents and their agencies. From the IRS to HLS and from the DMV to the TSA; Against all Legislative and Executive agents with governmental powers.

I have banged my head against the proverbial "legal wall" for decades to find a remedy that meets the above criteria. What are the code sections that give us the power to serve the agents with paperwork that will make them appear and answer to our demands (*show cause*)? There is one! There is one for the state jurisdiction and one for the federal jurisdiction!

Driving Me Crazy

Before we get to the the procedures and rules, let's look at a famous Virginia Court Case from 1930, *Thompson v. Smith ,155 Va. 367, 386-388, 154 S.E. 579, 71 A.L.R. 604. (Sept. 12, 1930)*, where the plaintiff, Mr. Thompson, was arrested for driving on a suspended license. The judge in his case was thinking out loud:

> ***"His only remedies at law were: (1) To proceed by petition for mandamus to compel the chief of police to restore to him his driving permit, or (2) to wait until arrested upon the charge of driving without a permit and then interpose the defense that the provisions of the ordinance under which his permit had been taken from him were void…"***

These are the only two remedies (at law) that the Court could come up with for Mr. Thompson to take. These are the remedies that most freedom loving Americans have been pursuing for many years because of their "lack of knowledge" or misguided understandings of equity.

Even with my intense studies, it took me decades to find the simple answer that was written in this case. Let's read what the judge continued to explain:

> *"In the instant case,* ***neither of these remedies is as complete and adequate as a suit for injunction to protect the complainant against the wrongful interference****, under the color of a void ordinance, with the lawful exercise of his common personal right to drive an automobile; and the bill alleges that,* ***unless the chief of police be restrained, complainant "will sustain irreparable injury in his pursuance of happiness and in acquiring and the use of his property."*** (Emphasis Added)

You see, **THERE IS NO REMEDY AT LAW!** The judge went on to explain that because petitioning for a **mandamus or making a defense** according to the ordinance (law) is **neither complete or adequate as a SUIT FOR INJUNCTION** to protect Mr. Thompson from the "wrongful interference" with the lawful exercise of his common PERSONAL right to drive an automobile. (How about that, he said "drive".)

So, it is INJUNCTION (see FRCP 65(b) and California Civil Procedure beginning with section 526) that is the "*silver bullet*" to protect the lawful exercise of one's rights. This is very specific; one is a federal rule and the other is a state procedural code section. I have known of many who have thought about this but, they never figured out how to do it. Just saying the word injunction isn't going to work and I'm sure there will be many who say they tried it and it didn't work. Just because it didn't work for you doesn't mean you worked it properly. Anyone who deals in legal matters or the courts can tell you that just because you are right, doesn't mean you win.

Much of the resistance to filing an injunction comes from the lawyers as well as case law rulings made "at law" which don't have within them the "special" process and nature of the equity jurisdiction.

In paragraph 17, of the above case, the judge addresses certain objections that have been raised in prior cases as well as some he comes up with himself. He says:

> *"But it is said that a suit for injunction will not lie in the instant case because no property rights of the appellant have been invaded.* ***Whether a right to use the public highways for the ordinary and usual purposes of life be a property right or not, it is a very valuable right, not a mere privilege.****"*

Evidently, it was just hearsay or never legally addressed that the power of injunction would not lie unless property rights were involved. The judge explains that the right to use the highways is a "very valuable right, not a mere privilege" and whether it is a property right or not, the fact that it is a very valuable right, puts it in the category of a personal right that the suit for injunction will be available for.

The judge continues to tell us that just because a statute is invalid or unconstitutional, or that your rights have been violated, this is not in itself a ground for equity jurisdiction, and there must be some further circumstances that must be shown in order to bring the case into some recognized ground of equity:

> *"The invalidity or unconstitutionality of a statute or ordinance is not of itself a ground of equity jurisdiction.* ***A court of equity has not jurisdiction to enjoin acts only because they are attempted or threatened under color of an unconstitutional or void statute or ordinance.*** *Further circumstances must be shown which bring the case within some recognized ground of equity jurisdiction, but* ***inadequacy of legal remedy or irreparable injury are well-recognized grounds of equity jurisdiction."***

He just told us here that those further circumstances that must be shown are "inadequacy of legal remedy" or "irreparable injury", in order to give the court jurisdiction to go into the equity to obtain relief. He continues:

> ***"It is recognized that an injunction will lie to enjoin the threatened enforcement of an invalid statute or ordinance where the lawful use and enjoyment of private property will be injuriously affected by its enforcement, or where the right of a person to conduct a lawful business will be injuriously***

affected thereby, unless the remedy at law be manifestly as complete and adequate as an injunction suit."

So, basically the judge is saying here, unless Mr. Thompson could get a complete and adequate remedy at law, which is the same as the remedy by injunction (which the judge knew he couldn't), this type of **equity injunctive remedy is available as an action to protect** private property and the right to conduct a lawful business.

Then the judge himself raises another objection dealing with the nature of personal rights compared to property rights:

> *"But it has been said that it is beyond the scope of the powers of a court of equity to enforce* ***personal rights as distinguished from property rights****."*

He deals with this objection fairly easily by telling us that he and the court don't believe that there is much of distinction between personal and property rights:

> ***"This distinction, we think, is not well made.*** *Fundamental personal rights, such as the right of a person to travel the public highways of the state, are not less sacred and valuable rights, or less subject to the protection of a court of equity, in a proper case, than are property rights."*

After concluding that the distinction is not well made, between personal and property rights, the court continues to tell us that the ***suit for injunction is the "more appropriate and effective method to stop the invasion or interference of personal rights:***

> ***"An injunction suit is often a more appropriate and effective method of resisting the invasion of or interference with such a personal right under color of void statute or ordinance than any common-law remedy****; and where the remedy at law is not as complete and as fully adequate as an injunction suit, or where the threatened or attempted enforcement of a void statute or ordinance will do irreparable injury to a person in interfering with the exercise of such a common fundamental personal right, a suit for injunction will lie. And,* ***by irreparable injury is meant an injury of such a nature that fair and reasonable redress may not be had in a court of law, and that to refuse the injunction would [587] be a denial of justice."***
>
> *— High on Injunctions (4th Ed.) sec. 22.*

The prosecutors for government cannot get an injunction against an individual for violation of a statute, unless someone is being irreparably injured, and then it would be non statutory and not on behalf of the "people of the state". There is no equitable remedy for the government because it cannot be damaged or prove irreparable injury.

So when the prosecutor is acting on behalf of the people, a legal fiction, he is bringing charges in the "statutory" jurisdiction, which as you recall from the first pdf, (which you can download from the *website*) is the legislative / executive jurisdiction under the Constitution which has no equity, so we refer to his actions to be "at law" as opposed to an action for "prospective relief".

When we bring an injunction under the equity jurisdiction, it is brought through the judicial power of the Constitution as opposed to the legislative / executive power of the Constitution. This is done outside the statutory scheme according to the rules of the common law (unwritten law) and brings in the fairness of the case, as opposed to the strictness of the law (statute).

Since the powers are separate and equal, a case at law will be presented in a separate court than a suit in equity and the case will proceed by statute and the suite by the plenary power of the court. The judicial power of the court has jurisdiction over all cases law and equity, but the legislative / executive powers of the court can only proceed by law (statute) since there is no judicial power in those branches of the government.

Works for 1st Amendment Protection

In order for us to be able to take an agent, or any individual who violates our rights, to court and make him or her "show cause" why he or she shouldn't be permanently restrained from interfering with our lawful exercise of Constitutional Rights, we need a "legal" process that can be enforced on him or her. As mentioned above, the Temporary Restraining Order (TRO), also known as a preliminary injunction, is a process described in Rule 65(b) of the Federal Rules of Civil Procedure, and 526 et seq. of the California Civil Procedure. Both appear to grant relief.

The above rule and procedure are out of the federal and state code books and most lawyers can figure out how to do them (usually with the help of the judge or other lawyers) but most say it is a complicated process and they really don't like it. Another

reason for the lawyers disinterest is the nature of this process. The lawyer doesn't get the "billable hours" or the "litigation time" that a "law" suit could produce. Therefore there is not much money in it for the lawyers. Remember, they are "attorneys at law".

I personally feel it is necessary that an individual have experience with legal forms and process as well as knowledge of basic court rules and concepts that could be gained with at least 2 years of personally fighting in court and filling out paperwork. Further, and just as important, one must have a flexible mind in order to understand how the equity relates to the situation that one is in. Too many people are brainwashed to think like attorneys who only study the legislative and executive statutes and "at law" procedures. I have seen rookies in the position of winning their case with an injunction and let the judge intervene and smoothly twist the "equity suit" into a "case at law." This is why one must have experience and understanding in order to prevail. A long time ago a judge told me, "I'm not going to do it for you." It took me about 25 years to understand what he was telling me.

Hopefully, from the above, you will be able to at least see the direction in which I am heading. The injunction, enforced in the equity jurisdiction using the judicial power of the United States, is the remedy that protects one from the unconstitutional invasion of personal and property rights.

Below is a plethora of case law quotes designed to help the more experienced individuals who can withstand the complex legal language or "punchy on the brain" legalese. The quotes below are to show those who are familiar with studying case law and legal arguments that the process I am talking about is 100% backed up by today's modern legal theories and that the equity jurisdiction and the injunction process is, and has been, the proper method to protect rights from unconstitutional invasion by government agents since the adoption of the Constitution.

Another case I found that also backs up the concept that equity will protect personal rights is a 1946 Massachusetts case, *JESSE KENYON & others vs. CITY OF CHICOPEE & others, 320 Mass. 528*, where the court was dealing with a city ordinance forbidding one to "distribute or cause to be distributed or thrown, any handbills, circulars, pamphlets, advertisements or other papers, except newspapers . . .,"

The court said the city ordinance was "unconstitutional and void as applied to the distribution of literature respecting religious meetings," and:

> ***"Equity will protect personal rights by injunction upon the same conditions upon which it will so protect property rights."***

The court continues to educate us about why the equity is able to protect personal rights:

"…[A]nd that injunctive relief can be applied with practical success and without imposing an impossible burden on the court or bringing it's processes into disrepute."

The fact that the injunction can be applied and that the court will not suffer a loss or want of reputation, means there's no reason for the court not to give relief. Continuing on, we are told why legal remedies by the defendant (us) are not sufficient:

> ***"Legal remedies by defending*** against repeated unfounded criminal complaints and by bringing successive actions for malicious prosecution or false arrest ***are not adequate."***

Here he is saying that the Plaintiff, Jesse Kenyon & others, who were repeatedly cited by the city's agents, **having to defend** against the governments repeatedly filing complaints against them is **not adequate**. He is also saying that for us to have to file cases against the government and their agents, for malicious prosecution and/or false arrest, is also **NOT ADEQUATE.**

It's a precarious position when there is no remedy at law. Most people cannot fathom the concept as it allows for a **power other than the statute** (legislative / executive branch). A situation where the law cannot provide a remedy calls for extraordinary measures and that would be the plenary or inherent power of the court (judicial power), as opposed to the power of the statute (legislation).

The power of the court, although it cannot stop a criminal case, can and will stop the prosecution of crimes, if that's what needs to happen while protecting someones rights. Here's how the court said this, as the judge continued:

> ***"Equity will not hesitate to restrain prosecutions for crime where such restraint is a necessary incident of the protection of rights which equity recognizes and protects, although commonly it will leave a person accused of crime to his defense at the trial of an indictment or complaint and will not prejudge the criminal case."***

Wait; I guess it was a novel idea back in 1946 considering the comment that the judge made just before this last paragraph:

"We are impressed by the plaintiffs' suggestion that if equity would safeguard their right to sell bananas it ought to be at least equally solicitous of their personal liberties guaranteed by the Constitution."

How come no one is doing this now? Surely some lawyer or really smart person would show us how to uphold our rights! So, obviously it doesn't work because if it did, "THEY" would inform everyone to make sure we are aware of how to proceed against the government, right? If these are some of your thoughts right now, it is going to be difficult to get past the brainwashing.

I am simply trying to point out that if our rights are being violated, then there is a special procedure, called injunction, that will prevent the injury to any person when the law (statutes) will not help. It just has to be executed properly. Much like telling a basketball player he gets to shoot a free throw to win the game, the situation is clear, he knows he must make a free throw but can he make it?

Enjoining Forfeitures, Foreclosures, and Other Actions!

As it turns out, this is the remedy for any violation of constitutional rights, foreclosure actions, as well as for forfeiture cases such as the Liberty Dollar in North Carolina. To give those of you who may file an action a head start on their orders, restraining orders (injunction) that is, let's look at the Admiralty and Maritime Claims Rule E §(4)(f), which states in relevant part:

Procedure for Release From Arrest or Attachment. Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the Plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules....

It's that "prompt hearing" that appears to be so elusive and I had to dig into the notes of the rule to find a 1985 Amendment that indicates the process of getting that hearing.

From the notes of Advisory committee on Amendments to Rules made in 1985:

"Rule E(4)(f) is designed to satisfy the constitutional requirement of due process by guaranteeing to the shipowner a prompt post-seizure hearing at which he can attack the complaint, the arrest, the security demanded, or any other alleged deficiency in the proceedings. The amendment also is intended to eliminate the

previously disparate treatment under local rules of Respondents whose property has been seized pursuant to Supplemental Rules B and C.

"The new Rule E(4)(f) is based on a proposal by the Maritime Law Association of the United States and on local admiralty rules in the Eastern, Northern, and Southern Districts of New York. E.D.N.Y. Local Rule 13; N.D.N.Y. Local Rule 13; S.D.N.Y. Local Rule 12. Similar provisions have been adopted by other maritime districts. E.g., N.D. Calif. Local Rule 603.4; W.D. La. Local Admiralty Rule 21. Rule E (4)(f) will provide uniformity in practice and reduce constitutional uncertainties.

*"**Rule E(4)(f) is triggered by the defendant or any other person with an interest in the property seized. Upon an oral or written application similar to that used in seeking a temporary restraining order, see Rule 65(b), the court is required to hold a hearing as promptly as possible to determine whether to allow the arrest or attachment to stand. The plaintiff has the burden of showing why the seizure should not be vacated. The hearing also may determine the amount of security to be granted or the propriety of imposing counter-security to protect the defendant from an improper seizure."***

If you have read this far, you may still have doubts about how this equity jurisdiction works. If you are having a hard time grasping the concept that equity is a completely separate jurisdiction from the law, you are going to have to de-program yourself by determining what the general perspective is, and create questions based upon the facts as you understand them.

I should also remind people that the court acts in a technical manner in each case. The above rule, E(4)(f) only applies to "seizure" actions and is not available for "forfeiture" actions. In the Liberty Dollar case, there is a separate case number for both the seizures and the forfeiture. Actually there are four different seizure numbers and one forfeiture number. There is, additionally, a criminal complaint against four other individuals and that is also considered a separate case.

While studying, I ran into a number of supreme court opinions that are a good foundation for the arguments in favor of using equity to restrain government agents from unconstitutional acts under color of law.

Ex Parte Ayers, 123 U.S. 443, (1888) is a case regarding the 11th Amendment, habeas corpus, and other issues where the court was dealing with the distinction between

protection of the Constitution and the rights of persons and of property. It appears that "protection of the Constitution" is done by the law, and protection of rights both personal and property are protected by equity. The court said it like this:

> *"A state, without its consent, cannot be sued by an individual; and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter. But it has been well settled that, **when a plain official duty,** requiring no exercise of discretion, **is to be performed,** and performance is refused, **any person who will sustain personal injury by such refusal may have a mandamus** to compel its performance; and, when such duty is threatened to be violated by some positive official act, **any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it.** In such cases the writs of mandamus and injunction are somewhat correlative to each other. In either case, **if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ.** An unconstitutional law will be treated by the courts as null and void."*

The last part of the quote that is in bold, tells us that whether the case against an agent is by mandamus or injunction, if he uses an unconstitutional law (almost all are) as an excuse to do his "duty", the court will still issue the injunction and the unconstitutional law will be treated as null and void. Remember, an agent needs a warrant (Fourth Amendment) which is a special kind of order, to proceed against us, as the statute is not sufficient. Oh! but wait, we already covered that the agent is acting upon presumption and ignoring the Constitution and the Fourth Amendment! Hmmm, where is that restraining order? We can go get it now!

The court continues, and tells us there are many precedents for injunctions to restrain officers of the states from executing statutes that are repugnant to the Constitution of the United States:

> *"It is, however, insisted upon in argument that it is within the jurisdiction of the circuit court of the United States **to restrain by injunction officers of the states from executing the provisions of state statutes void by reason of repugnancy to the Constitution of the United States;*** **that there are many precedents in which that jurisdiction has been exercised** *under the sanction of this court; and that the present case is covered by their authority."*

Further down in the same case, the court says that injunction will lie to restrain the collection of taxes if collected by seizures that are contrary to the Constitution of the United States:

> *"In pursuance of the principles adjudged in the case of Osborn v. Bank, supra, it has been repeatedly and uniformly held by this court that an* ***injunction will lie to restrain the collection of taxes sought to be collected by seizures of property imposed in the name of the state, but contrary to the Constitution of the United States, the defendants being officers of the state threatening the distraint complained of.****"*

In almost all cases, specifically those that deal with law and equity, a distinction by the court is usually necessary to explain why and how the court is making the decision in the particular case. A little further into this case, the court shows a distinction:

> *"It may be asked what is the true ground of distinction, so far as the protection of the Constitution of the United States is invoked, between the contract rights of the complainant in such a suit, and other rights of person and of property. In these latter cases it is said that* ***jurisdiction may be exercised against individual defendants****, notwithstanding the official character of their acts, while in cases of* ***the former description the jurisdiction is denied."***

In a more recent case, *Allen v. Railroad Co., 114 U.S. 311 , 5 Sup. Ct. Rep. 925 (1885)*, which was cited in Ex Parte Ayers, the judge tells us that when there are NO purely legal forms and procedures that will provide an adequate remedy in the law, the equity jurisdiction when appropriately entered, will give remedy and will not be affected by any legislation of the states. He says:

> *"Where the rights in jeopardy are those of private citizens, and are of those classes which the Constitution of the United States either confers or has taken under its protection, and no adequate remedy for their enforcement is provided by the forms and proceedings purely legal, the same necessity invokes and justifies, in cases to which its remedies can be applied,* ***that jurisdiction in equity vested by the Constitution*** *of the United States, and which* ***cannot be affected by the legislation of the states."***

The Court summed it all up by telling us that the fact that equity is the proper jurisdiction and that it can grant relief by injunction in this case, are both indisputable:

"In the present case, the jurisdiction in equity to grant the relief prayed for by injunction, and the propriety of its exercise, are alike indisputable."

I'm going to bring up one more case, which was also about the 11th amendment and the Civil Rights Act, which is re-written under Title 18 Sec. 1983. This case, *Will v. Michigan State Police 491 U.S. 58 (1989)*, which also cites the Ex Parte Ayers case above, the court was determining whether a State was considered a "person" for purposes of the Civil Rights Act. In this case, the majority concluded that the State is not considered a Person for purposes of the Act, however they were also faced with the question of whether state officials would be considered "persons" under the Act and they decided that they also were not considered "persons" for purposes of the Civil Rights Act. Here's the last paragraph of the case:

"Obviously, state officials literally are persons. But a ***suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.*** *Brandon v. Holt, 469 U.S. 464, 471 (1985). As such, it is no different from a suit against the State itself. See, e. g., Kentucky v. Graham, 473 U.S. 159, 165 -166 (1985); Monell, supra, at 690, n. 55. We see no reason to adopt a different rule in the present context, particularly when such a rule would allow petitioner to circumvent congressional intent by a mere pleading device.*[10]*"*

The key here is they are referring to the "suit", which in this case is pursuant to Title 42, sec. 1983, a statutory action under the Civil Rights Act. When we go to the footnote, number 10, we find the twist; if the suit is for injunctive relief then it is not considered a suit against the State:

[Footnote **10**] *Of course a state official in his or her official capacity,* ***when sued for injunctive relief, would be a person under 1983*** *because "official-capacity actions for prospective relief are not treated as actions against the State." Kentucky v. Graham, 473 U.S., at 167 , n. 14; Ex parte Young, 209 U.S. 123, 159 -160 (1908).* ***This distinction is "commonplace in sovereign immunity doctrine,"*** *L. Tribe, American Constitutional Law 3-27, p. 190, n. 3 (2d ed. 1988), and would not have been foreign to the 19th-century Congress that enacted 1983, see, e. g., In re Ayers, 123 U.S. 443, 506 -507 (1887); United States v. Lee, 106 U.S. 196, 219 -222 (1882); Board of Liquidation v. McComb, 92 U.S. 531, 541 (1876); Osborn v. Bank of United States, 9 Wheat. 738 (1824). City of Kenosha v. Bruno, 412 U.S. 507, 513 (1973), on which JUSTICE STEVENS relies, see post, at 93, n. 8, is not to the contrary. That*

case involved municipal liability under 1983, and the fact that nothing in 1983 suggests its "bifurcated application to municipal corporations ***depending on the nature of the relief sought*** *against them," 412 U.S., at 513 , is not surprising, since by the time of the enactment of 1983 municipalities were no longer protected by sovereign immunity. Supra, at 67-68, n. 7.*

Bottom line: it appears that it is not who or what you are suing that determines how the case will be ruled upon, but the **nature of the relief sought** that will define the jurisdiction of the case. **A case for damages is a different jurisdiction than a suit for prospective relief.** Welcome to the equity jurisdiction!

Conclusion…

At the time I'm putting this out I am working on a TRO for a piece of property. I have once before tried to put one together, but failed miserably. From this, I have learned a great deal. I say this to encourage each of you who have taken the time to read this to focus your energy towards this process and perfect the concept so that anyone will be able to go to the court and obtain a restraining order against anyone who violates their constitutional rights.

The injunction, enforced in the equity jurisdiction using the judicial power of the United States, is the remedy that protects one from the unconstitutional invasion of personal and property rights. I must stress that this process can be difficult. The Points and Authorities being the most challenging aspect. My next e-book will focus primarily on how this is done. Remember, **what we say** and **how we say it** is going to decide if we get what we want!

"In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution"

—Thomas Jefferson

Further Reading & Resources:

Power Politics Website
http://www.powerpolitics.com

Power Politics Introduction E-Book
http://powerpolitics.com/wp-content/uploads/2010/12/Power-Politics-E-Book-An-Introduction-to-Constitutional-Remedy.pdf

Black's Law Dictionary
http://www.blackslawdictionary.com

Find Law
http://www.findlaw.com

Nexus Lexus
http://www.nexuslexus.com

California Court Info - Forms
http://www.courtinfo.ca.gov/forms/

California Law - Codes
http://www.leginfo.ca.gov/calaw.html

Google Scholar
http://www.scholar.google.com/

More Info on Temporary Restraining Orders

A temporary restraining order (TRO) may be issued for short term. A TRO usually lasts while a motion for preliminary injunction is being decided, and the court decides whether to drop the order or to issue a preliminary injunction.

A temporary restraining order may be granted *ex parte*, that is, without informing in advance the party to whom the temporary restraining order is directed. Usually, a party moves ex parte to prevent an adversary from having notice of one's intentions. The TRO is granted to prevent the adversary from acting to frustrate the purpose of the action, for example, by wasting or hiding assets (as often occurs in dissolution of marriage) or disclosing a trade secret that had been the subject of a non-disclosure agreement.

To obtain a temporary restraining order, a plaintiff must prove four elements: (1) likelihood of success on the merits; (2) irreparable harm, absent the order; (3) that less harm will result to the defendant if the TRO issues than to the plaintiffs if the TRO does not issue; and (4) that the public interest, if any, weighs in favor of plaintiff.[1] If the balance of hardships tips in favor of plaintiff, then the plaintiff must only raise "questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberative investigation."[2]

Other Kinds of Restraining Orders

Many states have injunction laws that are written specifically to stop domestic violence, stalking, sexual assault, or harassment and these are commonly called restraining orders, orders of protection, abuse prevention orders, or protective orders.