

## BRIEF IN SUPPORT OF MOTION FOR TRIAL BY JURY DEMAND

This brief summarizes without becoming too lengthy the case law in support of Plaintiff's Right to a trial by jury in this instant case. All case law cited is pursuant to the intent of the U.S. Constitution as written by our founding fathers.

1. "To ascertain scope and meaning of Seventh amendment, preserving trial by jury in suits at common law where the value in controversy exceeds \$20, resort must be had to the appropriate rules of the common law established at the time of the adoption of the constitutional amendments in 1791. U.S.C.A. Const. Amend. 7. *Dimick v. Schéidt*, 55 S. Ct. 296, 293 U.S. 474, 79 L. Ed. 603. "9A S. Ct. Digest 250.
2. "The distinction between law and equity jurisdiction is constitutional to the extent to which the seventh amendment forbids any infringement of the rights of trial by jury, as fixed by the common law. *Root v. Lake Shore & S.R. Co.*, 105 U.S. 189, 26 L. Ed.975 "9A S. Ct Digest 250.
3. "Seventh "Amendment to constitution preserves right of jury trial existing under English Common Law when amendment was adopted and protects it from indirect impairment through possible enlargement of courts power of re-examination under such law. *Baltimore & Carolina Line v. Redman*, 55 S. Ct. 890, 295 U.S. 654, 79 L. Ed. 1636. "9A S. Ct Digest 251.
4. "A constitutional power cannot be used by way of condition to attain an unconstitutional result. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S. Ct. 125" S Ct Digest, L Ed.
5. "A litigant may only assert his own constitutional Rights and immunities. *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101." S. Ct Digest L. Ed.
6. "The constitution is intended to preserve practical and substantial Rights, not to maintain theories. *El Pase v. Simmons*, 379 U.S. 497, 85 S. Ct. 577". S. Ct Digest L. Ed.

7. "Where Rights secured by the Federal Constitution are involved, there can be no rule-making or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 10 ALR 3<sup>rd</sup> 974." S. Ct Digest L. Ed.
8. "Constitutional deprivations may not be justified by some remote administrative benefit to the state. *Harman v. Forssenius*, 380 U.S. 24, 85 S. Ct. 1177." S. Ct Digest L. Ed.
9. "Where the intention of a constitutional provision is clear, there is no room for construction, and no excuse for interpolation or additions. *United States v. Sprague*, 282 U.S. 716, 51 S. Ct 220, 71 ALR 1381." S. Ct Digest L. Ed.
10. "A clause in the Constitution must be given full force and effect throughout the Union. *King v. Mullins*, 171 U.S. 404, 18 S. Ct. 925." S. Ct Digest L. Ed.
11. "The Constitution was intended to prohibit things, not names, and its provisions cannot be evaded by giving a new name to an old thing. "*Craig v. Missouri* 4 Pet 410." S. Ct Digest L. Ed.
12. "As used in constitutional or statutory provision, the term "jury" is ordinarily understood to mean a common-law jury if no other jury was known in law at the time of the adoption of the constitution." 47 Am Jur 2d, 627.
13. "The Right to trial by jury is a fundamental Right in our democratic system, and is recognized as such in the Magna Charta, the Declaration of Independence, the Federal Constitution, and the constitutions of the various states." 47 Am Jur 2d, 631.
14. "The constitutions of the several states generally contain express guarantees of the Right to a jury trial. The typical provision is that the Right shall be and remain inviolate, or that the Right, as heretofore enjoyed, shall remain inviolate. Such Rights apply to both civil and criminal cases. The Right is secured, and not granted, by such a provision." 47 Am Jur 2d. 633.
15. "It has also been stated that the words "law of the land" and "due process of law." when used in considering the property Rights of individuals, mean not only summons or notice, such as is ordinarily given upon institution of a suit, due appearance of the parties in interest, and pleading of the facts in issue, but also means a determination thereof by a jury." 47 Am Jur 2d, 634.

16. "The Right of a trial by jury, where it is granted by constitutional or statutory provision, cannot be taken away or impaired by the courts, nor has the legislature any power to authorize the courts to take away nor impair the Right when it is secured in or guaranteed by a constitutional provision. The general rule is that a trial without a jury cannot be had where there is a Right to a jury trial. The view has been taken that a court sitting without a jury, where there is a Right to a jury trial which has not been waived, has no jurisdiction of the case, and its decree is void, the jury being a necessary constituent part of the court itself." 47 Am Jur2d 643.
17. Every state law must conform in the first place to the constitution of the U.S., and then to the subordinate constitution of the particular state, and if it infringes upon the provisions of either, it is so far void. Houston v. Moore 18 U.S. 1,5 L. Ed. 19.
18. Court's ruling is not discretionary if Court violates their oath of office to the state and federal constitutions by depriving citizen of constitutional rights, which is unconstitutional. See Adamson v. C.I.R. 745 F. 2d 541, 546 (9<sup>th</sup> Cir. 1984).
19. The Court's ruling is not discretionary if it violates the federal constitution, statute, or applicable regulation U.S. Fidelity & Guar. Co. v. United States 837 F. 2d 116, 120 (3<sup>rd</sup> Cir. 1996).

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